

IELP White Paper on Non-Detriment Finding Criteria

Erica Thorson* & Kim McCoy**
March 2, 2006

I. Introduction

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹ aims to prevent the overexploitation of species due to international trade by regulating trade in listed species through a permit scheme. Before a Party's Management Authority may issue a permit for the export of specimens of an Appendix I² or II³ species and the import of Appendix I species, the Party's Scientific Authority must determine that such trade will "not be detrimental to the survival of that species."⁴ This determination is known as a non-detriment finding (NDF). Beyond the initial NDF, a Scientific Authority from each Party must monitor both the export permits granted and the actual number of exports to ensure that trade in the species remains non-detrimental.⁵

The Secretary General has called the issuance of adequate NDFs "obviously essential for achieving the aims of the Convention" and has said, "It is also obvious that this advice requires sufficient knowledge of the conservation status of the species and that a positive advice should not be given in the absence thereof."⁶ Nonetheless, many Parties lack the technical expertise, financial resources, or political will to make appropriate NDFs—problems that have been widely acknowledged.⁷ The International Union for the Conservation of Nature (IUCN), for example,

* Clinical Professor of Law, International Environmental Law Project, Lewis & Clark Law School; J.D. *cum laude* 2005, Lewis & Clark Law School.

** IELP Law Clerk, J.D. expected 2007.

¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, *signed* Mar. 3, 1973, *entered into force* July 1, 1975, 993 U.N.T.S. 243.

² Appendix I species are those presently "threatened with extinction and which are or may be affected by trade." Trade in Appendix I species is "subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances." *Id.* at art. II(1).

³ Appendix II species are those "not necessarily now threatened with extinction," but which "may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival." *Id.* at art. II(2)(a). Appendix II also includes so-called "look-alike species," which so closely resemble actual Appendix II species that they must also be protected "in order that trade in [Appendix II] specimens may be brought under effective control." *Id.* at art. II(2)(b).

⁴ This language appears in Art. III(2)(a), which pertains to Appendix I exports, and Art. IV(2)(a), which pertains to Appendix II exports. *Id.* at arts. III(2)(a), IV(2)(a). Art. III(3)(a), which pertains to Appendix I imports, uses slightly different language, as NDF requirements for Appendix I imports are different from those of Appendix I and II exports. CITES, *supra* note 1, at art. III(3)(a).

⁵ CITES, *supra* note 1, at art. IV(3). In addition to monitoring, each Party must maintain records of its trade in listed species and submit annual reports to the Secretariat. *Id.* at arts. VIII(6), VIII(7)(a).

⁶ WILLEM WIJNSTEKERS, THE EVOLUTION OF CITES: A REFERENCE TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA 67 (7th ed. 2003).

⁷ "Clearly, action is needed to improve the situation and to assist Scientific Authorities in making non-detriment findings." CITES Inf. Doc. 11.3, *CITES Scientific Authorities Checklist to Assist in Making Non-Detriment Findings for Appendix II Exports*, 1.

has reported that “many species continue to be traded in the absence of information about the impact of such exploitation on the wild population.”⁸

Because of the obvious importance of and challenges to making robust NDFs, this paper clarifies key NDF issues in order to provide clear guidance to the Parties. Section II describes the existing guidance on making an adequate non-detriment finding, including a brief explanation of the IUCN Checklist. Section III highlights that, despite this guidance, important questions regarding adequate non-detriment findings remain. Section IV addresses these questions and offers suggestions for a new resolution on criteria for making adequate non-detriment findings.

