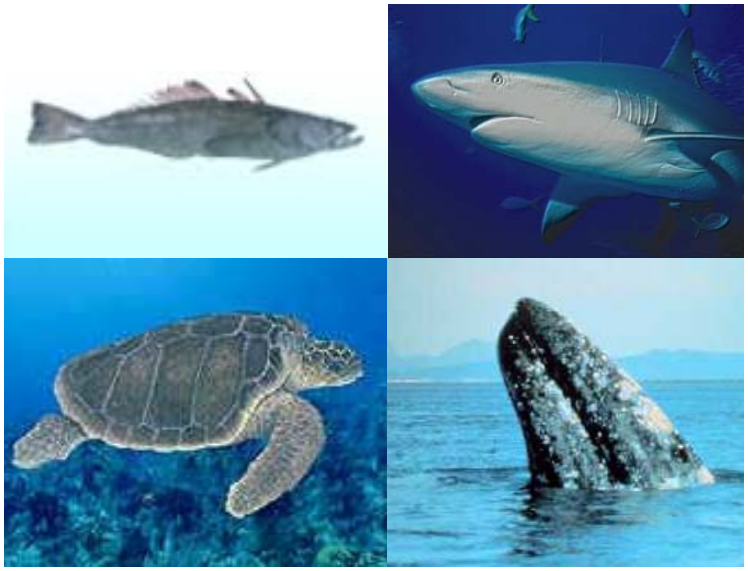
CITES and Marine Species

An Analysis of the Draft Resolutions on Sharks, Sea Turtles, Toothfish, and Whales

The Twelfth Meeting of the Conference of the Parties to CITES
Santiago, Chile 2002



International Environmental Law Project
Lewis & Clark Law School
October 2002

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IELP, the international component of Lewis and Clark Law School's nationally recognized environmental law program, takes advantage of the rapidly evolving field of international environmental law and increased opportunities for citizen participation and enforcement to address pressing global environmental issues. IELP develops, implements, and enforces international environmental law by working directly with governments, international institutions, and nongovernmental organizations. It also trains and educates students through active participation in international environmental processes.

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Introduction

Although the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) have included coral, cetaceans, and other marine species in the CITES Appendices, proposals to list marine species trigger specific legal obligations. For example, Article XV(2)(b) requires the Secretariat to consult with inter-governmental bodies having a function in relation to marine species with respect to proposals to amend the Appendices. The Secretariat must seek to obtain scientific data that these bodies may have and ensure coordination with any conservation measures enforced by such bodies. More generally, Goal 5.2 of the Strategic Plan requests that Parties act "to ensure close cooperation and coordination with related conventions, agreements and associations."

Because some populations of marine species continue to decline and are subject to significant trade, some Parties have become more interested in formal cooperation and consultation between the trade regime of CITES and the management regimes of regional fisheries management organizations. For example, illegal, unreported, and unregulated fishing for Patagonian toothfish has significantly undermined the rigorous management scheme for toothfish in the Southern Ocean created by members of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). As a result, Australia and Chile have submitted draft resolutions to enhance cooperation between CITES and CCAMLR (Doc. 16.1, Doc. 44). Other CITES Parties have submitted draft resolutions that define cooperation and consultation between CITES and the —

- UN Food and Agriculture Organization (FAO) generally (Doc. 16.2.1, Doc. 16.2.2) and specifically with respect to sharks (Doc.41.1, Doc. 41.2);
- International Whaling Commission (Doc. 16.4, Doc. 38); and
- Inter-American Convention for the Protection and Conservation of Sea Turtles (Doc. 16.3).

This paper assesses these draft resolutions in light of the Parties' legal obligations and with an understanding of the practical necessities of marine species conservation. It recommends the following:

Doc.	Proposed Resolution	Recommendation	Page
16.2.1 16.2.2	CITES and FAO (Japan) CITES and FAO (United States)	• object, inconsistent with CITES, art. II. • support.	2
16.3	CITES and Sea Turtles (Ecuador)	• support, with amendments	3
16.4 38	CITES, Whales, and the IWC (Mexico) CITES, Whales, and the IWC (Japan)	• support. • object.	4
41.1 41.2	CITES and Sharks (Australia) CITES and Sharks (Ecuador)	• support both resolutions, but they are similar and should be combined	6
44 Prop. 39 16.1	CITES, Toothfish, and CCAMLR (Australia) CITES, Toothfish, and CCAMLR (Chile)	• support proposal and resolution, with amendments. • object, issues covered better by Australia's proposal and resolution.	10
None	Introduction from the Sea: Issues	• provides support for definition consistent with UN Law of the Sea Convention	16

CITES and FAO (Doc. 16.2.1, Doc. 16.2.2)

The Parties should:

- **reject Japan's draft resolution (Doc. 16.2.1),** because it violates Article II of CITES and gives the views of FAO priority over the views of the CITES Parties; and

- **support the U.S. draft decision (Doc. 16.2.2)** because it seeks an MOU with FAO that includes the full range of relevant issues.

The Draft Resolution in Doc. 16.2.1 Violates Article II of CITES

Japan's draft resolution in Doc. 16.2.1 rewrites CITES listing criteria by allowing a commercially-exploited fish species to be listed only when a species meets *both* of Japan's narrowly defined criteria: (1) "Where there is no responsible fisheries management organization," *and* (2) "Where trade is having a significant negative impact on conservation." In other words:

- if a fisheries organization manages a commercially-exploited fish, then the CITES Parties may not list the species, even if trade has a significant negative impact on the conservation of the species;

- if no fisheries organization exists, then the CITES Parties may list the species *only* if trade has a *significant negative impact* on conservation.

These two criteria contravene the plain language of Article II of CITES, because Article II places no limit on the listing of commercially-exploited fish species. Instead, Article II contemplates listing *any* species that is threatened with extinction *or* may become so, regardless of its commercial value or the existence of a responsible fisheries management organization. In addition, Article II only requires that trade either "affect" or "may affect" a species. It does not require a significant negative impact on conservation. Because the draft resolution contravenes the plain language of CITES, it must be rejected.

The Draft Resolution in Doc. 16.2.1 Inappropriately Defers CITES Decisionmaking to FAO

Because FAO addresses issues with respect to fisheries as well as timber management and trade, the CITES Secretariat and CITES Parties should maintain a strong relationship with FAO. In fact, the FAO participated in the Listing Criteria Review and contributed expert opinion on fish proposals. The relationship between CITES and FAO, however, must recognize the role of CITES in regulating international trade.

Japan's draft resolution, however, inappropriately defers CITES decisionmaking to FAO. It "instructs" the CITES Secretariat to establish a process for evaluating marine aquatic species proposals "along the lines suggested by FAO" and directs an examination of the CITES Appendices based on recommendations of FAO. While the FAO's suggestions and participation at CITES have been valuable, any process must involve equal participation from CITES Parties and the CITES Secretariat. Thus, Doc.16.2.1 must be rejected.

