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GETTING ON THE LIST:

POLITICS AND PROCEDURAL MANEUVERING IN CITES APPENDIX I AND II DECISIONS FOR COMMERCIALY EXPLOITED MARINE AND TIMBER SPECIES

by *Melissa Blue Sky**

INTRODUCTION

In this, the International Year of Biodiversity, the fifteenth Conference of the Parties (“COP-15”) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES” or “Convention”) will likely be remembered most for those species that it failed to provide protection for—the polar bear, coral, sharks, and most notably the bluefin tuna.¹ International trade in wild species has been valued at an estimated \$240 billion annually and CITES seeks to ensure, through international cooperation, that this trade does not unduly threaten the survival of wild species.² Despite increased consideration of proposals to regulate trade in commercially valuable species since CITES COP-12 in 2002, any past trends in their acceptance are waning.³

Around eighty percent of the value of annual international trade in wild fauna and flora consists of trade in fisheries and timber.⁴ That none of the six proposals to include marine species, a number of which had been proposed for listing at prior COPs, were ultimately accepted at COP-15⁵ illustrates the fundamental tension in listing decisions between parties who believe that CITES should be part of the long-term sustainable management of species and those who consider it a last resort to prevent species extinction. Decisions on whether to provide protection for commercially exploited species often have more to do with economics than with science, underlining the inherent challenge of the Convention: species that are in most need of protection from trade are least likely to get listed because of high levels of demand.

This article examines the opportunities and challenges for protecting biodiversity of economically important species through inclusion in CITES,⁶ first providing an overview of CITES and its provisions for adding species to Appendices, including the revised listing criteria and the new role of the United Nations Food and Agriculture Organization (“FAO”) in COP listing decisions. The next section will focus on COP-15 listing debates, procedural maneuvering, and votes, in the context of scientific evidence and listing proposals for the Atlantic bluefin tuna, several shark species, pink and red coral, and two timber species. Proposals to increase the possibilities for inclusion of commercially exploited species in CITES include measures to strengthen the CITES Secretariat, build coalitions, take livelihood concerns into consideration, amend the relationship between CITES and FAO, and increase responsibilities for importing countries. Finally, this article considers alternative

actions for protecting threatened species from overexploitation through trade, such as through Regional Fisheries Management Organizations (“RFMOs”) or enacting unilateral trade bans justified under Article XX of the General Agreement on Tariffs and Trade (“GATT”).

OVERVIEW OF CITES AND LISTING CRITERIA

CITES regulates international trade in wild species, which includes “export, re-export, import and introduction from the sea,” through permitting and certification.⁷ Based on an initial proposal from the International Union for Conservation of Nature and signed by eighty countries in 1973, CITES currently has 175 members.⁸ CITES was initially concerned with a small subset of animals used in the fashion industry, such as leopards, elephants, and alligators, but today covers the international trade of over 5,000 animal and 28,000 plant species with myriad uses.⁹

Trade in wild fauna and flora is regulated for those species included in CITES Appendices I, II, and III. Appendix I includes “all species threatened with extinction which are or may be affected by trade.”¹⁰ Trade in species listed in Appendix I is prohibited, except under very limited circumstances for non-commercial purposes.¹¹ Species listed in Appendix II may either be a species that while not currently threatened by trade, risks becoming so if trade continues unregulated or a so-called “look alike” species, which is included to ensure the effectiveness of trade regulation for species listed in either Appendix I or II.¹² Trade certification provisions for Appendix II species include approval of an export permit by both importing and exporting nations and a determination that the export of the species “will not be detrimental to the survival of that species.”¹³ Appendix III includes species that are regulated within the jurisdiction of a country that needs international cooperation to control trade, and contains limited permit requirements.¹⁴ Of the more than 33,000 species included in CITES, the majority are listed in Appendix II, with less than three percent listed in Appendix I and less than one percent in Appendix III.¹⁵

Member countries are required to designate a Management Authority and Scientific Authority,¹⁶ whose responsibilities include reviewing species and authorizing trade in species listed in the Appendices.¹⁷ Parties are also responsible for enforcing the regulations set forth in the Convention, but may make

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reservations with regard to specific species listed in Appendix I, II, or III.¹⁸ Countries with reservations in the same listed species may thus trade with one another or with non-parties to the Convention and do not have to abide by CITES regulations for that particular species.¹⁹

LISTING PROCEDURES

Species may be added to Appendix I or II either through an affirmative vote of two-thirds of all the members present and voting at a COP, or between COPs by a two-thirds majority only if votes are received from at least half of the parties.²⁰ Abstentions are not counted in the determination of the two-thirds majority.²¹ For consideration of a proposal at a COP the party proposing the amendment must submit it to the CITES Secretariat at least 150 days before the meeting.²² The Secretariat must consult with other parties and interested bodies, provide the text to the parties²³ and, in the case of marine species, consult with relevant intergovernmental organizations for all proposals.²⁴

A party may make unilateral additions to Appendix III by notifying the CITES Secretariat of the species subject to regulation within the party's jurisdiction.²⁵ A party may submit a reservation for an Appendix III species at any time.²⁶ A listing country may also withdraw a species from Appendix III at any time.²⁷

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LISTING CRITERIA

At COP-9 in 1994 CITES members recommended that the guidance for adding species be reviewed and revised before COP-12 in 2002.²⁸ The listing criteria used for proposals to COP-15 was again amended at the 12th, 13th, and 14th COPs.²⁹

To be listed in Appendix I, a species must meet one of three biological criteria to be considered threatened with extinction for the purposes of CITES.³⁰ The biological criteria are: a small population; a limited geographic area of distribution; or a significant reduction in population, each of which must be coupled with at least one additional factor that may contribute to decline of the species.³¹