II. Existing Guidance on Adequate Non-Detriment Findings

Although the Convention is silent on the requirements for determining whether an export is detrimental to the survival of a species, the Parties have provided some guidance through a resolution and other documents.⁹ In particular, Resolution Conf. 10.3 recommends that export permit NDFs be “based on the scientific review of available information” regarding:

- population status;
- distribution;
- population trend;
- harvest;
- other biological and ecological factors, as appropriate; and
- trade information relating to the species concerned.¹⁰

While Resolution Conf. 10.3 provides guidance on the type of information that should be assessed, it fails to provide other guidance concerning the adequacy of the data supporting NDFs. For example, Resolution Conf. 10.3 does not require Parties to develop new information—it says the review should be based on “available information.” *How much* information is needed to make an NDF? What if the available information has not been peer reviewed? Must a Party evaluate the effect of an export on the species throughout the species’ range, or only within the borders of the exporting Party?

In addition to the limited guidance provided by Resolution Conf. 10.3, the IUCN Species Survival Commission has conducted workshops to identify challenges, requirements, and methods for making NDFs for Appendix II specimens. These workshops culminated with the development of a checklist (hereinafter “NDF Checklist”).¹¹

⁸ A.R. ROSSER & M.J. HAYWOOD, OCCASIONAL PAPER OF THE IUCN SPECIES SURVIVAL COMMISSION NO. 27, GUIDANCE FOR CITES SCIENTIFIC AUTHORITIES: CHECKLIST TO ASSIST IN MAKING NON-DETRIMENT FINDINGS FOR APPENDIX II EXPORTS 3 (2002).

⁹ See Resolution Conf. 10.3, *Designation and Role of the Scientific Authorities*; Inf. Doc. 11.3, *supra* note 7, Doc. 11.12.2, *Strategic and administrative matters—Evolution of the Convention—Strategic Plan for the Convention*, 15 (Apr. 2000), and ROSSER & HAYWOOD, *supra* note 8.

¹⁰ Resolution Conf. 10.3, *supra* note 9, at para. h of “RECOMMENDS.”

¹¹ *Id.* at 7. The NDF Checklist can be found in CITES, Inf. Doc. 11.3, *available at* <http://www.cites.org/eng/cop/11/info/03.pdf> (April 10–20, 2000).

Table 1 of the NDF Checklist facilitates an initial review, at a national level, of the likely effects of harvesting either a plant or animal species. The assessment begins with an examination of the following criteria: type of harvest, main product, degree of control over harvest,¹² demographic segment removed from wild population, relative level of off-take, reason for off-take, and commercial destinations or end users. Table 1A identifies six types of harvest for animals, including captive breeding, non-lethal harvesting of parts or products, ranching, pest control, live capture, and the killing of an individual.¹³ Similarly, Table 1P identifies six types of harvest for plants, including artificial propagation; non-lethal harvesting of fruits, flowers, seeds, or leaves; non-lethal harvesting of bark, roots, or wood; removal of a whole plant; removal of a whole bulb; and the killing of an individual.¹⁴

Having completed the applicable version of Table 1 by placing a check mark in each appropriate box, a Scientific Authority will likely conclude that trade is non-detrimental if certain boxes are checked, indicating the *well-regulated* captive breeding of animals. These boxes include: artificial propagation of plants; non-lethal removal of animal parts or products; non-lethal removal of plant fruits, flowers, or seeds; ranching of animals; or non-lethal harvest of plant leaves.¹⁵ So long as the only boxes checked are within these rows and no more than two types of harvest are involved, a non-detriment finding can be made.

On the other hand, boxes checked in rows indicating pest control, live capture, killing, or illegal or unmanaged harvest would signal to a Scientific Authority the need to conduct a more thorough review by reviewing the factors included in Table 2.¹⁶ Table 2 facilitates a more in-depth review of biological and management information, examining the following criteria: general biological characteristics, national status of the species, harvest management, control of harvest, monitoring of harvest, incentives and conservation benefits of harvest, and protection from harvest.¹⁷ Biological characteristics of animals and plants are considered separately, but within the same table. Biological considerations for animals include life history, ecological adaptability, dispersal efficiency, and human tolerance.¹⁸ Biological considerations for plants include life form, regeneration potential, dispersal efficiency, and habitat.¹⁹