Doc. 16.2.2 Requires the Parties to Examine the FAO/CITES Relationship before Codifying an MOU

The U.S. draft decision recognizes the benefits of inter-governmental collaboration and of considering the scope of the CITES-FAO relationship before entering into an MOU. Doc. 16.2.2 proposes to include *all* CITES specific issues under review by FAO and does not limit the potential scope of a CITES-FAO MOU, as Doc. 16.2.1 does. The extra time spent charting a clear course of action encourages communication and promotes better collaboration between CITES and FAO. Draft decision 16.2.2 should be adopted.

CITES and Sea Turtles (Doc. 16.3)

The Parties should **adopt the draft resolution in Doc. 16.3** with the amendments proposed below, because it fosters effective cooperation between CITES and the Inter-American Convention for the Protection and Conservation of Sea Turtles (the IAC).

Doc. 16.3 Seeks Coordination to More Effective Conserve Sea Turtles

A sea turtle may travel over 1000 kilometers in its lifetime—often swimming in the territorial seas and exclusive economic zones of several countries. Despite receiving the highest level of protection from several international treaties, including CITES, many sea turtle populations remain dangerously low. Thus, effective sea turtle conservation requires international organizations to coordinate their regulatory and management practices.

The draft resolution in Doc. 16.3 increases cooperation between CITES and the IAC to coordinate and improve conservation and trade strategies. For example, the information collected by the IAC's scientific committee concerning "biology and population dynamics" of and environmental threats to sea turtles could prove valuable when CITES evaluates import, export and re-export permit applications, and proposals to list, delist, or transfer sea turtle populations in the Appendices.

Doc. 16.3 Could Be Made More Effective by Including Specific Goals for Cooperation

Doc. 16.3 could be improved by directing the Secretariat or the Conference of the Parties to undertake specific actions. For example, the second paragraph directs the Secretariat to study opportunities for cooperation, coordination and synergy, but does not provide any guidance on the scope of the project. To provide greater specificity, the Parties should amend the second, third and sixth paragraphs of the draft resolution as follows:

REQUESTS the CITES Secretariat to develop cooperation between the conventions by:

(a) inviting the IAC Secretariat to observe future meetings of CITES and informing the IAC Secretariat of opportunities for cooperation when they arise;

(b) establishing an information clearing-house for sharing databases, reports and other materials between the conventions;

(c) exploring opportunities for preparing joint work plans that address threats to sea turtle populations on a regional level;

(d) coordinating its activities with regard to sea turtles and their habitats in the western hemisphere, including future dialogue meetings among range States, with the Parties and Secretariat of the IAC;

(e) transmitting to the IAC this and other relevant Resolutions and Decisions adopted at the 12th meeting and at future meetings of the Conference of the Parties to CITES; and

(f) submitting a report documenting the progress in implementing the provisions of this resolution at the 13th and at future meetings of the Conference of the Parties to CITES with the intention of evaluating cooperative development and generating new ideas for synergy.

CITES and the International Whaling Commission (Doc. 16.4, Doc. 38)

The CITES Parties should:

- **support Mexico's draft resolution (Doc. 16.4),** because it ensures coordination of CITES and International Whaling Commission (IWC) conservation strategies; and

- **reject Japan's draft resolution (Doc. 38),** because it undermines the IWC's efforts to control commercial whaling and conflicts with goals of Article XV(2)(b) and Resolution Conf. 9.24.

Mexico's Draft Resolution Ensures Effective Coordination (Doc. 16.4)

A uniform and coordinated conservation management regime for the harvest and trade in whale products is essential for ensuring that these practices are not detrimental to whale populations. For this reason, Resolution Conf. 11.4 supports the moratorium on commercial whaling of the IWC by recommending that CITES Parties not issue any import or export permits or certificates for introduction from the sea for species protected by the IWC.

Mexico's draft resolution in Doc. 16.4 continues efforts to coordinate conservation measures between CITES and the IWC. This draft resolution calls for the retention of whale species in their current Appendices due to the ongoing progress on the IWC's Revised Management Scheme (RMS) and the lack of adequate population estimates to generate quotas under the IWC's Revised Management Procedure (RMP). Without adequate population estimates, the RMP cannot guarantee harvest quotas that will not be detrimental to species. Without adequate supervision and control measures, legal harvest and trade in whales and whale products cannot be ensured.

By requiring the Parties to retain whale species in their current Appendices, however, Mexico's draft resolution may create a tension between the coordination provisions of CITES and the procedure for amending the Appendices under Article XV of CITES and Resolution Conf. 9.24, because some whale species may meet the scientific criteria for inclusion in Appendix II. However, as the following comments regarding Japan's draft resolution make clear, the lack of an adopted RMS means that an appropriate or effective enforcement scheme is not yet in place, as required by Resolution Conf. 9.24. Adoption by CITES of enforcement controls different from the IWC's would seriously undermine the moratorium and efforts to complete the RMS. It would also conflict with the goal of Article XV(2)(b) of CITES to coordinate conservation measures for marine species and fail to comply with the precautionary measures of Resolution Conf. 9.24. Still, Mexico's draft resolution should be amended to include a "sunset" provision that requires repeal of the resolution on completion of the RMS by the IWC.[1]

Japan's Draft Resolution (Doc. 38) Conflicts with Resolution Conf. 9.24 and RMS Proposals

The draft resolution in Doc. 38 fractures coordination between CITES and the IWC by adopting measures that may undermine completion of the RMS. Japan's draft resolution proposes to transfer certain whale stocks from Appendix I to Appendix II based on CITES criteria, including the precautionary measures of Resolution Conf. 9.24, which provides that a species cannot be transferred from Appendix I to Appendix II if the transfer may cause enforcement problems or until appropriate or effective enforcement controls are in place.[2]

The National DNA Register. Yet, Japan's proposed enforcement control—trade only with countries having a national DNA register system—directly conflicts with a proposal for an international DNA register system now under consideration by the IWC. By transferring whale populations to

Appendix II subject to a national DNA register, CITES would undermine the IWC's discussions concerning an international DNA register, a result contrary to the intent of Article XV(2)(b). In addition, approval of a national DNA register under these circumstances would be inappropriate and potentially ineffective, and, thus, inconsistent with Resolution Conf. 9.24.

In addition, if the IWC adopts an international DNA registry and CITES adopts a national DNA registry, members of the IWC and CITES would be required to establish two potentially counterproductive regimes. Moreover, if the IWC adopts an international DNA registry that shows that whales were taken illegally while CITES' national registry shows a legal taking, a Party would be in compliance with CITES even though evidence of illegal harvest or trade exists. This would place CITES in the position of allowing trade in whales that were harvested inconsistently with the IWC's RMS. Not only would this situation inefficiently allocate human and other resources, it would place CITES in an antagonistic relationship with the IWC and highlight the inappropriateness of adopting Japan's resolution.

