The IUCN Species Survival Commission

# Guidance for CITES Scientific Authorities

## Checklist to assist in making non-detriment findings for Appendix II exports

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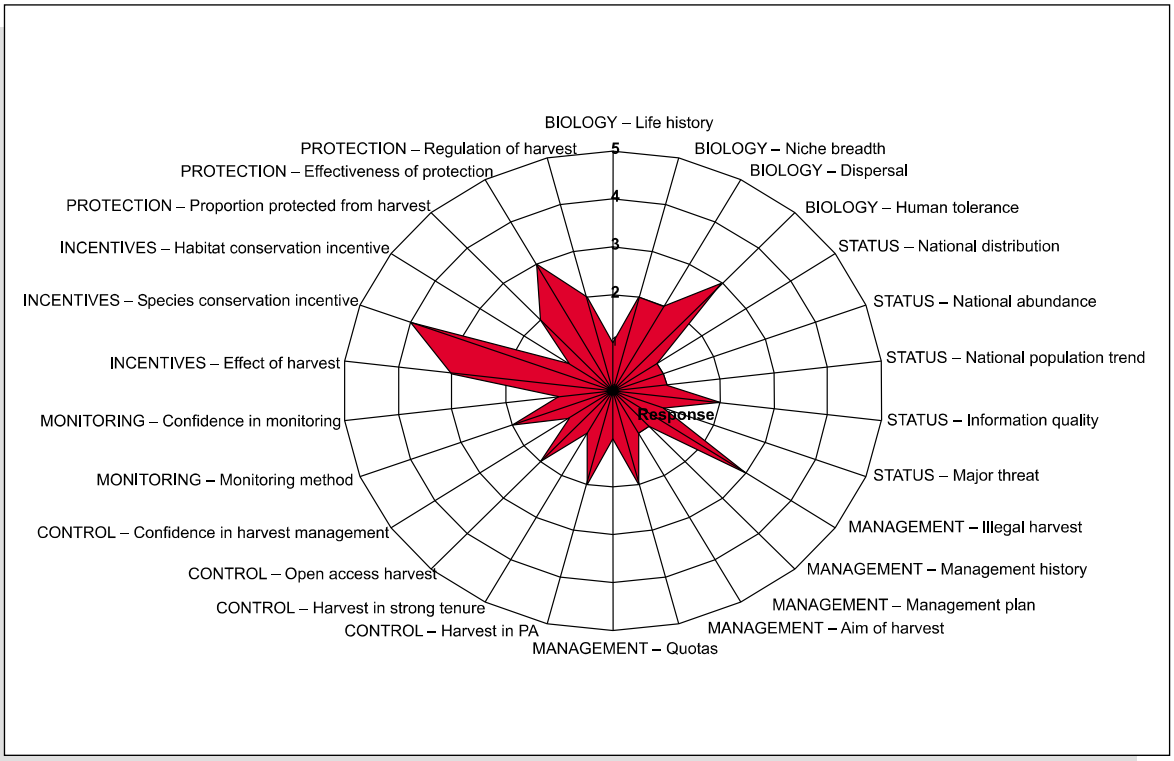


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- The functions of the Management Authority should be clearly defined and separated from those of the Scientific Authority.
- Communications should be improved between Scientific Authorities in the region, in order to exchange information and experience.
- The Management Authority will require funds for operations, equipment, improving local infrastructure and training official staff, to allow effective control of hunting, trade, export and inspection of wildlife use or management programmes.

## 3.10 Procedures used by the United States of America in making CITES non-detriment findings, *Susan Lieberman*

### The role of the Scientific Authority

The United States has the unique advantage of a large and robust scientific community to draw upon, as no matter how many staff there are in the Scientific Authority, we can never have all the expertise necessary to make non-detriment decisions alone. We must work closely with the scientific community, experts, and others around the world. I believe that the same is true in all countries of the world. Decisions on particular exports, either for individual shipments or annual quotas, should be made based on the best available information, and based on consultations with experts on particular taxa. If we reach a global scientific consensus on what is not detrimental for particular species then we will reduce much of the controversy about whether or not particular uses are sustainable or not.