Table 2 moves slightly beyond the act of simply placing a check in a box. The user must instead choose from one of five pre-designated responses (including four definitive answers and one “uncertain”) for each of the twenty-six questions asked.²⁰ Once all of the relevant information has been collected, Table 2 scores may be entered into an Excel spreadsheet and transformed into a visual representation of the results to assist the Scientific Authority in

¹² Table 1 distinguishes between harvest that is “regulated” and that which is “illegal or unmanaged.” Although illegal and unmanaged harvests are different, they have the same effect on wild populations and are consequently grouped together as one category. Inf. Doc. 11.3, *supra* note 7, at 8.

¹³ *Id.* at 5.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ Inf. Doc. 11.3, *supra* note 7, at 18–21.

¹⁷ *Id.*

¹⁸ *Id.* at 18.

¹⁹ *Id.*

²⁰ *Id.* at 10.

interpretation of the data.²¹

A basic summary of the Checklist exists as Inf. Doc. 11.3. In addition, the 2000 Strategic Plan for the Convention, Doc. 11.12.2, includes as a major focus “strengthening the scientific basis of the decision-making processes”²² and specifically categorizes “life history, ecological adaptability, distribution, abundance, population trends, and management programme” as “*necessary scientific information*” for making NDFs.²³

Following the NDF Checklist and Strategic Plan, IUCN published a compilation of articles (hereinafter “IUCN Guidelines”) offering further guidance on making NDFs.²⁴ The IUCN Guidelines include presentations on NDF issues made by the CITES Secretariat and representatives from ten different countries.²⁵ The IUCN Guidelines also address technical considerations, such as methods for evaluating harvest sustainability, possible management frameworks, assistance to Parties in developing database and trade monitoring systems, and whether the Significant Trade Process can be helpful as a guide in making better NDFs.²⁶ The IUCN Guidelines conclude with a re-print of the NDF Checklist and a practical example of how the NDF Checklist may be applied.²⁷

III. Problems with NDFs

Although the IUCN Guidelines is widely available and the “checklist” has been incorporated into Inf. Doc. 11.3, the Parties and the Secretariat have continued to express the need to further clarify the parameters of adequate non-detriment findings. For example, the Animals Committee included in its working program for 2003-2004 the development of “a programme to assist Scientific Authorities in making non-detriment findings in accordance with the provisions of Article IV of the Convention.”²⁸ At its May 2005 meeting, the Animals Committee increased the priority from low to medium for developing “practical guidance for making non-detriment findings, including a manual and checklist, and samples of non-detriment findings and case studies; and support to the Secretariat in its work on the development and implementation of a programme to assist Scientific Authorities in making non-detriment findings in accordance with the provisions of Article IV of the Convention.”²⁹

Several issues arise in conjunction with non-detriment finding criteria that have not been affirmatively addressed by the Parties. First, although the non-detriment findings for imports versus exports are stated differently, the Parties have never defined this difference in a way that sets out separate criteria for each type of non-detriment finding. Second, not only have Parties not clearly articulated the differences between import versus export non-detriment findings, they

²¹ In fact, an electronic template has been developed to automatically generate a radar plot and is available from the CITES Secretariat upon request. *Id.* at 15.

²² Doc. 11.12.2, *supra* note 9, at 15, *Goal 2*.

²³ *Id.* at 15, Action Point 2.3.3 (emphasis added).

²⁴ ROSSER & HAYWOOD, *supra* note 8.

²⁵ *Id.* at part II.

²⁶ ROSSER & HAYWOOD, *supra* note 8, part III.

²⁷ *Id.* at part IV.

²⁸ CITES, AC19 Doc. 6.3, *Strategic Planning—Establishment of the Animals Committee’s Priorities*, para. h (Aug. 2003).

²⁹ CITES, AC21 Summary Record, page 4 (May 2005).

have also not defined in a resolution the quality of scientific, trade, and/or management information needed to make adequate non-detriment findings. Finally, it is unclear whether Parties have an affirmative obligation to ensure that a non-detriment finding is made on the basis of at least *some* scientific information.