To be listed in Appendix II a species must either be in danger of meeting the criteria for inclusion in Appendix I if trade is not regulated, or regulation of harvesting is needed to ensure that the survival of the species is not threatened.³² In addition, for the listing of "look alike" species in Appendix II, the traded form must resemble an Appendix II listed species, be similar enough to an Appendix I species that an enforcement officer

would be "unlikely to be able to distinguish between them," or be otherwise necessary to regulate trade in a listed species.³³

Moreover, the listing criteria notes that the conditions for listing species in either Appendix I or II must be read in conjunction with the definition for "decline," particularly with regard to commercially exploited marine species.³⁴ Definitions are prefaced with a statement that numerical guidelines are illustrative, as no range will apply to all species.³⁵ Nevertheless, for a species to be considered in long-term decline the population will generally be between five and thirty percent of the baseline, and in the case of aquatic species the population will be between five and twenty percent of the baseline.³⁶ Decline can also be measured by the recent rate of decline, which is a reduction of fifty percent or more in the past ten years or three generations, or

a reduction of twenty percent or more in the last five years or two generations for species with low productivity.³⁷

ROLE OF FAO IN LISTING

Since COP-14 FAO has played a major role in the listing debates and decisions related to aquatic species.³⁸ Although the Convention requires the Secretariat to consult relevant intergovernmental bodies for marine species listing proposals,³⁹ the terms of the consultation with FAO were expanded and formalized in a 2006 Memorandum of Understanding ("MoU") between CITES and FAO.⁴⁰ A provision of the MoU specifically related to listing proposals states that "the CITES Secretariat will respect, to the greatest extent possible, the results of the

FAO scientific and technical review of proposals to amend the Appendices."⁴¹

CITES and FAO expert panel listing recommendations conflicted on four of the seven marine species proposals at COP-14, with many members disagreeing with FAO's opposition to listing coral and shark species.⁴² FAO also opposed listing a number of the proposed marine species at COP-15, as discussed in more detail below.⁴³ Moreover, parties at COP-15 applied FAO recommendations inconsistently and did not follow any of the FAO expert panel recommendations in favor of listing, indicating that politics may trump science in determining whether to include a species in Appendix I or II.⁴⁴

ANALYSIS OF COP-15 PROPOSALS, DEBATE, AND LISTING DECISIONS

All marine species listing proposals at COP-15 were rejected after contentious debate, but both timber species—rosewood and holy wood—were approved by consensus for listing

CITES was initially concerned with a small subset of animals used in the fashion industry, such as leopards, elephants, and alligators, but today covers the international trade of over 5,000 animal and 28,000 plant species with myriad uses.

in Appendix II. In contrast, at recent COPs some marine species have been listed, while a number of timber proposals have met with considerable opposition. Commercially significant species listed at COP-12 and COP-13 included seahorses, basking whale and great white sharks, mahogany, and ramin.⁴⁵ Out of the eleven proposals on marine and timber at COP-14 only Brazil wood, sawfish, and eel species were listed.⁴⁶

Forty-two Appendix I and II amendment proposals for species were considered at COP-15, including downlisting of certain species, removal of certain species, and addition of species to both Appendices.⁴⁷ Although decisions on species ranging from elephants to a newt are of utmost importance in the realm of biodiversity and international trade, the scope of this article includes only proposals to list commercially exploited timber and marine species, which were either approved or rejected.

Arguments gaining traction at COP-15 listing debates—discussed in more detail in sections below—include: parties questioning CITES jurisdiction, economic and livelihood concerns, and opinions of insufficient or flawed scientific data.⁴⁸

ATLANTIC BLUEFIN TUNA

Outside of CITES debates there exists a near unanimous agreement that the situation of the Atlantic bluefin tuna is dire.⁴⁹ Commercial fishing of the species only began in the 1970s,⁵⁰ but the stocks have fallen to just fifteen percent of their total before fishing began.⁵¹ Although around eighty percent of the total bluefin tuna catch is consumed in Japan, European and other Mediterranean countries harvest much of the Atlantic bluefin.⁵²

The International Commission for the Conservation of Atlantic Tunas (“ICCAT”) has woefully mismanaged the Atlantic bluefin tuna, setting total allowable catch (“TAC”) quotas at levels that even its own scientists deemed unsustainable.⁵³ Moreover, the problem of illegal, unregulated, and underreported (“IUU”) fishing and lack of enforcement by ICCAT led to a total catch of nearly double the TAC in 2007.⁵⁴

The rapid decline in the Atlantic bluefin tuna population has been obvious for decades; Sweden initially proposed CITES listing in 1992.⁵⁵ The defeat of that proposal was accompanied by claims that ICCAT management of the bluefin tuna stock would improve, a promise echoed by those countries who worked to defeat this year’s CITES Appendix I listing proposal.⁵⁶ Although ICCAT did reduce the TAC limits in 2009,⁵⁷ even with a near total ban population levels would still reach record lows in the next few years.⁵⁸

The proposal and amended proposal to add the Atlantic bluefin tuna to Appendix I were both rejected despite recommendations by FAO’s expert panel for approval.⁵⁹ Even the European Union, whose fishing fleets would be among those most effected, supported a modified version of the listing, which would have delayed inclusion of the species until May 2011.⁶⁰ Japan claimed to not oppose the listing on the grounds that it would reduce sushi and sashimi consumption, but rather because it would place a burden on coastal states and impair their sustainable use of the species.⁶¹ Japan made this claim despite having previously indicated that it would take a reservation if the