The United States is both an exporting and major importing country. We have a federal system in the United States, and the office of the Scientific Authority works very closely with our States and Indian Tribes in the export of our native species. In some cases, such as for the American alligator and American ginseng, those exports are extensive. We also support large numbers of captive-bred wildlife, often of species wherein the founder stock was imported from other countries. This paper will focus on fauna, but many of the same points could be made for flora.

All non-detriment findings are made in the United States by the Division of Scientific Authority (as required by the CITES treaty). There has been some discussion in CITES fora as to what is meant by the independence of the Scientific Authority, as required by CITES and Resolution Conf. 10.3. The explanation is quite simple. When we in the Scientific Authority make a finding that a particular export (or import for Appendix I species) would either be detrimental or that we have insufficient information on which to make a non-detriment finding, the Division of Management Authority cannot issue the CITES permit. It is as simple as that. Of course, in some cases further dialogue with the Management Authority, or the provision of new information, may modify our finding, and in all cases applicants that have been denied a permit have an appeal process available to them. But the important point is the independence; the Management Authority cannot issue a permit if the Scientific Authority does not make the non-detriment finding. I am acutely aware that in many countries that is not the case, and the Management Authority either does not consult the Scientific Authority, or ignores their biological opinion in many cases; in some countries they are even the same individuals. That lack of scientific independence poses a serious problem for the implementation of CITES, and more critically, a serious problem for the conservation of species subject to international trade. In other words, the independence of the Scientific Authority is not a function of where it sits in a country's bureaucracy, but rather the independence of the decision-making process.

### Sources of information used to make non-detriment findings

In all cases, the status of the species in the wild is the primary factor that we take into consideration in making a non-detriment finding. Our non-detriment findings, whether for Appendix I or Appendix II species, are based on the best available biological information, are scientifically grounded and consider whether the species in the wild is common, abundant, managed, stable, declining, threatened, or endangered. We may pay greater attention to some proposed shipments than others, based on the status of the species. In all cases, the degree of risk to the species (risk of detriment, illegal trade involvement etc.) determines the degree of scrutiny. Therefore, if a species being bred in the United States is a highly valuable species subject to illegal trade, or a rare endemic in its country of origin, we might pay closer scrutiny than to a species bred here that is extremely common and less valuable economically (and thus less at risk of illegal trade, laundering etc.). I believe that Scientific Authorities must pay particular attention to illegal trade risks to species, as illegal trade poses significant risks to the conservation of species in the wild. This is true for both Appendix I and II species.

It is useful to highlight some of the information sources that we use. When our Scientific Authority receives permit applications from the Management Authority, any of the following information sources may be consulted in making non-detriment findings:

- Published literature – scientific journals, the Internet, databases, publications of TRAFFIC and other NGOs and other publications;
- Species experts – individual scientists, field biologists, members of IUCN specialist groups, Species Survival Plan coordinators, studbook keepers, and other experts;
- U.S. government officials in other countries – when applicable we consult U.S. government officials in other countries that may have useful information on conservation and management in that country where they are located (such as the U.S. Agency for International Development and the U.S. Department of State);
- Other CITES Management and Scientific Authorities;
- CITES Secretariat (when applicable);
- CITES documents – documents from previous meetings of the Conference of the Parties (including proposals submitted to amend the Appendices), and documents from the Animals, Plants and Standing Committees, when applicable.

Many of the sources of information that we use are now available on the Internet, and I welcome efforts to produce a directory of these information sources for CITES Scientific Authorities.

For every CITES permit request we receive from our Management Authority, a non-detriment finding is "on file". However, the United States issues more than 5,000 CITES permits every year, and therefore we must prioritize applications. We therefore do not request to actually see every application (although which applications or types of application we see is at the discretion of the Scientific Authority). We have set up a system whereby certain "lower priority" or otherwise simpler applications can use so-called "general advices" that we issue to the Management Authority.

Every permit file has a U.S. Scientific Authority non-detriment finding in it, and every permit issued by the Management Authority is copied to the Scientific Authority. We track the permits that are issued as required by the CITES treaty, and the exports from the United States, in particular, for Appendix II species to implement effectively Article IV. Such monitoring is vital to the implementation of the requirement of Article IV paragraph 3. Unfortunately, all too often, Scientific Authorities in some countries may implement Article IV paragraph 2 (the non-detriment finding), but they have ignored the requirement of paragraph 3 to ensure that the species are maintained throughout their range at levels consistent with their role in their ecosystems, and well above levels at which they might become eligible for inclusion in Appendix I.