Encouraging Noncompliance with the RMS. The draft resolution allows trade in whale meat between "signatories" to the International Convention for the Regulation of Whaling (ICRW). This provision may encourage noncompliance with the RMS and undermine the IWC's ability to manage whale harvests effectively. An IWC member could harvest whales under an existing objection to the moratorium on commercial whaling, a future objection to the RMS, or a scientific research whaling program, and still trade in whale products subject only to CITES requirements. Thus, whales would be harvested without compliance with the measures that the IWC considers effective and appropriate, such as on-board observers, vessel monitoring systems (VMS), vessel registration, inspections, and compliance. The IWC is currently considering all these measures, which several fisheries organizations already require, with support from Japan, the United States, and Norway, among others.

Second, the draft resolution allows trade among "signatories" to the ICRW. Presumably, Japan intends "signatory" to mean any country that has acceded to or otherwise formally indicated its intent to be bound by the ICRW, because Japan is not a signatory to the ICRW.[3] If true, then the draft resolution allows trade between "signatories" to the ICRW that no longer participate in the IWC. The resolution thus encourages noncompliance with IWC regulations. It also discourages IWC Members from reaching consensus on the final RMS because they could resume commercial whale meat trade under CITES while maintaining uncompromising positions in the IWC. As such, this draft resolution creates inappropriate and ineffective mechanisms that conflict with the goals of Article XV(2)(b) and Resolution Conf. 9.24.

Other provisions do not contribute to the implementation of CITES. The first paragraph merely restates the obligations of the Parties to list species based on the criteria of Resolution Conf. 9.24, and it fails to mention that such decisions must also be made consistently with Article XV. The two statements in the third operative paragraph are too general to be accurate. Because they do not contribute to the implementation of CITES, they should not be adopted. Lastly, because the resumption of commercial whaling requires completion of both the RMP and the RMS, it is irrelevant that the RMP is completed so long as the RMS remains uncompleted.

CITES and Sharks (Docs. 41.1, 41.2)

The Parties should **adopt the draft resolutions contained in Doc. 41.1 and Doc. 41.2**, because they promote cooperation on shark conservation between CITES and other international organizations, strengthen our understanding of shark populations and management, and encourage the establishment of a classification system for collecting trade data. Because of the similarities of the two resolutions, the Parties should consolidate the two resolutions, as provided below.

Shark Conservation and CITES

Consumption of shark products increased significantly in certain regions of the world in the mid-1980s. By 1995, world exports more than doubled from 22,203 to 47,687 metric tons (mt); the number of exporting nations increased from 18 to 37, while importing countries increased from 12 to 36; international shark fin trade increased more than tenfold, from 3,011 mt in 1980 to 7,048 mt[4]; one country imported 52 mt of shark liver oil annually for seven years, representing 130,000 to 156,000 sharks[5]; more than 435,000 mt of shark was landed in the Americas; and by 1999, countries reported combined shark landings totaling more than 629,786 mt annually.[6] The World Conservation Union's (IUCN) 2000 Red List includes 75 shark taxa in its Threatened Species List. The FAO warns that "unless efforts are undertaken promptly to halt growing catches, the future of many more shark populations is very bleak."[7]

The need for greater cooperation between CITES and FAO is clear.[8] The Parties to CITES have passed Resolutions and Decisions that called for a review of existing biological, trade, and management information relating to sharks (Resolution Conf. 9.17 and Decision 10.48). Decision 10.48 called for the collection of species-specific data, management of shark fisheries at a national level, as well as establishing international and regional bodies to coordinate the management of shark fisheries. Decision 11.94 directed the Chair of the Animals Committee to liaise with FAO.

In addition, although FAO adopted the voluntary International Plan of Action-Sharks (IPOA-Sharks) in 1999 and encouraged States to develop a National Plan of Action (NPOA-Sharks) for shark conservation, the Chairman of the CITES Animal Committee stated that the FAO's progress in implementing the voluntary IPOA-Sharks has been "negligible" and appeared to be "less advanced than described by a previous COFI report." As of May 2002, 113 States reported shark landings to FAO, but only 29 States reported any progress on implementing IPOA-Sharks. Of these, only five States had prepared Shark Assessment Reports or NPOAs.[9] In addition, although CITES Decision 11.151 sought to establish tariff classifications that distinguished various shark products, the World Customs Organization reported that no opportunity exists for further elaboration of identification codes within the Harmonized System of Standard Tariff Classifications, other than including a single code for all species "listed" on CITES Appendices.[10] In practice, the effective implementation of IPOA-Sharks and NPOAs has been minimal and has not addressed a major concern of Parties to CITES: unregulated landings of sharks that supply a growing, predominately unregulated international trade that continues to deplete shark populations. Clearly, the need remains strong for more action by CITES and increased cooperation between CITES and FAO.

The Draft Resolutions Support Cooperation

Australia and Ecuador have proposed draft resolutions that call for more direct, consistent participation by CITES in monitoring shark trade and closer cooperation with FAO. The draft resolutions recommend that the CITES Animal Committee critically review progress towards IPOA-Sharks implementation (NPOA-Sharks) by major fishing and trading nations, by a date one year before COP 13

to CITES. This action directly involves CITES and its members in advancing efforts to gain necessary data about sharks and encouraging pertinent States to develop NPOA-Sharks within a specific time frame.

In addition, the draft resolutions recommend that the Animals Committee examine Shark Assessment Reports (SARs) for the purpose of identifying specific species for CITES listing. This action could encourage Parties to develop SARs and keeps CITES directly involved with current, global information concerning over-exploitation of sharks due to trade.

The draft resolutions also recommend that CITES Parties obtain information on IPOA−Sharks from their fisheries departments and report directly on progress at future meetings of the Animal Committee. This action encourages direct participation by CITES Parties that will provide each Party a more comprehensive understanding of its role and effect in shark conservation. It also encourages the development of a demographical analysis of shark species, which should facilitate proper CITES listings. Also, by encouraging regular reports directly to the Animals Committee, CITES may more readily determine and assist countries having difficulty in implementing shark conservation programs;

However, IELP is concerned with the following paragraph proposed by Ecuador:

> DIRECTS the Secretariat, in liaison with FAO, to commission the preparation of a report to be presented 150 days prior to each Conference of the Parties, on the biological, fishery and trade status of the highly migratory and straddling stocks of sharks listed in the UN Fish Stocks Agreement and to focus on 10 species at a time for consideration at each meeting of the Animals Committee.

This report is likely to be very expensive and draw resources away form other important CITES implementation needs. Other aspects of the draft resolutions should help ensure that the same or complementary data is obtained. However, to the extent that the Parties believe such a report is warranted, this paragraph should refer to the list of highly migratory species included in Annex I of the UN Convention on the Law of the Sea. The references to straddling stocks and the Fish Stocks Agreement are incorrect.

With that exception, The Parties should supports both draft resolutions. However, the resolutions should be merged because of their similarities. Moreover, certain actions included in the resolutions are more accurately characterized as Decisions. As provided below, the Parties should consolidate the resolutions based on Ecuador's text, and divide the various actions into a Resolution and a Decision.