Atlantic bluefin tuna were added to Appendix I and serving bluefin tuna sushi at the Japanese embassy mere hours before the vote.⁶² During the middle of the debate on the listing proposal, the delegate from Libya screamed at other parties, called everyone liars, and suggested that politics had trumped science in FAO’s recommendation for listing, and called for an immediate vote on the proposal.⁶³ The move was not surprising considering Libya’s fishing fleets are primary harvesters of the Atlantic bluefin tuna and are suspected of harvesting more than their legal quota.⁶⁴ Libya also established “fishing conservation zone” in the Mediterranean

for exclusive use of one tuna ranching enterprise, which many consider to be a violation of international law.⁶⁵

After Libya requested a vote, the Chair directed parties to first vote on whether to close the discussion.⁶⁶ Although Libya “called on the Chair to respect the Rules of Procedure and go straight to a vote on the proposal” the Chair reiterated the need to first address the issue of closing the discussion.⁶⁷ Monaco then requested a vote on adjournment of the session in an effort to allow for further debate on the proposal and postpone the vote until the plenary.⁶⁸ Although CITES COP Rule of Procedure 18 states that motions to adjourn should be considered before motions on closure of debate,⁶⁹ the Chair determined that as Libya’s motion had already begun that “he had no option but to proceed.”⁷⁰ The parties then voted to close the debate and rejected both the amended and original proposals through votes by a secret ballot.⁷¹ Even if Monaco had succeeded in adjourning discussion to allow for additional consideration over a weekend,⁷² it is likely that the “coalition” put together by Japan still would have defeated the proposal,⁷³ however, Libya’s procedural maneuvering stopped debate in the only international forum dedicated to consideration of trade in wild species.

Economic and livelihood concerns now play an important role, either overtly or covertly, in the decision of whether to include a species in a CITES Appendix.

SHARKS

Sharks are caught and traded for a number of reasons, with sharkfin soup most notable among them. They are also often captured as accidental bycatch in fishing operations targeting other species, which can complicate listing efforts, as the killings are not a direct result of trade in the species.

All four proposals to add shark species of “great commercial value” to Appendix II were rejected,⁷⁴ although they received varying levels of support for listing during discussions, with one listing initially accepted only to be overturned in the plenary session two days later.⁷⁵ China led the rejection of listing proposals for sharks, as the world’s foremost consumer of sharks, along with Japan, which opposes CITES listing for any marine species.⁷⁶

The proposal to list the scalloped hammerhead shark in Appendix II was considered first. The United States had initially included four look-alike shark species, but withdrew two species based on the assessment by the FAO expert panel and the CITES Secretariat.⁷⁷ Many countries spoke out in support of the proposal citing, *inter alia*, a decline to between fifteen and twenty percent of the baseline population, FAO support for the proposal, lack of species-specific management plans under RFMOs, and absence of any enforcement by ICCAT of their 2004 prohibition on finning.⁷⁸

Arguments against listing included the familiar “RFMOs [a]re the appropriate management body” for the proposed species, as well as claims that technical and identification issues were insurmountable, even with an amended twenty-four month implementation delay.⁷⁹ Moreover, Singapore noted that they did not believe that CITES was intended to deal with marine species—despite specific provisions related to marine species in both the Convention and the listing criteria⁸⁰—noting issues with preparation and documentation for non-detriment findings and introduction from the sea.⁸¹ Although the proposal did receive a simple majority of the affirmative votes, it did not meet the two-thirds majority required for approval.⁸²

The oceanic whitetip shark, a species prized for its fins, was considered for listing during the same session and is also estimated to have declined to between fifteen and twenty percent of its baseline population.⁸³ Although the EU and twenty-one other countries have instituted shark-finning bans, no international management plans exist for the species.⁸⁴ FAO also recommended approval of the proposal.⁸⁵ Supporters noted that, due to its distinctive fin, identification should not present a problem and the United States offered capacity building assistance.⁸⁶ In addition to arguments noted above in opposition to the proposal to list the scalloped hammerhead shark, Japan supported Venezuela’s position that inclusion of the oceanic whitetip shark would infringe upon their sovereign fishing rights.⁸⁷ The proposal was rejected by a similar margin as the proposal for the hammerhead shark.⁸⁸

Although the porbeagle shark is one of the most widespread shark species, its population has declined to around twenty percent of its baseline population, with declines to less than ten percent in the most affected populations.⁸⁹ The porbeagle is caught

primarily for its meat, although fins and oil are also traded.⁹⁰ An updated stock assessment led FAO reevaluate the species and to support listing in COP-15, although it had opposed the proposed listing at COP-14.⁹¹ The EU clarified that, contrary to comments made by China and others, they had closed their internal porbeagle fisheries, so that any porbeagle consumed within the EU would be imported.⁹² The EU expressed a desire to ensure that all future imports of porbeagle are sustainably harvested.⁹³

Despite similar opposition to the listing of the porbeagle as to the listing of the other shark species, the proposal passed in secret ballot voting with eighty-six in favor, forty-two against, and eight abstentions.⁹⁴ In the plenary session, however, Singapore made a motion under Rule 19 to reopen debate on the proposal stating they believed that there was a “technical problem” with the vote in Committee I.⁹⁵ Although the United States and Croatia were opposed to reopening debate, the requirement for one-third of parties present and voting in favor of the motion was met.⁹⁶ Interestingly, in the two days between the approval in Committee I and the vote in the plenary, four votes against the proposal were added, two of the votes in favor were lost, and two abstentions were added, ultimately defeating the listing proposal for the porbeagle.⁹⁷

The final shark listing proposal was for the spiny dogfish, which is threatened by trade in its high-value meat primarily destined for the EU.⁹⁸ FAO concluded that the spiny dogfish species as a whole did not meet the listing criteria for addition to Appendix II.⁹⁹ Due to the reduction in the total catch in the EU to zero because of significant declines in the population, the non-threatened southern populations would have had to be listed based on the look-alike criteria.¹⁰⁰ Several range countries noted that their internal management measures were sufficient and that populations remained stable.¹⁰¹ A lack of concrete data on population decline due in part to “incomplete species-specific records” may have also hampered support for listing.¹⁰² The proposal was easily defeated, with a majority voting against approval.¹⁰³