## General advices

To expedite permit issuance for lower risk activities the Scientific Authority has devised a system whereby "general advices" have been issued for certain species and activities. Exceptions to these general advices often exist, and in those cases the Scientific Authority requests that the Management Authority provide it with a copy of the permit application. Both offices are in constant, close coordination, but the decision-making processes are independent. The Management Authority provides the Scientific Authority with copies of all permits issued, to assist it in its monitoring functions and to allow the Scientific Authority to confirm that permits have been issued appropriately and the correct advices have been used.

General export findings (general advices) can be facility-based or species-based. Facility-based non-detriment findings are issued for facilities with which we are very familiar, and whose work usually either benefits species conservation or recovery, or the facility is breeding in captivity or artificially propagating species that we are familiar with. In many cases, we have physically inspected the facility (or it has been inspected by another Fish and Wildife Service representative, usually from our Division of Law Enforcement). Facility-based non-detriment advices can either be annual or multi-year. For example, we issue general multi-year findings for certain scientific research institutions with which we are very familiar. We have recently issued such multi-year findings for Appendix I and II specimens involving major conservation research institutions in the United States, for the import and export of tissue samples for scientific research. This does not exempt them from needing a CITES permit, of course, but it allows our Management Authority to issue a permit more expeditiously.

Species-based non-detriment advices include more open-ended general advices for export of certain (low risk) non-native captive-bred animal species or artificially propagated plant species. We evaluate whether or not certain species meet the criteria in Resolution Conf. 10.16, as bred in captivity, and in particular whether all specimens in the United States meet those criteria. Such determinations take into consideration the establishment of the original founder stock, and whether or not additional animals are imported into the United States for commercial breeding purposes, among other

factors. There are also native species for which we have issued species-based advices, including the paddlefish (*Polyodon spathula*) and white sturgeon (*Acipenser transmontanus*), with the stipulation to our Management Authority that these are for aquaculture-produced fish only. The Management Authority then has the obligation to ensure that the specimens are indeed captive-bred.

In addition, we approve several native Appendix II species on an annual or multi-year basis for export, based on State programmes. For species such as American ginseng and American alligator, we approve the programmes of the various States and Indian Tribes in the United States on an annual basis, based on the information provided to us by our States. We make our non-detriment finding based on that information. We do not issue quotas to our States, or national quotas, but rather approve the export programmes of individual States and Tribes, based on our satisfaction that the State's or Tribe's harvest or export programme is not detrimental to the species. A list of approved programmes is available on request. There are also several furbearer species in the United States (such as the bobcat *Lynx rufus* and river otter *Lutra canadensis*) that are listed under Article II.2.b of CITES, in that they are similar to other furbearer species, and their pelts may be confused with either Appendix I species or similar Appendix II species. Under Article II.2.b., their listing is in order to ensure that trade in the other species to which they are similar is brought under control and our non-detriment finding for these species is made on this basis. Of course, it is the obligation of each Scientific Authority, in the case of II.2.b species, to ensure that the species does not decline to the point that it qualifies for Appendix II in its own right. We receive information from our States every year that allows us to monitor exports and satisfy us that exports are not detrimental.

Samples of any of our general advices (facility-based, species-based, or State programmes) are available on request from the Scientific Authority. The important point is that we have devised a flexible system that allows us to strategically focus our resources and attention.

## Types of non-detriment advices

So how do we make non-detriment findings? Population monitoring and censusing may be appropriate for certain exports, while adaptive management and similar strategies may be appropriate in other cases. In the case of imports of Appendix I specimens, censusing and population monitoring or other management is the responsibility of the range country and so the US Scientific Authority adopts a different approach. We make individual non-detriment findings for three categories of trade: live animals, sport-hunted trophies and scientific specimens. Some of the more contentious findings that we make often involve those for the import of Appendix I species. Our general operating principle is that for Appendix I species, import or export is likely to be considered detrimental if the proposed activity stimulated removal from the wild, or may stimulate the removal of additional specimens from the wild, without any off-setting benefit for the conservation of the species in the wild. The degree of off-setting benefit necessary is related to the extinction risk to the species. For imports, we take into consideration the management programme in the country of export in evaluating the conservation benefits of the proposed activity. As stated previously, the status of the species in the wild is the primary factor that we take into consideration in making all non-detriment findings.