A. Export vs. Import NDF Analysis

Both the Convention itself and the Parties' resolutions provide few, if any, criteria for distinguishing export from import non-detriment findings. The exporting country focuses on whether the *removal* of an Appendix I and II specimen is detrimental to the survival of the species. In contrast, non-detriment findings for the import of Appendix I specimens focus on the *purpose* of the import; that is, whether the *end use* of the imported specimen is detrimental to the survival of the species. To determine whether an *export* is detrimental to the species at issue, Resolution Conf. 10.3 recommends that the Scientific Authority examine information on population status, distribution, population trends, harvest, other biological and ecological factors, as appropriate, and trade information relating to the species concerned.³⁰ However, neither the Convention nor a Resolution indicates whether the information needed to determine if an *import* is for purposes that are detrimental to the survival of the species differs from the information needed for the export finding. Whether an importing Party looks at the same type of information as the exporting country or reviews an entirely distinct set of factors is left for each Party to decide for itself.

B. Lack of Guidance on NDFs for Imports

While the drafters of CITES clearly considered the NDF for imports qualitatively different than the NDF for exports, the absence of guidance creates several interpretative questions for Parties. The first question is whether the Scientific Authority of the importing country may or should review population data and other information that the exporting country relied upon to determine whether the export or removal from the wild is detrimental to the survival of the species. Depending on how the importing Party uses that information, the importing Party may duplicate the NDF of the exporting Party.

While there may be some benefit to duplicating efforts, the text of CITES clearly conveys that the NDF inquiry for imports differs. Thus, information on population status and trends and other information useful for determining whether removal from the wild is detrimental to the survival of the species will be useful to the importing country but the importing country should put that information to a different use.

For example, presumably an assessment of whether the purpose of the import is detrimental to the survival of the species requires an analysis of whether the purpose will increase demand for and trade in specimens of the species at issue. Whether trade may increase enough to be detrimental to the survival of the species would require reference to population data and trends.

³⁰ Resolution Conf. 10.3, *supra* note 9, para. h of "RECOMMENDS" provides that "the findings and advice of the Scientific Authority of the country of export be based on the scientific review of available information on the population status, distribution, population trend, harvest and other biological and ecological factors, as appropriate, and trade information relating to the species concerned."

A second interpretive question is whether the importing Party should assess the potential detriment to the same taxonomic level that the exporting country assessed. For example, if Bhutan proposes to export ten bears (*Ursos arctos*) to zoos in the United States, may or should the United States determine whether the importation for exhibition in a zoo is detrimental to the survival of the Bhutan population of *Ursos arctos* only or should it assess the impact on all populations of *Ursos arctos*? May or should it assess the impact of that trade on all *Ursos* species?

The answer, perhaps, may depend on the specific purpose of the import of the characteristics of the specimen being imported. In the example given, it is unlikely that exhibition of bears in a zoo will lead to increased trade in bears *only* from Bhutan, unless such bears exhibit unique behavioral or physical characteristics that are particularly attractive. In the absence of such characteristics, future demand for zoos is likely to be for bears generally, not for bears from Bhutan. Consequently, the importing country should probably assess the impact of the import on the species as a whole.

On the other hand, the purpose of the import or the unique characteristics of a species may suggest that the non-detriment analysis focus on the potential impact to the specific population from which the specimens derive. For example, only certain populations of bottlenose dolphins have learned to use tools.³¹ If such dolphins are imported for exhibition, and prove to be especially popular exhibits, it is possible that future demand for bottlenose dolphins would focus on those populations where tool use occurs.