CORAL

International demand in trade of coral is for jewelry, use in aquariums, and its limestone content for making cement, calcium supplements, and other products.¹⁰⁴ The genus of red and pink corals proposed for listing are the most commercially exploited group of precious corals,¹⁰⁵ and populations have declined significantly recently, with the reproductive modules at ten to twenty percent of the baseline.¹⁰⁶ Although the United States has banned collection of coral from its own reefs, it is still the world’s largest importer and introduced the listing proposal to ensure the sustainable management of coral in trade.¹⁰⁷

This was the second time that the proposal to list the red and pink coral was rejected at a CITES COP. Listing of the species was initially approved in Committee I at COP-14 in 2007, but debate was reopened and the proposal was subsequently rejected.¹⁰⁸ There was vocal opposition to the listing proposal by Italian artisans who use the Mediterranean coral to make valuable jewelry, including necklaces that can cost as much as \$25,000.¹⁰⁹

In debate it was noted that collection methods for coral should be considered “mining” rather than fishing, due to the fact that the harvested resource was non-renewable.¹¹⁰ Iran stated that if trade was not regulated “both the continued trade in precious corals and the livelihood of the people involved would be in doubt.”¹¹¹

Opposition to the proposal included the belief that the General Fisheries Commission for the Mediterranean was the appropriate management body for the coral species, that, if listed, “consumers would think that buying [the coral] would be environmentally unfriendly,” and FAO’s assessment that the species did not meet the listing requirements for Appendix II.¹¹² Not surprisingly, the proposal barely received a majority and was thus rejected.¹¹³

TIMBER SPECIES

In contrast to the proposals on commercially exploited marine species, two proposals on economically important timber species were accepted without much debate. Although efforts to list some timber species have met with resistance at past COPs, rosewood and holy wood proposals were offered by Brazil and Argentina respectively—countries that are principal sources of the species in international trade.¹¹⁴ Marine and timber species have a range of different issues related to listing in CITES, however, if countries proposing the listings are involved in international trade of a species as exporters and meet with little opposition from importers, listing proposals may more easily be approved.

In contrast to the opposition that the rosewood listing proposal met with at COP-14, the proposal for inclusion in Appendix II was approved by consensus at COP-15.¹¹⁵ In 2007 Latin American range states opposed the proposal, citing livelihood concerns and implementation issues with CITES obligations for timber species. As much of the international trade is from wood harvested in Brazil that is being cut—both legally and illegally—at a greater rate than it regenerates, Brazil presented the COP-15 listing proposal for rosewood, which is used as an ingredient in perfume.¹¹⁶ Although concerns with identification in finished products were expressed, an amendment excluding those products was accepted, as was a proposal to create a task force to work on identification issues.¹¹⁷

Argentina, which with Paraguay has the majority of holy wood stands, recommended the addition of the species to Appendix II because of pressures from habitat loss and trade.¹¹⁸

Holy wood is used for its essential oil and timber, in medicines, and for a number of traditional uses.¹¹⁹ The proposal was passed by consensus after a draft decision by Spain for creating a task force to address technical issues was considered, and subsequently also approved.¹²⁰

RECOMMENDATIONS

ADDING COMMERCIALY EXPLOITED SPECIES TO CITES APPENDICES AT FUTURE COPs

It is obvious that the conflict over addition of commercially exploited marine and timber species to CITES Appendices is not going away. The CITES Secretariat must be clear that *all* species threatened by international trade should be included in the appropriate Appendix once it has been determined by the CITES Secretariat that they meet the listing criteria. Although the listing criteria already include specific guidelines for determining whether a marine species is in decline, the CITES Secretariat must be given the support and funding to demonstrate that CITES does and should have jurisdiction over international trade in additional aquatic species, despite some parties’ opinions.

Countries must build coalitions and mobilize support for listing proposals months in advance of voting at COPs. If possible, countries substantially involved in the trade of a species should recommend the listing, as in the case of Brazil with the rosewood proposal and Argentina with holy wood. Although approving a listing proposal is much more difficult than defeating it because of the requirement of approval by two-thirds of the votes,¹²¹ Japan’s “diplomatic” approach leading up to COP-15 shows the importance of lining up support prior to the vote. In contrast, the EU announced their support for a trade ban for the bluefin tuna just days before the start of COP-15 and was divided on the original proposal, after their amended proposal delaying inclusion of the species failed to garner enough votes for passage.¹²² There will of course always be last minute negotiations in the halls of COPs, but it is unlikely that a coalition to approve a proposal can be created at the meeting.

Economic and livelihood concerns now play an important role, either overtly or covertly, in the decision of whether to include a species in a CITES Appendix. Leading up to a COP, the recommending country and proponents of listing must identify potential livelihood concerns and use national trade, environment, and development agencies to work with potentially effected sectors in developing countries to find viable alternatives. If countries

If CITES is to be more than “an ambulance at the bottom of the cliff,” waiting to rescue a species that it may not be able to save, then countries must make decisions to list species before their extinction is virtually guaranteed.

in favor of listing try to address economic concerns of a proposal prior to a vote, then it will be more apparent that opponents are citing livelihoods as an excuse to continue the status quo because of a culinary preference for certain marine species. CITES listing should not be a debate between jobs and species; if unsustainable harvesting continues we should not be surprised to discover that both have disappeared.