Cop12 Doc. 41.2 (Rev.)
Annex

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Conservation of and trade in sharks

RECOGNIZING that sharks are particularly vulnerable to over-exploitation owing to their late maturity, longevity and low fecundity;

CONCERNED that some shark species are heavily utilized around the world for international trade in their fins, skins and meat, and that shark stocks remain unmanaged and their utilization unmonitored;

RECOGNIZING that unregulated fishing of sharks, including bycatch, is the most important threat to shark conservation;

NOTING that levels of exploitation in some cases are unsustainable and may be detrimental to long-term survival of shark species;

RECOGNIZING that there is growing international concern about the conservation threats to sharks, which has been addressed through unilateral action, as well as by multilateral agreements and organizations;

NOTING that the World Conservation Union's (IUCN) Red List of Threatened Species (2000) lists 79 shark taxa (from the 10 percent of taxa for which Red List assessments have been made);

NOTING that the United Nations Convention of the Law of the Sea (UNCLOS) has called for international cooperation for conservation and utilization of sharks listed on Annex I of UNCLOS;

CONSIDERING that the Conference of the Parties has competence to consider any species subject to international trade;

NOTING that two shark species are currently listed in Appendix III of CITES;

NOTING that Parties to CITES have previously recognized the conservation threat international trade poses to sharks through Resolution Conf. 9.17 and Decisions 10.48, 10.73, 10.74, 10.93, 10.126, 11.94, and 11.151;

NOTING that, at the 23rd session of the Food and Agriculture Organization Committee on Fisheries (COFI), held in February 1999, the Code of Conduct for Responsible Fisheries and the International Plan of Action (IPOA) on the Conservation and Management of Sharks (IPOA-Sharks) were agreed;

NOTING that States were encouraged to have prepared NPOAs for sharks by COFI 24th session held in 2001, but there has been a significant lack of progress with the development and implementation of NPOAs;

OBSERVING that, of the 113 FAO member countries that report their shark landings to the FAO, just 29 have reported any progress with IPOA implementation, and only five of these have provided documentation of such progress in the form of Shark Assessment Reports or National Plans of Action;

CONCERNED that insufficient progress has been made in achieving shark management through the implementation of IPOA-Sharks except in States where comprehensive shark assessment reports and NPOA-Sharks have been developed;

CONCERNED that, despite these efforts, sharks continue to be poorly managed and over-exploited for international trade;

WELCOMING a decision adopted at the 18th meeting of the CITES Animal Committee that CITES should continue to contribute to international efforts to address shark conservation and trade concerns, including by assisting FAO Parties in the implementation of the IPOA-Sharks, particularly with respect to international trade in sharks and parts and derivatives thereof;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that a lack of progress in the development of the FAO IPOA-Sharks is not a legitimate scientific justification for a lack of further substantive action on shark trade issues within the CITES forum;

URGES Regional Fisheries Management Organizations to take steps to undertake, on a regional basis, the research, training, data collection, data analysis and shark management plan development outlined by FAO as necessary to implement the IPOA-Sharks;

DIRECTS the Animals Committee to:

(a) maintain liaison with FAO COFI in monitoring the implementation of the IPOA−Sharks;

(b) critically review progress towards IPOA−Sharks implementation (NPOA−Sharks) by major shark fishing and trading nations and report the findings to each meeting of the Conference of the Parties;

(c) examine information provided by range States in shark assessment reports and other available relevant documents, with a view to identifying key species and examining these for consideration and possible listing under CITES;

(d) recommend actions for improving the regulation of international trade in shark species and specimens thereof based on the information obtained in paragraphs (a)-(c) to each meeting of the Conference of the Parties;

REQUESTS Management Authorities to collaborate with their national customs authorities to expand their current classification system to allow for the collection of detailed data on shark trade including, where possible, separate categories for processed and unprocessed products, for meat, cartilage, skin and fins, and to distinguish imports, exports and re-exports. Wherever possible these data should be species-specific.

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES

DIRECTS the Parties to report to the Secretariat on progress made to comply fully with the FAO IPOA-Sharks by the 13th meeting of the Conference of the Parties;

DIRECTS the Secretariat to raise with FAO concerns over the significant lack of progress implementing the IPOA−Sharks and to urge FAO to take steps to encourage the implementation of the IPOA;

DIRECTS the Animals Committee, in the event that any shark species are listed in Appendix II at the 12th meeting of the Conference of the Parties, to prioritize species within the Review of Significant Trade.

CITES, Toothfish, and CCAMLR (Doc. 16.1, Doc. 44, Proposal 39)

The CITES Parties should:

- **reject Chile's draft resolution (Doc. 16.1),** because its call for cooperation between CITES and CCAMLR is insufficient to prevent IUU fishing and protect toothfish; and

- **support Australia's draft resolution and annotation to Proposal 39**, as amended below.

Background

Chile and Australia have proposed greater cooperation between CITES and the Convention for Conservation of Antarctic Marine Living Resources ("CCAMLR") to conserve Patagonian Toothfish. Greater cooperation is needed because, although CCAMLR has succeeded in reducing unregulated and unreported ("IUU") toothfish catches, IUU catches continue to result in serious over-harvesting of toothfish. In 2001, 20,820 tons of toothfish were caught inside the Convention Area, and 7,500 tons, or 34% of the total catch, were not reported.

To reduce IUU fishing, CCAMLR has adopted a Catch Documentation Scheme ("CDS") to promote accurate catch reporting and to monitor legal and illegal harvesting of toothfish. Under the CDS, fishing vessels must supply information describing their catches in a special CCAMLR catch document form. Vessel masters, receiving vessels, and port state officials verify the document with their signatures. Originals of all copies of the document must be returned to the Flag State of the fishing vessel that caught the fish. The Flag State then forwards the copy to the CCAMLR Secretariat. Throughout, copies of the documents remain with the catch. Thus, the toothfish catches are verified and tracked from the moment they are caught to the moment they are sold.

While the CDS has been extremely effective at decreasing IUU fishing and trade, many fishermen continue to fish outside the Convention Area and outside CCAMLR's quota and enforcement regime for toothfish. According to Australia's proposal to list toothfish in Appendix II (Proposal 39), almost 50% of toothfish landings over the past four years derived from IUU fishing.

Cooperation Alone Is Insufficient to Protect Patagonian Toothfish

While exchanges of information and other forms of cooperation between CITES and CCAMLR are beneficial, they are insufficient to promote the conservation of toothfish. The fishery—already imperiled by IUU fishing—will continue to decline unless measures to control IUU fishing are imposed. In fact, the Secretariat, TRAFFIC, WWF, and the Species Survival Network all agree that Patagonian toothfish meets the requirements for inclusion in Appendix II.

Thus, Chile's draft resolution in Doc. 16.1 on cooperation is insufficient. ***Cooperation must be accompanied by an Appendix II listing.*** As TRAFFIC reported, "no single measure will be successful in addressing IUU fishing. All possible avenues must be explored in order to address the impact of IUU fishing of Patagonian Toothfish stocks."[11] Ultimately, TRAFFIC recommends the consideration of complementing CCAMLR mechanisms with those of CITES and other conventions and that further efforts must be made to involve all trading nations in the Catch Document System (CDS).[12] An Appendix II listing under CITES provides a useful mechanism for involving all trading nations in the CDS or a regime similar to the CDS.

