



Mr. Willem Wijnstekers  
Secretary-General  
CITES Secretariat  
International Environment House  
Chemin des Anémones  
CH-1219 Châtelaine, Geneva  
Switzerland

8 May 2006

Re: Notification No 2006/023 Introduction from the Sea

Dear Willem:

Thank you for the opportunity to comment on the recommendations from the workshop on Introduction from the Sea issues Geneva 30 November – 2 December 2005.

As an initial, procedural matter, the Species Survival Network (SSN) supports clarifying ‘introduction from the sea’ via a resolution rather than by an amendment to the Convention. In addition to the arguments presented in the Notification, we note that adopting an amendment to the Convention requires an extraordinary meeting of the Conference of the Parties, and could therefore involve the Parties and the Secretariat in additional, unnecessary time and expense.

**Marine environment not under the jurisdiction of any State**

Defining the phrase ‘in the marine environment not under the jurisdiction of any State’ is important for the proper implementation of CITES for marine species, because establishing the boundaries of jurisdiction determines whether an export permit, an introduction from the sea certificate, or nothing at all is required under CITES.

SSN agrees it is prudent for UNCLOS to provide the primary legal basis for determining jurisdiction over maritime spaces, that a broad reference to international law is inappropriate, and that terminology from UNCLOS should not be paraphrased.

SSN therefore supports the Final Recommendation of the working group on the definition of this phrase, and would welcome its inclusion in a draft resolution to COP 14.

We note the discussion over the use of the term ‘jurisdiction’ in the definition and agree that use of this term would be confusing. UNCLOS grants sovereign rights to exploit resources, and jurisdiction to regulate artificial islands. Jurisdiction is not otherwise used to describe the rights of coastal



States with respect to demarcating boundaries of a territorial sea, exclusive economic zone, or continental shelf. Thus, the inclusion of jurisdiction in defining the term ‘not under the jurisdiction of any State’ is unnecessary.

### **Transportation into a State**

This definition is important because it determines which CITES party will issue the introduction from the sea certificate and make the non-detriment finding required prior to the issuance of the certificate.

SSN concurs with the view that, as a matter of law, ‘transportation into a State’ clearly refers to the State into which specimens are brought and then cleared through customs. Under that construction, the port State should issue an introduction from the sea certificate.

SSN opposes allowing flag states to issue IFS certificates for reasons of simplicity, and to avoid the risks associated with ‘flags of convenience’.

### **Non detriment findings**

SSN supports the view that port states, not flag states, should be responsible for the issuance of NDF findings, but that port States should of course consult with flag states and that they should certainly consult with relevant regional fisheries bodies (RFBs). SSN shares the view expressed by participants at the workshop that the knowledge of an RFB about the sustainability and legality of a particular harvest (perhaps based on a trade documentation or a certification scheme) would be critical to the making of any NDF.

We note that some parties expressed concern that a port State may have insufficient information to be able to make a valid NDF. SSN suggests that if a port state is unable to gather sufficient scientific information to make a non-detriment determination for any particular import, and an RFB or flag state cannot provide relevant or sufficient information, then the Scientific Authority of the port State must make a finding that the introduction will be detrimental or acknowledge that insufficient information exists to make a NDF. As a consequence, the Management Authority of port State may not issue an introduction from the sea certificate.

SSN would urge against the assumption that the legal harvesting of marine specimens (for example in accordance with an RFB) could always be presumed non-detrimental. It will very much depend on the species and RFB in question. There are many commercial marine species that are legally harvested at rates that are not ecologically sustainable but nonetheless done in accordance with RFB arrangements. In fact, it may be because an RFB has failed to adequately manage a species that a CITES listing is proposed. Therefore, we recommend that Parties remain ultimately responsible for reaching *independent* assessments of non-detriment, taking into consideration any advice from the relevant RFB. However, the Parties can make a decision on listing a specific marine species to cooperate formally with a relevant RFB, and stipulate the process for that through an annotation or related resolution.

SSN notes that agreement on a definition for ‘transportation into a State’ was not reached at the workshop.

We consider the problem of making non-detriment findings for marine species subject to Introduction from the Sea to be crucial to the success of the Convention in preventing overexploitation of these species. We therefore strongly recommend that a formal process to deal with this issue be established at

the next COP. This could take the form either of an intersessional working group, a series of workshops, or a cooperative process with FAO, relevant RFBs and appropriate experts, with the aim of providing assistance to Parties in the making of these NDFs. We also recommend that the Review of Significant Trade process should be modified as necessary so that it can be made applicable to species taken beyond the boundaries of any state, allowing Recommendations to be made to relevant port states.

SSN thanks you for considering our views.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Will Travers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Will Travers  
President  
Species Survival Network