It has been suggested that the burden placed upon exporting countries to certify “non-detriment” to an Appendix II species prior to exportation creates resistance to list on the part of some countries.¹²³ Although offers of capacity building support have increased, additional responsibility on the part of importing countries in the form of bilateral cooperation or regulatory measures could help build support for listing approval.¹²⁴

FAO listing recommendations for marine species at COP-15 were only followed when they stated that the species did not meet listing criteria. The inconsistent application of FAO’s recommendations and the fact that they often conflict with the CITES Secretariat is not leading to listing decisions firmly based on science. The relatively new practice of presenting FAO recommendations at COPs should be adjusted so that FAO can provide expertise and support directly to the CITES Secretariat. FAO and CITES should coordinate to provide one recommendation on each proposal, using FAO’s technical and scientific expertise within the CITES framework of regulation of international trade in wild species.

ALTERNATE APPROACHES TO PROTECTING WILD SPECIES

Parties should capitalize on the growing international and public pressure for better management of bluefin tuna. It appears that the threat of listing may have led ICCAT to reduce the TAC at its November 2009 meeting; this reduction must be enforced and lowered to zero at the 2010 meeting to prevent the imminent collapse of the stock. ICCAT also has provisions for prohibiting imports from countries that have caught more than their allocated quotas for two consecutive years.¹²⁵ Despite attempts by the United States to enforce the provisions against Europe and Libya, the measure has only been used once—and against Equatorial Guinea.¹²⁶ ICCAT must be made to enforce its internal trade measures and prohibit imports from countries that regularly violate their quotas.


A near universal argument of opponents to listing aquatic species was that RFMOs were the appropriate forum for management. Although membership in RFMOs is much more limited than that of CITES, countries wishing to protect threatened species should also pursue species specific regulation and catch limits for sharks through the relevant RFMOs. Cooperation between RFMOs with distinct populations of the same species should also be encouraged.

As a last resort countries could enact unilateral import and export bans for severely threatened species. If the United States is serious about protecting red and pink coral then it should enact a ban on imports of the species, to complement its existing ban on coral harvesting.¹²⁷ Countries would likely be more willing to consider listing coral in Appendix II if the alternative was a ban on coral exports to the United States. The EU could also attempt to do the same for the shark species it currently has fishing bans for in its waters.

CONCLUSION

It is increasingly difficult to get species listed in Appendix I or II of CITES: those species that are threatened with extinction that countries can agree to stop trade in have already been added. For commercially exploited species endangered by trade there is likely to be resistance to limiting that trade, at the very least from those who are engaged in trading the species. Even when, as in the case of the bluefin tuna, the evidence that listing criteria are met is clear, countries are increasingly willing to ensure that a threatened species is not protected because they want to keep selling and buying it.

Awareness of the plight of species has been increased as a result of the debates at COP-15, but ICCAT quotas are still too high to allow for recovery of the bluefin tuna stock, RFMOs have no management authority to prevent increased shark harvesting for sharkfin soup, and coral is threatened not only by rising sea level temperatures caused by global warming, but for use in jewelry.

If CITES is to be more than “an ambulance at the bottom of the cliff,”¹²⁸ waiting to rescue a species that it may not be able to save, then countries must make decisions to list species before their extinction is virtually guaranteed. Through creation of new coalitions and addressing livelihood concerns of developing countries, countries can ensure CITES continues to be a force for international biodiversity protection. 

Endnotes: Getting on the List: Politics and Procedural Maneuvering in Cites Appendix I and II Decisions for Commercially Exploited Marine and Timber Species

¹ See, e.g., Justin McCurry, *How Japanese sushi offensive sank move to protect sharks and bluefin tuna*, THE GUARDIAN (London), Mar. 26, 2010, available at <http://www.guardian.co.uk/environment/2010/mar/26/endangered-bluefin-tuna-sharks-oceans>; David Jolly & John M. Broder, *U.N. Reject Export Ban on Atlantic Bluefin Tuna*, N.Y. TIMES, Mar. 18, 2010, available at <http://www.nytimes.com/2010/03/19/science/earth/19species.html?ref=global-home>; *Bluefin tuna: Eaten away*, THE ECONOMIST ONLINE, Mar. 18, 2010, <http://www.economist.com/science-technology/displaystory>.

[cfm?story_id=15745509&source=features_box_main](http://www.economist.com/science-technology/displaystory) (last visited Apr. 18, 2010); Summary of the Fifteenth Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, EARTH NEGOTIATIONS BULLETIN (Int’l Inst. for Sustainable Dev., New York, N.Y.), Mar. 29, 2010, available at <http://www.iisd.ca/download/pdf/enb2167e.pdf> [hereinafter ENB CITES COP-15].

ENDNOTES: GETTING ON THE LIST: POLITICS AND PROCEDURAL MANEUVERING IN CITES APPENDIX I AND II DECISIONS FOR COMMERCIALY EXPLOITED MARINE AND TIMBER SPECIES *continued from page 40*

² See *Summary of the Fourteenth Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, EARTH NEGOTIATIONS BULLETIN (Int'l Inst. for Sustainable Dev., New York, N.Y.), June 18, 2007, at 21, [hereinafter ENB CITES COP-14], available at <http://www.iisd.ca/download/pdf/enb2161e.pdf>; Convention on International Trade in Endangered Species of Wild Fauna and Flora, pmbl, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975) [hereinafter CITES] (regulating trade in species and their parts).

³ See ENB CITES COP-14, *supra* note 2, at 21; ENB CITES COP-15, *supra* note 1, at 17.

⁴ See ENB CITES COP-14, *supra* note 2, at 21.

⁵ CITES, CoP15 DECISIONS ON AMENDMENT PROPOSALS, available at <http://www.cites.org/eng/news/meetings/cop15/CoP15-decisions-on-proposals.pdf> [hereinafter CoP15 DECISIONS].