Substituting CCAMLR's Harvest Quotas and CDS for CITES Permit Requirements

Australia has proposed to substitute CCAMLR's annual catch limits and CDS for CITES permit requirements under Article IV. Because Article IV of CITES requires a Party's Scientific Authority to make a non-detriment finding and its Management Authority to determine that a specimen was obtained legally or in accordance with CITES, the CITES Parties must answer two questions before allowing the substitution of CCAMLR's requirements for those of CITES: (1) Do CCAMLR's quotas and CDS meet the substantive requirements of Article IV?; and (2) What is the appropriate legal mechanism for linking CCAMLR's regime to CITES permit requirements?

Do CCAMLR's Quotas and CDS Meet the Substantive Requirements of Article IV of CITES?

Yes. As Table 1 illustrates, CCAMLR's conservation measures meet or exceed the requirements of CITES. As such, substituting CCAMLR's CDS for CITES permits would be an efficient and effective way to protect and monitor trade in toothfish.

Table 1: Comparison of CITES and CCAMLR/CDS Requirements

CITES Requirement	CCAMLR Requirement	Comments
Scientific Authority must make a non-detriment finding before granting an export permit or a certificate of introduction from the sea. Article IV(2)(a), (6)(a).	Harvest quotas based on ecosystem and precautionary approach, as well as historical catches and uncertainties in or lack of information.	• CCAMLR quotas are set at a level well above the level necessary to ensure that a species is not harvested and traded to the detriment of the species. • Because CITES does not provide a uniform definition of "non-detriment" and concern has been raised about the issuance of non-detriment findings under Article IV, the use of CCAMLR's would provide a uniform means by which to gauge non-detriment.
Management Authority must be satisfied that specimen was not obtained in contravention of national laws before granting an export or imported in accordance with CITES before granting a re-export permit. Article IV(2)(b), (5)(a).	Conservation Measure 170/XX, CDS for *Dissostichus* spp. requires: • Contracting Party must take steps to determine whether Dissostichus spp. was "caught in a manner consistent with CCAMLR measures." • Contracting Party may issue catch documents only to vessels authorized to catch Dissostichus spp. • Each landing and transshipment must be accompanied by a completed catch document. • Vessels must be registered and use VMS to verify their catch positions.	• Because CCAMLR measures must be implemented through national legislation, CCAMLR's requirement requires that a Party verify that toothfish is caught consistent with national legislation. Thus, CCAMLR's measures are equivalent to CITES, Article IV. • Designating CCAMLR as responsible for conservation measures in the annotation requires Management Authority to ensure specimen taken in accordance with CITES • VMS and vessel registration provisions ensure that toothfish are caught consistently with national laws and establish mechanisms to assist the Contracting Parties to make that finding. • The CCAMLR requirement is broader because it applies in the Convention Area, much of which is beyond national jurisdiction where domestic laws do not apply.
Management Authority must be satisfied that the living specimen is prepared and shipped to minimize injury, damage to health or cruel treatment before granting an export permit, re-export permit, or certificate of introduction from the sea. Article IV(2)(c), (5)(b), (6)(b).	No equivalent finding.	• *Dissostichus* spp. entering trade are dead (the vast majority of toothfish are caught using longline methods and traded as frozen fish products). • Thus, the CITES requirement is not applicable.

What Are the Appropriate Legal Mechanisms to Link CCAMLR's Quotas to the CITES Permit Requirements Finding?

In its proposal to list Patagonian Toothfish in Appendix II, as well as in its draft resolution relating to CCAMLR, Australia has proposed to substitute CCAMLR's catch quotas and Catch Documentation Scheme (CDS) for compliance with the permit requirements of CITES. Australia has modeled its proposal on the provisions of Article XIV(4), which allows compliance with the provisions of a marine organization to substitute for compliance with CITES. However, because Article XIV(4) does not apply to marine treaties that entered into force after CITES entered into force, the Parties must find some other way to substitute CCAMLR's quotas and CDS for CITES permit requirements that is consistent with the Parties obligations under Article IV of CITES.

To provide the legal basis for implementing CCAMLR's regime through CITES, the annotation in Proposal 39 and similar language in Doc. 44 should be amended as proposed by TRAFFIC:

(a) the Commission of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) is responsible for the development and implementation of scientific and management measures for the conservation and rational use of toothfish in its Convention Area.

(b) non-detriment findings for international trade in specimens of toothfish caught within the CCAMLR Convention Area [in waters that are not under the jurisdiction of a State] are made on the basis of CCAMLR's conservation measures.

This language accomplishes several objectives. First, this language incorporates CCAMLR's quotas and other conservation measures into an annotation to Appendix II, thus making them approved by and binding on the Parties. As such, they are the equivalent of the COP-approved quotas for leopard skins. Resolution Conf. 10.14 provides precedent for quotas approved by the COP to be considered as the equivalent of a non-detriment finding, provided that the export is within the quota. Resolution Conf. 10.14 states:

> "in reviewing applications for permits to import whole skins or nearly whole skins of leopard *Panthera pardus* (including hunting trophies), in accordance with paragraph 3(a) of Article III of the convention, the Scientific Authority of the State of import approve permits if it is satisfied that the skins being considered are from one of the following States [for which an export quota has been granted]."

Second, the annotation is written in a way that makes any changes to the quota or other conservation measures between CITES COPs binding on the Parties. Third, because the annotation designates CCAMLR as responsible for conservation measures, trade inconsistent with those measures is inconsistent with CITES, provided CITES establishes the appropriate mechanisms for implementing these obligations by Resolution.

IELP has bracketed the text "in waters that are not under the jurisdiction of a State" in paragraph (b), because it is not clear why the issuance of non-detriment findings in accordance with CCAMLR's conservation measures should be limited only to waters outside the jurisdiction of any State. The CCAMLR Convention Area includes areas where Australia and other countries have asserted sovereign rights. Presumably, countries asserting sovereign rights within the CCAMLR Convention Area would want to rely on CCAMLR's quotas for making non-detriment findings.

Once the annotation provides the legal basis for implementing CCAMLR's measures, a resolution must provide the mechanisms for issuing valid permits consistent with Article IV of CITES. The proposed Resolution below creates the appropriate procedural mechanisms. First, it directs the Parties to designate CCAMLR as the Scientific Authority and the relevant port authority as the Management Authority. It then directs the Parties to reject any trade based on permits issued by any other authority.

Designate CCAMLR as the CITES Scientific Authority. As the Secretariat has reported, a Party may designate CCAMLR as their CITES Scientific Authority for purposes of issuing non-detriment findings for toothfish. By doing so, a CITES Party directly links the non-detriment finding to the harvest quotas set by the CCAMLR Scientific Committee. This mechanism meets the requirements for Article IV of CITES anywhere in the CCAMLR Convention Area. Thus, such a mechanism would be valid both for export permits and for certificates of introduction of the sea provided that the catch occurred in the CCAMLR Convention Area.