*Live animals:* We look at captive animals a bit differently from wild-caught animals, as the risk to the conservation of the species in the wild is by definition greater for wild-caught animals. For captive animals, we look at the origin of the animals. If the animals are captive-bred, in general, neither import nor export is considered detrimental, unless the proposed activity would disrupt conservation efforts for rare or endangered species. If the animal is wild caught, but is a long-term captive, we usually treat it the same as a captive-bred animal, as long as the proposed activity is unrelated to the circumstances of the original removal of the animal from the wild. Therefore, we take into consideration the length of time that has elapsed since the animal was removed from the wild. This is particularly germane for personally owned animals or animals for zoological exhibition or display. In the case of recently wild-caught animals, if the removal from the wild appears to be unrelated to the proposed activity, we may treat them the same as captive-bred specimens. An example of such an occurrence is the case where an animal is removed from the wild for the treatment of injuries.

In looking at live captive animals, we pay particular attention to the origin of the animal [and founder stock in the case of captive-born individuals]. This is vital to ensure that wild-caught animals are not being traded as captive-bred specimens. There are also all-too-many cases where animals may themselves be bred in captivity, but the founder stock was not obtained legally, and therefore export of even the progeny would be detrimental to the survival of the species (in that it increases demand and facilitates detrimental trade). Information that we use to verify the origin of the animals can include: a) affidavits from the applicant, the breeder, and previous owners; b) ISIS (International Species Inventory System) documents and studbooks; or c) published sources, such as the

International Zoo Yearbook, IUCN Red Data Books, or other similar publications.

In the case of wild-caught animals, we look at the impact on the species in the wild and we verify the origin of the animals. In considering the impact on the species, each case is looked at individually, based on the best available biological information. This is particularly relevant for imports of either Appendix I species or species subject to stricter domestic measures here in the United States (such as the Endangered Species Act or the Wild Bird Conservation Act). We consider various factors, including: a) the current status of the species (including population size, trend and distribution); b) the impact on the population or species of removal of specimens from the wild; c) for Appendix I specimens, whether or not there is any off-setting benefit to wild populations from the proposed activity; d) range country management of the species; e) impacts on future recruitment; and f) the amount of incidental take.

In verifying the origin of wild-caught animals, the information that we consider can include: a) affidavits from the applicant; b) copies of collecting permits and other permits required by the range country; c) verification by other Management or Scientific Authorities; d) a copy of the CITES export permit (if applicable); and e) information from the current literature or species experts with knowledge about the species or country in question.

Sport-hunted trophies: One of the more frequent types of non-detriment advices that we provide pertains to sport-hunted trophies. In the case of Appendix II species (where our finding is on exports from the United States), we: 1) consult with the relevant State agency or Indian Tribe within the United States; 2) consider the current status of the population, including population size, trends and distribution; and 3) consider the management programme for the species, including permits or licences, quotas or bag limits, restrictions on seasons or hunting areas, age or sex limitations, and the marking of specimens.

For Appendix I species for which we are requested to make import findings, we consider a number of factors. For species that are imported in large numbers, we may issue a programmatic finding for one or more range countries, on an annual basis. Such is the case, for example, for the leopard, for which there is a CITES-approved quota, and for certain countries' populations of African elephants. We consider the following information in making import findings for sport-hunted trophies:

1. relevant Resolutions of the CITES Conference of Parties;
2. relevant Decisions of the CITES Conference of Parties;
3. relevant decisions or recommendations of the CITES Animals and Plants Committees;
4. the status of the species in the wild (population size, trends and distribution, including the IUCN classification);
5. the management of the species, including: permits or licences, quotas or bag limits, restrictions on seasons or hunting areas, age or sex limitations, and the marking of specimens;
6. whether the hunting programme in the range country provides benefits for the conservation of the species, including improved enforcement, habitat protection, or research on the species; and
7. the effectiveness of the implementation of CITES by the range country, including its implementing legislation, enforcement and overall CITES management.