⁶ Adding a species to Appendix I or II is only the first step to providing protection for a species under CITES. The range of additional actions needed, funding, and enforcement mechanisms are beyond the scope of this article. See generally James B. Murphy, Comment, *Alternative Approaches to the CITES "Non-Detriment" Finding for Appendix II Species*, 36 ENVTL. L. 531, 533 (2006); ENB CITES COP-15, *supra* note 1 (considering some of the relevant issues); TRAFFIC, Marine species get raw deal at CITES, Mar. 25, 2010, <http://www.traffic.org/home/2010/3/25/marine-species-get-raw-deal-at-cites.html> (last visited Apr. 15, 2010).

⁷ CITES, *supra* note 2, arts. I-VI.

⁸ See Memorandum of Understanding Between the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and IUCN-The World Conservation Union, July 1999, available at <http://cites.org/common/disc/sec/CITES-IUCN.pdf>; CITES, *supra* note 2; CITES, The CITES species, <http://www.cites.org/eng/disc/species.shtml> (last visited Apr. 22, 2010) [hereinafter The CITES species].

⁹ See The CITES species, *supra* note 8.

¹⁰ CITES, *supra* note 2, art. II(1). Although, for reasons considered in the section analyzing listing decisions of COP-15, Appendix I does not include all species referred to.

¹¹ See CITES, *supra* note 2, art. III.

¹² CITES, *supra* note 2, art. II(2); Fourteenth Meeting of the Conference of the Parties to CITES, The Hague, Neth., June 3-15, 2007, Criteria for Amendment of Appendices I and II, Conf. 9.24 (Rev. CoP14) (amending Res. Conf. 9.24 (1994)), Annex 2b(A), available at <http://www.cites.org/eng/res/all/09/E09-24R14.pdf> [hereinafter CITES Criteria].

¹³ See CITES, *supra* note 2, art. IV(2)(a), (4).

¹⁴ CITES, *supra* note 2, arts. II(3), V, XVI.

¹⁵ The CITES species, *supra* note 7.

¹⁶ CITES, *supra* note 2, art. IX.

¹⁷ CITES, *supra* note 2, arts. III-V.

¹⁸ CITES, *supra* note 2, arts. VIII, XXIII(2).

¹⁹ See CITES, *supra* note 2, arts. XV(3), XXIII(3).

²⁰ CITES, *supra* note 2, art. XV. See generally Annecoos Wiersema, *The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements*, 31 MICH. J. INT'L L. 231 (2009) (discussing the relevance of international legal obligations through COPs).

²¹ CITES, *supra* note 2, art. XV.

²² CITES, *supra* note 2, art. XV(1)(a).

²³ CITES, *supra* note 2, art. XV(1)(a), (2)(c).

²⁴ CITES, *supra* note 2, art. XV(1)(a), (2)(b).

²⁵ CITES, *supra* note 2, art. XVI(1).

²⁶ CITES, *supra* note 2, art. XVI(2).

²⁷ *Id.*, art. XVI(3).

²⁸ CITES Criteria, *supra* note 12.

²⁹ *Id.* See generally Annecoos Wiersema, *Adversaries or Partners? Science and the Precautionary Principle in International Wildlife Regimes*, 11:4 J. INT'L WILDLIFE L. & POL'Y 211 (2008) (discussing the textual changes in the CITES Criteria related to the precautionary principle).

³⁰ CITES Criteria, *supra* note 12, Annex 1.

³¹ *Id.*

³² CITES Criteria, *supra* note 12, Annex 2a.

³³ CITES Criteria, *supra* note 12, Annex 2b.

³⁴ CITES Criteria, *supra* note 12, Annex 1, Annex 2b.

³⁵ CITES Criteria, *supra* note 12, Annex 5.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See ENB CITES COP-15, *supra* note 1, at 15-18; ENB CITES COP-14, *supra* note 2, at 22.

³⁹ CITES, *supra* note 2, art. XV(1)(a), (2)(b).

⁴⁰ See FAO-CITES Memorandum of Understanding, 2006, available at <http://www.cites.org/eng/disc/sec/FAO-CITES-e.pdf> [hereinafter MoU].

⁴¹ MoU, ¶ 6.

⁴² ENB CITES COP-14, *supra* note 2, at 22.

⁴³ See Third FAO Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of CITES Concerning Commercially-Exploited Aquatic Species, Dec. 7-12, 2009, *Report*, FAO Fisheries Report. No. 925, available at <ftp://ftp.fao.org/FI/DOCUMENT/R925/r925.pdf> (providing a full analysis and recommendations of COP-15 aquatic species listing proposals).

⁴⁴ ENB CITES COP-15, *supra* note 1, at 18.

⁴⁵ *Id.*, at 17.

⁴⁶ ENB CITES COP-14, *supra* note 2, at 21.

⁴⁷ See CoP15 DECISIONS, *supra* note 4 (listing all decisions taken at COP-15 related to amendments to the Appendices).

⁴⁸ ENB CITES COP-15, *supra* note 1, at 17-18.

⁴⁹ See, e.g., *Trade and Conservation: Fin times*, THE ECONOMIST (London), Mar. 18, 2010, available at http://www.economist.com/science-technology/displaystory.cfm?story_id=15720346; Jolly & Broder, *supra* note 1; Press Release, European Union, EU Confirms Support for Bluefin Tuna Trade Ban (Mar. 11, 2010), <http://www.euractiv.com/en/sustainability/eu-confirms-support-bluefin-tuna-trade-ban-news-329139> (last visited Apr. 20, 2010).

⁵⁰ Christine Goepp Towberman, *Fishing for a Solution: The Role of the United States in Preventing Collapse of the Eastern Atlantic Bluefin Fishery*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10102, 10102 (2008).