Designate the Port Authority as the CITES Management Authority. In addition, the CITES Parties could implement their obligations to issue export, re-export, and introduction from the sea certificates—whether inside or outside the CCAMLR Convention Area—by making their port authorities that are competent to issue and validate *Dissostichus* catch documents under CCAMLR the Management Authority. In this way, CITES permits are issued by a designated Management Authority but the CITES permit requirements and CDS are not duplicated, because the same entity issues the permit.

Non-detriment findings outside the CCAMLR Convention Area. CCAMLR does not set quotas outside the Convention Area. For catches of Patagonian Toothfish outside of the CCAMLR Area and beyond the jurisdiction of any country, CITES Parties must issue non-detriment findings consistent with Article IV(6)(a). For catches of Patagonian Toothfish outside of the CCAMLR Area, but within a CITES Party's EEZ or otherwise within an area for which sovereign rights have been legally established, the Parties must issue a non-detriment finding for any export consistent with Article IV(2)(a).

Annotation

(a) the Commission of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) is responsible for the development and implementation of scientific and management measures for the conservation and rational use of toothfish in its Convention Area.

(b) non-detriment findings for international trade in specimens of toothfish caught within the CCAMLR Convention Area [in waters that are not under the jurisdiction of a State] are made on the basis of CCAMLR's conservation measures.

Resolution

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Conservation of and Trade in *Dissostichus* species

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

A. Permitting: In the CCAMLR Convention Area

DIRECTS the Parties to

(a) designate the Commission for Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) as the Scientific Authority for the purposes of making non-detriment findings pursuant to Article IV(2)(a) and Article IV(6)(a) for catches of *Dissostichus* spp. in the CCAMLR Convention Area;

(b) designate their port authorities that are competent to issue and validate *Dissostichus* catch documents under CCAMLR as the Management Authority for purposes of granting certificates of introduction from the sea, export permits, and re-export permits for catches of *Dissostichus* spp. in the CCAMLR Convention Area;

RECOGNIZES that, because the listing of *Dissostichus* spp. in Appendix II designates CCAMLR's Commission as responsible for the development and implementation of scientific and management measures for the conservation and rational use of toothfish in its Convention Area, permits issued inconsistently with paragraphs (a) and (b) above for catches of *Dissostichus* spp. in the CCAMLR Convention Area are invalid;

INSTRUCTS the Secretariat to notify the Parties of relevant conservation measures, including any changes in harvest quotas established by CCAMLR's Scientific Committee at meetings of CCAMLR's Commission;

B. Permitting: Outside the CCAMLR Convention Area

AGREES that trade in *Dissostichus* spp. taken outside the CCAMLR Convention Area and

(a) taken in the marine environment not under the jurisdiction of any State shall require the issuance of a certificate of introduction from the sea in accordance with Article IV(6);

(b) taken in the marine environment under the jurisdiction of any State shall require the issuance of an export permit or re-export permit in accordance with Article IV(2) or Article IV(5);

AGREES that, notwithstanding the provisions of paragraphs (a) and (b) of this section, compliance with CCAMLR's Catch Document Scheme outside the Convention Area may substitute for the findings of Article IV(2)(b), Article IV(5)(a), and Article IV(6)(b), provided that the CCAMLR catch documents are issued by the CITES Management Authority.

C. Definition of Introduction from the Sea

AGREES that, consistent with U.N. Convention on the Law of the Sea, the term "specimens of any species which were taken in the marine environment not under the jurisdiction of any State" means that a specimen was:

(a) not taken within the territorial sea or the internal waters of a State or in the archipelagic waters of an archipelagic State; or

(b) not taken on a State's continental shelf, in a State's exclusive economic zone, or in a marine area for which a State has lawfully asserted its sovereign rights (as in a validly declared exclusive fishery zone or fishery conservation zone);

AGREES that, for the purposes of Article III(5), Article IV(6), Article IV(7), and Article XIV(5) of the Convention, the term "State of Introduction" means the State in which a specimen is first landed.

D. Information and Cooperation

RECOMMENDS that Parties inform the Secretariat about legal exporters of *Dissostichus* spp. and that importing countries be particularly vigilant in controlling the unloading of *Dissostichus* spp. products;

RECOMMENDS that the Animals Committee, in consultation with the CCAMLR Scientific Committee and other relevant experts, examine trade in *Dissostichus* spp. and report to the next CITES Conference of the Parties on any trade measures that may be required, including the establishment of specific quotas, zero quotas or other restrictions on exports of *Dissostichus* spp. in order to maintain the level of exports of *Dissostichus* spp. harvested outside the CCAMLR Convention Area at below the level that would be detrimental to the survival of *Dissostichus* spp.;

DIRECTS the CITES Secretariat to establish procedures whereby CITES can cooperate with CCAMLR's Commission for the purpose of exchanging information relevant to the harvesting and regulation of trade in *Dissostichus* spp., enhancing synergies between CCAMLR and CITES and facilitating consultations on Introductions from the Sea;

DIRECTS the CITES Secretariat to share with CCAMLR's Commission any information it collects regarding illegal trade in *Dissostichus* spp.;

URGES all Parties to adopt CCAMLR's CDS for catches of *Dissostichus* spp. outside the CCAMLR Convention Area; and

URGES all Parties and non-Parties, as well as relevant international organizations, to take measures individually and collectively, including through CCAMLR and other international organizations, to prevent continued IUU fishing and illegal trade in *Dissostichus* spp., and to report to the CITES Secretariat on any developments regarding this issue.

Introduction from the Sea: Issues (Doc. 44, Doc. 61)

Background

In the draft resolution in Doc. 44 (conservation of toothfish), third operative paragraph, Australia incompletely defines "introduction from the sea." In Doc. 61, Chile requests the establishment of a marine working group to, *inter alia,* propose a definition of introduction from the sea. To progress this discussion, IELP has analyzed the issues involving introduction from the sea and prepared a definition of it that is consistent with the U.N. Convention on the Law of the Sea (UNCLOS).

Under CITES, "introduction from the sea" is the transportation into a State of a specimen of a marine species (flora and fauna) listed in Appendix I or II that was taken in the marine environment "*not under the jurisdiction of any State*." Article III(5) and Article IV(6) require the State of introduction to issue a certificate of introduction from the sea for a specimen introduced from the sea. Although neither CITES nor the CITES Parties have defined the term "not under the jurisdiction of any State," the Parties agree that the term should be harmonized with the provisions of UNCLOS.

UNCLOS does not refer to a State's "jurisdiction," as CITES does. Instead, it establishes rules for claims of "sovereignty" and "sovereign rights" in different areas of the ocean—the continental shelf, internal waters, territorial sea, exclusive economic zone, and high seas. These provisions of UNCLOS, however, that can be correlated with the phrase "not under the jurisdiction of any State" in CITES.

Beyond the Continental Shelf

Because CITES applies to both marine plants and animals, any definition of "introduction from the sea" must incorporate the continental shelf. Article 76 of UNCLOS defines the continental shelf as comprising:

- the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of a coastal State's land territory to the outer edge of the continental margin; or
- a distance 200 nautical miles from the baseline from which a State's territorial sea is measured.