*Scientific specimens:* We issue a relatively large number of findings for scientific specimens. In many cases, we try to issue these programmatically, usually on a facility basis, for a number of species or specimen types. This is analogous to the CITES exception in Article IV paragraph 6 for scientific institutions exchanging accessioned museum specimens. In this case we look at scientific institutions (such as universities or research institutions) that are working to benefit species conservation; it is our goal to expedite their import and export of scientific specimens. A certain amount of scrutiny is required to ensure that the research is legitimate. We have also issued general advices for tissue culture specimens, and for other specimens involving negligible risk to species in the wild. For scientific specimens, we differentiate between specimens from salvage materials or those taken from live animals. For salvaged material, we consider an activity to be non-detrimental if the material is derived from animals that have died of natural causes or opportunistically from legal subsistence or other take. We also take into consideration whether the import would stimulate additional take from the wild, such as by offering rewards or monetary compensation for specimens. We often condition our findings (and the Management Authority thus conditions its permits) to preclude the payment of rewards for specimens, which we believe could be detrimental to the survival of some species. For scientific specimens taken from live animals, we take into consideration the record of the importing facility, including its history of compliance with wildlife laws and regulations. We also consider the methods of capture, restraint, sample, collection, and other manipulations of the animals involved. Finally, we take into consideration whether the research is designed to result in

benefits for the conservation status of the species. We require each facility (particularly those with programmatic findings) to be responsible for ensuring the qualifications of the persons involved in the collection of samples.

## Conclusion

In conclusion, I have tried to give an overview of the types of information we use in making our non-detriment findings, and therefore in fulfilling our obligations under the CITES Convention. The space available does not allow for examples of individual permit decisions and how we reach our conclusions. Our primary goal is the conservation of species in the wild, as stated best in the CITES preamble: "Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come". We are cautious and precautionary, and always focus on what is in the best interest of the conservation of the species in the wild.

# 3.11 European Union – stricter domestic measures and non-detriment findings for imports of Appendix II species, *David Morgan*

## CITES Implementation in the EU

The implementation of CITES in the European Union (EU) countries needs to be considered in the light of a number of fundamental points:

- There is only one basic law for the whole of the EU. Its provisions are binding on each Member State.
- There are no customs barriers within the EU so CITES specimens are free to circulate without controls between Member States.
- Permits and certificates are issued by each member State and harmonized implementation is ensured by a Scientific Review Group (SRG) comprised of representatives from the Scientific Authorities of the Member States and a Committee comprised of representatives from each Management Authority.
- The EU trade regulations are designed to support CITES, not to replace it.

The legislation implementing CITES in the EU is based very closely on the requirements of CITES. The legislation incorporates directly into EU law virtually all the provisions of the many CITES resolutions. In this respect, it is arguably the most comprehensive legislation for implementing CITES anywhere in the world. All this contrasts with the position of the EU under CITES. The "Gaborone Amendment" agreed in 1983 and permitting accession to the Convention by regional economic integration organizations has still not been ratified by sufficient Parties to enter into effect. The mismatch between the day-to-day realities of implementation at EU level and the Union's position under CITES results in a lack of accountability and hinders the EU's attempt to play its full part in the work of the Convention. Parties who have still to ratify this amendment should do so without delay.

The significance of the application of non-detriment requirements in the EU is heightened by the fact that we have adopted a stricter domestic measure requiring import permits for CITES Appendix II species. These permits can only be issued after a non-detriment finding has been made. The conditions required to be fulfilled for import and export of CITES specimens in the EU are summarized in Table 1.

Derogations from the conditions specified in the above table are available for captive-bred animals/ artificially propagated plants, non-commercial exchange between registered scientific institutions and so forth in a similar way as applies under CITES.

As shown in Table 1, the non-detriment finding can be determined at three levels. Firstly, the importing Member State's Scientific Authority must determine that "after examining available data, the introduction into the EU would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of current or anticipated trade". If the finding is negative, the European Commission is informed and coordinates such that the SRG either upholds or rejects this conclusion.

Secondly, the SRG also systematically reviews the conservation status of Annex B species and forms positive or negative non-detriment findings. As these are collective decisions of the Scientific Authorities, they are followed by them in their everyday work. It is important to note that EU Management Authorities cannot issue import and export permits unless a non-detriment finding has been made.

Thirdly, if the SRG has made a negative non-detriment finding, the European Commission can then formalize this decision though the publication of an import restriction in the Official Journal of the European Communities. Before doing so, the Commission is