⁵¹ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the 8th session of Committee I*, 1, CoP15 Com. I Rec. 8, (Mar. 18, 2010) available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec08.pdf> [hereinafter *Summary – tuna*]; *Bluefin tuna: Eaten away*, *supra* note 1.

⁵² Jolly & Broder, *supra* note 1.

⁵³ ICCAT has only forty-two countries as members in contrast to the 175 of CITES. *Id.*

⁵⁴ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010

Proposal to include Atlantic Bluefin Tuna (Thunnus thynnus (Linnaeus, 1758)) on Appendix I of CITES in accordance with Article II 1 of the Convention, ¶ 12, CoP15 Prop. 19, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-19.pdf> [hereinafter *Atlantic Bluefin Tuna Proposal*].

⁵⁵ David Jolly, *Europe Leans Toward Bluefin Trade Ban*, N.Y. TIMES, Feb. 4, 2010, available at <http://www.nytimes.com/2010/02/04/world/europe/04tuna.html?fta=y>.

⁵⁶ ENB CITES COP-15, *supra* note 1, at 15, 18.

⁵⁷ See *Summary – tuna*, *supra* note 51, at 3.

⁵⁸ *Atlantic Bluefin Tuna Proposal*, *supra* note 54, ¶ 8.

⁵⁹ *Summary – tuna*, *supra* note 51, at 4.

⁶⁰ See *id.*, at 1-2 (including text of the amended proposal).

⁶¹ *Id.*, at 2-3.

⁶² David Jolly, *Japan Plans to Ignore Any Ban on Bluefin Tuna*, N.Y. TIMES, Feb. 20, 2010, available at <http://www.nytimes.com/2010/02/20/business/energy-environment/20tuna.html?fta=y>; McCurry, *supra* note 1.

⁶³ *Bluefin tuna: Eaten away*, *supra* note 1; *Summary – tuna*, *supra* note 51, at 4.

⁶⁴ Towberman, *supra* note 50, at 10109.

⁶⁵ *Id.*

⁶⁶ *Summary – tuna*, *supra* note 51, at 4.

⁶⁷ *Id.*

⁶⁸ See *Summary – tuna*, *supra* note 51, at 4; *Bluefin tuna: Eaten away*, *supra* note 1.

⁶⁹ CITES, *Rules of Procedure of the Conference of the Parties* (as amended at the 14th meeting, The Hague, Neth. 2007), R. 18, available at <http://www.cites.org/eng/cop/E14-Rules.pdf> [hereinafter *Rules of Procedure*].

⁷⁰ *Summary – tuna*, *supra* note 51, at 4.