A third question is whether the importing country should assess the impact of only the one import for a specific purpose to a specific site or whether it should expand its inquiry. For example, assume that Captive Breeding Facility X, a facility with particularly good captive breeding results, wishes to import a male and female bird for its captive breeding program. Should the importing Party assess the potential impact of this one shipment to this particularly successful captive breeding facility? Or should it also take into account the impact of similar requests to facilities that are less successful and thus will request additional imports to replace or supplement breeding stock? Should the importing country be restricted to captive breeding facilities in its own country or can it look beyond its borders to total imports of these birds to captive breeding facilities worldwide?

Because the non-detriment finding for the import of a specimen focuses on the purpose of the import, the importing country should, at a minimum, take into account the impact of similar requests to facilities that are less successful and thus will request additional imports to replace or supplement breeding stock. If the negotiators of the treaty had intended to focus only on the one transaction, they could have easily drafted language to make that clear. For example, Article III would require the scientific authority to determine that the “import will not be detrimental to the survival of the species.” That inquiry more clearly focuses on the impact of the specific transaction to a particular importer. Instead, the negotiators asked whether the *purposes* of the

³¹ Michael Krützen et al., Cultural Transmission of Tool Use in Bottlenose Dolphins, 102 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 8939 (Jul. 21, 2005), Published online before print Jun. 9, 2005, *available at* <http://www.pnas.org/cgi/content/abstract/0500232102v1>.

import are detrimental to the survival of the species. That is a larger question that requires an assessment of additional imports for the same or similar purposes.

C. Insufficient Guidance for Export NDFs

Although NDFs are scientific in nature, and should thus require scientific justification, the Convention is structured in such a way that there is considerable room for policy judgments. First, the Convention does not identify appropriate sources of data for the purpose of making NDFs, nor does it require information to be peer reviewed, meet other specific standards of professionalism, or be the most current scientific data available. Second, while supporting documents offer suggestions, the Convention does not explicitly state what types of data might be necessary for making adequate non-detriment findings. For example, if information about population structure exists but no information about population status, can a non-detriment finding be made? Third, the Convention does not instruct the Parties as to how much data is enough for making adequate non-detriment findings. Resolution Conf. 10.3 offers the vague recommendation that export permit non-detriment findings “be based on the scientific review of *available information*” and is entirely silent as to the amount or types of data appropriate for import permit non-detriment findings.³²

Under current CITES provisions, when insufficient scientific data exist, the Parties do not have an affirmative obligation to seek and obtain additional information beyond what is presently available; however, they are not precluded from doing so. It is commonly believed by some Parties, including the United States that, when faced with insufficient data, the Scientific Authority should either initiate additional research or decline to issue an NDF for the species.³³ While an NDF based on the blatant disregard of existing and previously collected data would likely be construed as inadequate, and thus invalid,³⁴ the problem lies in determining whether the Scientific Authority based its decision on “sufficient data.”

D. Lack of Resources to Make Adequate NDFs

Even if CITES provided unmistakable criteria and requirements for adequate non-detriment findings, many Parties would still find themselves unable to comply due to a lack of resources, both financial and human. Madagascar, for example, has just two part-time volunteers responsible for making all non-detriment findings. Even the best-funded Scientific Authorities, however, are frequently under-staffed—the U.S. Scientific Authority currently employs only five people.³⁵ Under-resourced Scientific Authorities, particularly in developing countries, struggle

³² Resolution Conf. 10.3, *supra* note 9, para. h) of “RECOMMENDS” (emphasis added).

³³ However, due to the abundance of species information already in existence and circulation, the United States rarely issues a finding of “unable to make NDF,” perhaps only once every two months. Telephone Interview with Dr. Javier Alvarez, Branch Chief, Consultation and Monitoring, U.S. Fish & Wildlife Service, Division of Scientific Authority (DSA), in Arlington, Va. (Oct. 31, 2005).

³⁴ In *Castlewood Prods. v. Norton*, a Brazilian court ordered Brazil’s Scientific Authority to issue an NDF for trade in mahogany, despite the Scientific Authority’s finding that such trade would likely be detrimental to the survival of the species. The United States perceived this as direct CITES non-compliance and rejected the shipment of mahogany. 264 F.Supp.2d 9 (D.D.C. 2003), *aff’d* 365 F.3d 1076 (D.C. Cir. 2004).