The first paragraph acknowledges the sovereign rights of a coastal State beyond the 200-mile mark, provided that the continental shelf extends beyond that point. The second paragraph grants sovereign rights to a coastal State up to 200 miles even if its continental shelf does not reach that distance. While UNCLOS establishes supplementary rules for measuring the extent of the continental shelf that limit the extent of the legal definition of continental shelf, the rules are well-established. A definition of introduction from the sea could simply refer to "the area beyond the continental shelf."

Beyond Exclusive Economic Zones and Fisheries Conservation Zones

UNCLOS defines the "high seas" as the area "not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." UNCLOS, art. 86. UNCLOS makes clear that these areas are "open to all States" and thus *not* under the jurisdiction of any State. UNCLOS, art. 87. Thus, the area beyond the jurisdiction of any State includes the high seas—the area beyond a State's internal waters, territorial sea, and/or exclusive economic zone.

However, UNCLOS does not necessarily limit a coastal State's claim of sovereign rights to an exclusive economic zone. UNCLOS allows coastal State's to assert sovereign rights to natural resources

in an area up to 200 nautical miles from the coast and subject to the specific legal regime established by UNCLOS for Exclusive Economic Zones (EEZ). UNCLOS, arts. 55, 57. However, a coastal State does not need to exercise sovereign rights over all natural resources or completely to the 200-mile mark. It may, for example, exercise sovereign rights over a limited number of natural resources. These areas are often called Exclusive Fisheries Zones (EFZs) or Fisheries Conservation Zones (FCZs). To the extent that a coastal State asserts sovereign rights over a natural resource, however, it must meet the minimum obligations of UNCLOS.[13]

A coastal State's EFZ or FCZ must meet the requirements of UNCLOS because the right to assert sovereign rights derives from UNCLOS directly. The right to assert sovereign rights over an area up to 200 nautical miles may also derive indirectly through UNCLOS to the extent that its provisions have become customary international law.[14] Because the rights and duties of coastal States concerning fisheries under customary international law are closely related, if not the same as, those of UNCLOS,[15] a coastal State may assert its sovereign rights over living resources in an EFZ or FCZ *only if* it meets its conservation and management obligations under UNCLOS.

In either case, UNCLOS provides minimum requirements for exercising sovereign rights over natural resources in an area up to 200 nautical miles from the coast. Thus, if the legal regime for an EFZ or FCZ meets the minimum legal obligations of UNCLOS for the conservation of living marine resources, then it constitutes a valid exercise of "jurisdiction." Fishing within these areas for CITES-listed species would *not* require introduction from the sea certificates.

If the legal regime for an EFZ or FCZ fails to meet the minimum legal obligations of UNCLOS, then it does not constitute a valid exercise of sovereign rights or jurisdiction. Fishing in these areas thus requires the issuance of an introduction from the sea certificate.

Issues of Special Concern: Transshipment between Two FCZs of One Country

Some countries, including the United States and Norway, administer territories and have declared EFZs or FCZs around those territories. An issue for CITES is how to address the catch of a CITES-listed species in the EFZ of one of these territories, the subsequent transshipment of that catch through the high seas, and the introduction of that catch into the State which administers the territory. For example, assume that a fisherman catches an Appendix II listed species in Norway's EFZ around Svalbard. To land the catch in Oslo, the fishermen must travel on the high seas and perhaps through the EFZs of Iceland, Denmark, or the United Kingdom.

Does this constitute "introduction from the sea"? The answer should be "no." "Introduction from the sea" applies only when a specimen is taken in the marine environment not under the jurisdiction of any State. In this example, the specimen was taken in the marine environment of Norway. As such, the transportation of the specimen through the high seas and the jurisdiction of other States is irrelevant.

Issues of Special Concern: Transshipment Through Another State's EEZ

"Introduction from the sea" means the "transportation into a State" of specimens taken on the high seas. A broad interpretation of "State" could require a fisherman to obtain introduction from the sea certificates from ***each*** country through which he transports his catch. The text of CITES does not provide clear guidance on how to address this issue. It is difficult to imagine that the drafters intended a fisherman who simply traversed a country's EEZ to obtain an introduction from the sea permit from that country. However, Article VII(1) of CITES requires a trader to obtain relevant CITES permits when transiting through a country, *unless* the specimens remain in customs control. That suggests that CITES

requires a fisherman to obtain an introduction from the sea certificate from each EEZ through which he passes.

At COP11, Australia provided a sensible solution to this issue. It proposed to define "State of introduction" as the State into which a specimen *is first landed*. This definition ensures that fishermen are not unduly burdened with CITES requirements. It also ensures that one country—the State in which the catch is first landed—has responsibility for making non-detriment and other findings required by CITES.

Issues of Special Concern: Export and Re-export

Some fish caught on the high seas are landed at the nearest available port. The fish are then flown to another country. The provisions of CITES with respect to re-export of specimens introduced from the sea are not a model of clarity. Article III(4) and Article IV(5) allow re-export only when a Management Authority is satisfied that the specimen was "imported" into that State in accordance with the provisions of CITES. Because a specimen "introduced from the sea" is not technically "imported," a strict reading of CITES would prohibit the re-export of specimens introduced from the sea, which seems unwarranted.

However, the definition of "re-export" suggests that a specimen introduced from the sea must be "exported" before being re-exported. Requiring an export before a re-export would require a non-detriment finding to be made by the country of export. However, the country of export will be the same as the state of introduction, which made a non-detriment finding with respect to the introduction from the sea. Thus, there seems to be little added value in requiring an export prior to a re-export of a specimen introduced from the sea. (At the same time, there seems to be little additional burden in adhering strictly to the language of CITES).

Thus, a resolution on introduction from the sea should define the trade transaction immediately following introduction from the sea as a "re-export." This can be accomplished by defining the phrase "imported" in Articles III(4)(a) and IV(5)(a) to mean "imported or introduced from the sea."

Proposed Definition of "Introduction from the Sea"

Consistent with UNCLOS, IELP urges the Parties to adopt the following definition of introduction from the sea:

1. Consistent with UNCLOS, the term "specimens of any species which were taken in the marine environment not under the jurisdiction of any State" means:

   (a) not taken within the territorial sea or the internal waters of a State or in the archipelagic waters of an archipelagic State; or
   (b) not taken on a State's continental shelf, in a State's exclusive economic zone, or in a marine area for which a State has lawfully asserted its sovereign rights (as in a validly declared exclusive fishery zone or fishery conservation zone).

2. For the purposes of Article III(5), Article IV(6), Article IV(7), and Article XIV(5) of the Convention, the term "State of Introduction" means the State in which a specimen is first landed.

3. For the purposes of Article III(4)(a) and Article IV(5)(a), the phrase "imported" shall mean "imported or introduced from the sea."