- ⁷¹ *Id.*, at 4-5. Although the votes on the proposals were conducted by secret ballot, it is likely that the seventy-two parties recorded as having voted to close debate also cast the seventy-two votes to reject the amended proposal, as well as the sixty-eight votes to reject the original proposal and a few of the thirty abstentions. Forty-three parties voted to approve the amended proposal and only twenty voted in favor of the original proposal. *See id.*, at 4-8 (laying out the complete votes on the motion to close debate and on the proposals).
- ⁷² *See* McCurry, *supra* note 1.
- ⁷³ *See id.* (describing how Japan had been amassing votes months before COP-15 and how Japanese funding for developing countries' fishing industries had been used to send delegates from some developing countries to the COP).
- ⁷⁴ Press Release, CITES, CITES Conference Ends Without New Sharks in its Net (Mar. 25, 2010), http://www.cites.org/eng/news/press_release.shtml (last visited Apr. 23, 2010).
- ⁷⁵ ENB CITES COP-15, *supra* note 1, at 15-16; Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the sixth plenary session*, 2, CoP15 Plen. 6, (Mar. 25, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Plen-06.pdf> [hereinafter *Summary – sixth plenary*].
- ⁷⁶ David Jolly, *U.N. Group Rejects Shark Protections*, N.Y. TIMES, Mar. 23, 2010, available at <http://www.nytimes.com/2010/03/24/science/earth/24shark.html>.
- ⁷⁷ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the 13th session of Committee I*, 1, CoP15 Com. I Rec. 13 (Rev. 1), (Mar. 23, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec13.pdf> [hereinafter *Summary – hammerhead & oceanic whitetip sharks*].
- ⁷⁸ *Id.*, at 1-3.
- ⁷⁹ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Sphyrna lewini (scalloped hammerhead shark) in Appendix II in accordance with Article II paragraph 2(a) of the Convention and satisfying Criterion A in Annex 2a of Resolution Conf. 9.24 (Rev. CoP14)*, 3, CoP15 Prop. 15, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-15.pdf>; *Summary – hammerhead & oceanic whitetip sharks*, *supra* note 77, at 2-4. *See also* ENB CITES COP-15, *supra* note 1, at 15.
- ⁸⁰ *See* CITES, *supra* note 2, art. XV(2)(b); CITES Criteria, *supra* note 12, Annex 5.
- ⁸¹ *Summary – hammerhead & oceanic whitetip sharks*, *supra* note 77, at 3.
- ⁸² *See id.*, at 4.
- ⁸³ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Carcharhinus longimanus (Poey, 1861) in Appendix II in accordance with Article II paragraph 2(a) of the Convention and satisfying Criterion A in Annex 2a of Resolution Conf. 9.24 (Rev. CoP14)*, 2, CoP15 Prop. 16, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-16.pdf>.
- ⁸⁴ ENB CITES COP-15, *supra* note 1, at 16.
- ⁸⁵ *Summary – hammerhead & oceanic whitetip sharks*, *supra* note 77, at 4.
- ⁸⁶ *Id.*
- ⁸⁷ *Id.*, at 5.
- ⁸⁸ *Id.*
- ⁸⁹ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Lamna nasus (Bonnaterre, 1788) in Appendix II in accordance with Article II 2(a) and (b)*, 1, CoP15 Prop. 17, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-17.pdf>; Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the 14th session of Committee I*, 1, CoP15 Com. I Rec. 14 (Rev. 1), (Mar. 23, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec14.pdf> [hereinafter *Summary – porbeagle & spiny dogfish sharks*].
- ⁹⁰ Juliet Eilperin, *Only One Breed of Shark, the Porbeagle, Earns Protection at CITES Conference*, WASHINGTON POST, Mar. 24, 2010, at A02.
- ⁹¹ *Summary – porbeagle & spiny dogfish sharks*, *supra* note 89, at 1.
- ⁹² ENB CITES COP-15, *supra* note 1, at 16.
- ⁹³ *Summary – porbeagle & spiny dogfish sharks*, *supra* note 89, at 2.
- ⁹⁴ *Id.*, at 4.
- ⁹⁵ *Rules of Procedure*, *supra* note 69, at R. 19(1); *Summary – sixth plenary*, *supra* note 75, at 2.
- ⁹⁶ *Id.*
- ⁹⁷ *Summary – sixth plenary*, *supra* note 75, at 2. *See also* ENB CITES COP-15, *supra* note 1, at 16.
- ⁹⁸ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Squalus acanthias Linnaeus, 1758 in Appendix II in accordance with Article II 2(a) and (b)*, 2, CoP15 Prop. 18, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-19.pdf> [hereinafter *Spiny Dogfish Shark Proposal*].
- ⁹⁹ *Summary – porbeagle & spiny dogfish sharks*, *supra* note 89, at 3.
- ¹⁰⁰ *Id.*, at 3-4
- ¹⁰¹ *Id.*, at 4.
- ¹⁰² *Spiny Dogfish Shark Proposal*, *supra* note 98, at 2.
- ¹⁰³ *Summary – porbeagle & spiny dogfish sharks*, *supra* note 89, at 4.
- ¹⁰⁴ *See* Marjorie Mulhall, Note, *Saving the Rainforests of the Sea: An Analysis of International Efforts to Conserve Coral Reefs*, 19 DUKE ENVTL. L. & POL'Y F. 321, 329 (2009).
- ¹⁰⁵ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of all species in the family Coralliidae (Corallium spp. and Paracorallium spp.) in Appendix-II of CITES*, 2, CoP15 Prop. 21, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-21.pdf> [hereinafter *Coral Proposal*].
- ¹⁰⁶ *Id.*, at 1.
- ¹⁰⁷ Mulhall, *supra* note 104, at 345; Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the 10th session of Committee I*, 3, CoP15 Com. I Rec. 10 (Rev. 1), (Mar. 21, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec10.pdf> [hereinafter *Summary – coral*].
- ¹⁰⁸ ENB CITES COP-14, *supra* note 2, at 19. Although the affirmative vote in the plenary was only one fewer than in the Committee, the votes against nearly doubled, from twenty-eight to fifty-five. *Id.*
- ¹⁰⁹ Mulhall, *supra* note 104, at 344.
- ¹¹⁰ *Summary – coral*, *supra* note 107, at 3.
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ *Id.*
- ¹¹⁴ *See* ENB CITES COP-14, *supra* note 2, at 20; ENB CITES COP-15, *supra* note 1, at 16-17.
- ¹¹⁵ *See* ENB CITES COP-14, *supra* note 2, at 21; Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the fifth session of Committee I*, 5, CoP15 Com. I Rec. 5 (Rev. 1), (Mar. 17, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec05.pdf> [hereinafter *Summary – rosewood*].
- ¹¹⁶ *See* Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Aniba rosaeodora Ducke in Appendix II, in compliance with the provisions of Article II, paragraph 2 (a), of the text of the Convention, and paragraph A of Annex 2 a., 1-5*, CoP15 Prop. 29, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-29.pdf>.
- ¹¹⁷ *Summary – rosewood*, *supra* note 115, at 4-5.
- ¹¹⁸ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Inclusion of Bulnesia sarmientoi in Appendix II, in compliance with the provisions of Article II, paragraph 2 (a), of the text of the Convention, and Resolution Conf. 9.24 (Rev. CoP14), Annex 2 a, paragraph A*, 4-7, CoP15 Prop. 42, available at <http://www.cites.org/eng/cop/15/prop/E-15-Prop-42.pdf>.
- ¹¹⁹ *Id.* at 5-6.
- ¹²⁰ Fifteenth Meeting of the Conference of the Parties to CITES, Doha, Qatar, Mar. 13-25, 2010, *Summary record of the sixth session of Committee I*, 2, CoP15 Com. I Rec. 6 (Rev. 1), (Mar. 17, 2010), available at <http://www.cites.org/eng/cop/15/sum/E15-Com-I-Rec06.pdf>.
- ¹²¹ CITES, *supra* note 2, art. XV(1)(b).
- ¹²² *See* Press Release, European Union, *supra* note 48; McCurry, *supra* note 1.
- ¹²³ Mulhall, *supra* note 104, at 345.
- ¹²⁴ *Id.*
- ¹²⁵ *See* Towberman, *supra* note 50, at 10109.
- ¹²⁶ *Id.*
- ¹²⁷ Although import restrictions, such as a ban, are generally considered to be in violation of GATT principles, Article XX(g) allows for adoption of nondiscriminatory measures “relating to the conservation of exhaustible resources if such measures are made effective in conjunction with restrictions on domestic production or consumption,” under which an import ban could potentially be justified. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.
- ¹²⁸ ENB CITES COP-14, *supra* note 2, at 22.