³⁵ A fully staffed U.S. Scientific Authority would employ approximately ten people, a number which seems meager given that the United States is the world’s largest importer and exporter of wildlife. Telephone Interview with Dr. Javier Alvarez.

with either out-of-date or a lack of equipment and limited access to computer and Internet technology, which results in poor communication between CITES' committees and the Parties' Management and Scientific Authorities. An inability to provide reasonable compensation and training often results in under-qualified and/or over-worked staff, which perpetuates the inability of Scientific Authorities to design and implement proper non-detriment finding monitoring schemes. Furthermore, much relevant information is available only in English, which precludes some developing countries from real access to scientific data considering that resources for translating scientific studies do not exist. A Party's good intentions will be unable to overcome the problems associated with Scientific Authorities with limited or no capacity to make adequate non-detriment findings.

III. Solutions

The existing CITES and IUCN information on NDFs, while helpful, is scattered throughout multiple documents, nearly all of which provide little persuasive authority. The Strategic Plan provides a course of action for the Parties but does not provide specific technical advice for implementing the Convention. Similarly, Information Documents, such as Inf. Doc. 11.3, are provided as information only and not as technical advice. The IUCN Guidelines, of course, are not Convention documents. Only Resolution Conf. 10.3 constitutes persuasive authority that the Parties are expected to implement. The best elements of these documents should be compiled, expanded upon, and placed in a resolution. Additionally, a new resolution should take into consideration the need for technical support and collaboration to ensure robust non-detriment findings.

In addition, a new resolution on non-detriment finding criteria could vastly improve the information contained in existing CITES and IUCN documents. For example, offering the most comprehensive guidance currently available, the NDF Checklist evaluates key biological information, such as reproduction and population data, on a scale of one to five, using imprecise indicators, such as high/low, common/rare, effective/ineffective, fast/slow, and beneficial/harmful. The NDF Checklist's inquiry on threats to a species extends only to overuse, habitat loss, invasive species, or "other," with no blank to fill in what the "other" threat might be, followed by a generic five-scale assessment of the severity of the threat. A new resolution could advise the Parties more specifically than Resolution Conf. 10.3 on the type of information an adequate non-detriment finding might be based on. Further, a new resolution would be broader than the IUCN Checklist because it would also provide guidance on non-detriment findings for the import of Appendix I species. Additionally, a new resolution would be less a method for making non-detriment findings, like the IUCN Checklist, than it would be guidance on the types of information that should be considered to make an adequate non-detriment finding. In this way, a new resolution would be less outcome determinative and offer more flexibility for species- and country-specific concerns than the Checklist.

A. Import Non-Detriment Finding Criteria

Because the import non-detriment finding focuses on the purposes of the import, trade data and trends, as well as data regarding the end-use of the specimen are important to this

finding. This data includes: the purpose of the import; the commercial destinations, or end users, of the traded specimen; the main type of product derived from the species; whether the import will likely increase demand for trade in the species or specimen of the species; recent trends regarding trade in that species; and any information received from the country of export. The Parties should be encouraged to include trade data both specific to the importing country as well as to all imports of the same species, to the extent this information is available.

B. Export Non-Detriment Finding Criteria

The export non-detriment finding focuses on the removal of a specimen of a species from the country of export. As such, this finding requires solid knowledge of the conservation status of the species, including extensive biological data and information regarding harvest and management of the species. Without sound understandings of the conservation status of species in trade, especially Appendix II species, the Parties risk unsustainable trade thus increasing the chances that Appendix II species will end up on Appendix I, which would drastically diminish opportunities for the development and conservation benefits of trade.