Introduction from the Sea Is Not a Food Security Issue

The listing of marine species in CITES and the requirements for the issuance of introduction from the sea certificates does *not* raise food security issues. More that 90% of commercial fisheries are found within 200 miles of the coast,[16] bringing the vast majority of commercial fisheries within the Exclusive Economic Zones of coastal States. ***None*** of this catch is subject to CITES requirements for introduction of the sea. Moreover, to the extent that the catch is landed in the State which has declared the Exclusive Economic Zone or a valid EFZ or FCZ, the catch will ***not*** be subject to CITES requirements for either Appendix I or Appendix II species, because CITES permits are required only for international trade in CITES-listed species.

Marine Management Organizations, Zero Quotas, and Article XIV of CITES

The questions of introduction from the sea and the regulation of marine species generally invoke Article XIV of CITES concerning the relationship of CITES to other treaties that protect marine species. Article XIV(4) states that, for Appendix II species that are also subject to a treaty relating to marine species, that Party "shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade" in such specimens.

Article XIV(4) applies only with respect to marine treaties that entered into force before CITES on July 1, 1975, such as the International Convention for the Regulation of Whaling (ICRW) and the Convention Establishing the Inter-American Tropical Tuna Commission (IATTC). It also applies only to the extent that the country harvests the relevant marine species in accordance with the provisions of the relevant marine treaty.

It is clear that if the Parties place a whale species in Appendix II, members of the International Convention for the Regulation of Whaling (ICRW) that are also Party to CITES are relieved from their CITES obligations. A question arises as to the applicability of Article XIV(4), however, when species is included in Appendix II subject to a zero quota. Article XIV(4) can be interpreted reasonably to mean that the zero quota would not apply to a country that is both a Party to CITES and the ICRW, because that country is relieved of its CITES obligations with respect to marine species covered by another treaty.

IELP doubts that the drafters of CITES intended Article XIV(4) to cover the situation of zero quotas—they probably never thought of zero quotas. A better interpretation of Article XIV(4) is:

(1) if a species is included in Appendix II of CITES and also managed by another treaty relating to marine species, a country that is Party to both of those treaties is not required to issue permits pursuant to Article IV of CITES.
(2) if a species included in Appendix II of CITES is subject to a zero quota and the species is also managed by another treaty relating to marine species, a country that is a Party to both of those treaties is not required to *issue permits* pursuant to Article IV of CITES. However, because a zero quota prohibits trade, those Parties may not issue permits. Thus, Article XIV(4) does not apply.

Endnotes

[1] In addition, the ninth preambular paragraph must be amended to define introduction from the sea consistently with Article I(e) of CITES: the "*transportation* into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State." Finally, the operative paragraph concerning adherence to the IWC should be deleted because it is already included in Resolution Conf. 11.4.

[2] Resolution Conf. 9.24, Annex 4, paragraph B(2) establishes five alternatives under which a species may be transferred from Appendix I to Appendix II. All but one alternative requires, among other conditions, an inquiry into potential enforcement problems or the effectiveness or appropriateness of enforcement controls. The alternative that does not include an inquiry into enforcement, ranching, does not seem to apply to whale species.

[3] "Signature" usually means the act of signing a treaty at the conclusion of a negotiation or within the time period authorized by the treaty. A State ratifies a treaty that it has signed. Acceptance, accession, adherence, or approval occurs when a State did not sign a treaty but formally accepts its provisions. *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 612 (5th ed. 1998). Japan acceded to the ICRW, but did not sign it. 161 UNTS 72.

[4] At least 125 countries are involved in shark fin trade. TRAFFIC, AN OVERVIEW OF WORLD TRADE IN SHARKS AND OTHER CARTILAGINOUS FISHES, TRADE IN SHARK FINS, http://www.traffic.org/factfile/factfile_sharks_fins.html (Dec. 1996).

[5] TRAFFIC reports that one tonne could require the liver of 2,500 to 3,000 sharks. *Id*.

[6] Five countries landed 312,172 of the 694,220 tonnes of shark landed annually. IUCN Shark Specialist Group & TRAFFIC, *The Role if CITES in The Conservation and Management of Sharks* (June 2002)(revised and updated from AC18 Doc. 19.2). Moreover, 50% of the global Chondrichthyan catch is bycatch that is largely unmanaged and unreported. Terence I. Walker, *Can Shark Resources Be Harvested Sustainably? A Question Revisited with a Review of Shark Fisheries*, 49 MARINE AND FRESHWATER RESEARCH 553-572 (1998).

[7] FAO, *FAO Concerned about Severe Declines in Shark Stocks: International Plan of Action Calls for Sustainable Management*, Press Release 98/61(Oct. 21, 1998).

[8] To limit over-exploitation of sharks, some States have enacted stricter conservation laws to protect sharks. For example, Ecuador bans shark finning and fishing within the Galapagos Marine Reserve; Australia has listed the whale shark as nationally threatened under the Environment Protection and Biodiversity and Conservation Act and currently bans finning; India provides "Schedule 1" protection to the Whale Shark; the United States bans finning. Other States are collaborating with international organizations to implement more effective national conservation measures. For example, China's CITES Management Authority recently established a Memorandum of Understanding with IFAW which allows IFAW to assist China with various national shark conservation techniques that strengthen China's capacity to enforce CITES. *International Fund for Animal Welfare*, *Press Release,* http://www.ifaw.org/page.asp?id=637 (June 27 2002). Australia and the United Kingdom have placed the Great White Shark and the Basking Shark, respectively, in Appendix III of CITES.

[9] IUCN Shark Specialist Group & TRAFFIC, *The Role if CITES in The Conservation and Management of Sharks* (June 2002)(revised and updated from AC18 Doc. 19.2).

[10] *See id.*

[11] Mary Lack & Glenn Sant, *Patagonian Toothfish: Are Conservation and Trade Measures Working?* TRAFFIC Bulletin, vol. 19, no. 1, at 16 (2001).

[12] *Id.* at 16, 17.

[13] "[T]he rights and duties of states that enacted exclusive fishing zone legislation correspond to the applicable rights and duties set out in Part V [of UNCLOS] with regard to exploring and exploiting, and conserving and managing, living natural resources in the area in question." THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY, vol. II, page 510, para. v.33 (eds. Satya N. Nandan & Shabtai Rosenne, 1993); *See also* William T. Burke, THE NEW INTERNATIONAL LAW OF FISHERIES: UNCLOS 1982 AND BEYOND 43 (1994).

[14] *Case concerning the Continental Shelf (Tunisia v. Libya)* 1982 I.C.J. 18, 38, 47-49, 79; *Case concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1885 I.C.J. 13, 33 (June 3)("[T]he institution of the exclusive economic zone … is shown by practice of states to have become part of customary law."); *See, e.g.,* William T. Burke, THE NEW INTERNATIONAL LAW OF FISHERIES: UNCLOS 1982 AND BEYOND 40 (1994).

[15] Ian Brownlie, *Principles of Public International Law* 207 (5th ed. 1998); Jon M. Van Dyke, *International Governance and of the High Seas and Its Resources*, in FREEDOM FOR THE SEAS IN THE 21ST CENTURY 13 (1993).

[16] FREEDOM FOR THE SEAS IN THE 21ST CENTURY 231 (JON M. VAN DYKE, DURWOOD ZAELKE, AND GRANT HEWISON eds. 1993).