Sound and extensive biological data is especially important for specimens removed from the wild. The types of biological data that may be necessary for an adequate export non-detriment finding include: the age and sex of each specimen removed from a wild population; the current size and recruitment rate of the wild population; the general biological characteristics of the species; the national status of the species, including data on distribution and fragmentation, population abundance, trends in population status, impacts and threats to the survival of the population; and the status of the species within its range, to the extent that information is available.

Information regarding harvest is also important because different types of harvest may not be as detrimental as others. Further, maintaining sustainable harvests depends on an understanding of illegal and unmanaged harvest trends. For these reasons, an adequate non-detriment finding may entail inclusion of information on the type of harvest, the degree of control over the harvest, and the reason for the harvest. In addition, an adequate non-detriment finding may also include information on the storage and domestic transport methods, since these could have either a direct or indirect effect on mortality and morbidity.

Finally, an adequate export non-detriment finding may depend on management data. Management data is important because it gives indication of the likelihood of sustainable and controlled harvesting and the likelihood of harvest trends reflecting market and demand trends. This type of information includes: the management history of the species; the existence and past success of a management plan; the purpose of any management plan in place for that species (e.g. obtaining harvest benefits versus control of a target population); confidence in the effectiveness of monitoring; an assessment of human use compared with other threats; and an assessment of the portion of the population strictly prohibited from harvest.

Resolution Conf. 10.3 suggests that export non-detriment findings “be based on the scientific review of available information.” This leaves open the possibility that a non-detriment finding could be made on the basis of no information, if none is available. Given the Secretary General’s advice that “it is also obvious that this advice [the non-detriment finding] requires

sufficient knowledge of the conservation status of the species and that a positive advice should not be given in the absence thereof,” the Parties would benefit by clarifying that a non-detriment finding may not be deemed valid in the absence of sufficient data. If trade in the species for which there is no information is to ensue at a later date, the exporting Party, perhaps with support from others, including the Secretariat and non-governmental organizations, must undertake to gather sufficient information. Additionally, it should be clear that when a sufficient non-detriment finding is made, but certain relevant data may be missing, any lack of information should be explained and justified. In some cases, this may mean simply that certain information is inapplicable; in others, for example, it may mean that studies are ongoing but unfinished.

C. Technical and Other Support for Non-Detriment Findings

Although Resolution Conf. 10.3 recommends that Parties and the Secretariat consult and collaborate regarding the making of non-detriment findings, any new resolution on non-detriment finding criteria should remind Parties, the Secretariat, and other relevant bodies of these opportunities. Further, it should encourage Parties that may think they need support to make adequate non-detriment findings to proactively seek such support from the Secretariat, other Parties, and relevant NGOs. Each Party has the primary responsibility to ensure that it can fulfill its obligations under the Convention, which means the ability to make adequate non-detriment findings. To facilitate the fulfillment of this responsibility, the proposed resolution recommends that Parties designate a contact person in their Scientific Authority responsible for ensuring that non-detriment findings are made and made adequately.

Moreover, transparency and precaution are necessary for sustainable trade. However, currently, the Secretariat and other CITES subsidiary bodies usually are involved only in a Party’s non-detriment finding process once a detrimental export permit has been granted. This approach is contrary to the precautionary principle and could potentially result in the transfer of species from Appendix II to Appendix I due to high levels of unsustainable trade. As such, a new resolution should recommend that the contact person in each Scientific Authority regularly share his or her information and data supporting the non-detriment findings with the Secretariat. The Secretariat should establish and regularly update both a register of contact persons for non-detriment findings and a database of information and data used to support non-detriment findings. Both should be available on the CITES website. A centralized information database may be necessary for adequate non-detriment findings from developing countries. Many developing countries seek scientific information from the Secretariat. To facilitate response to these requests, the Secretariat wants to add a section to the CITES website devoted to compiling the scientific information and studies available and listing various specialists and their contact information. Because of its tremendous potential to improve the making of non-detriment findings, the Parties should affirmatively endorse and fund the Secretariat’s activity in this regard.