



A CITES priority:

Introduction from the Sea and the Thirteenth Meeting of the Conference of the Parties to CITES, Bangkok, Thailand 2004

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Over the Convention's history, the role of CITES in regulating trade in marine species has increased with a number of such species listed in Appendix II, including Giant Clams in 1975, hard corals in the 1980s and Basking Shark, Whale Shark, and seahorses at the last CoP in 2002. CITES has also engaged in challenges for a number of marine species that are not listed but whose conservation status may potentially benefit through some level of co-ordinated engagement by CITES Parties, including sea cucumbers, other shark species and toothfish.

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The range of marine species with which CITES is engaged is extremely broad, covering those found in tropical and temperate waters, those taken in coastal fisheries and those that may be harvested in remote waters, and those taken in multi-species fisheries, as well as in single-species fisheries. These developments have made redundant any suggestion that CITES has no role to play in the regulation of trade in marine species as a contribution to the effective conservation and management of such species. However, there remains a need to consider and clarify some practical aspects of this role. One such aspect, that is unique to CITES and that remains an outstanding implementation issue, relates to "introduction from the sea".

The issue: introduction from the sea

Under CITES, "introduction from the sea" is defined as "...transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State" (Article I (e)). Special provisions apply to specimens of species in Appendix I and II introduced from the sea. The CITES Management Authority of the State into which the catch is landed must issue a certificate of introduction before the introduction takes place. In issuing the certificate, the Management Authority must act on the advice of the Scientific Authority that "...the introduction will not be detrimental to the survival of the species involved" (Article III 5(a) and Article IV 6(a)). Unlike for export permits, such certificates do not require a finding that the specimen was legally obtained. There are no provisions relating to introduction from the sea for species listed in Appendix III.

The drafting and entry into force of CITES occurred prior to the completion of negotiations that resulted in the *United Nation's Convention on the Law of the Sea* (UNCLOS), which was adopted in 1982 and entered into force in 1994. Currently, 145 countries are Parties to UNCLOS. The UNCLOS establishes a definition of marine jurisdiction and, at the national level, States have generally adopted this definition. As a result, conservation and management of commercially exploited marine species is undertaken by a State out to the limit of its 200-nautical-mile exclusive economic zone (EEZ), or equivalent zone of national jurisdiction. In fisheries regimes at the international, regional and national levels, waters beyond the 200-nautical-miles limit of the EEZ are generally referred to as the high seas. One of the important roles of regional fisheries management organizations is to co-ordinate and implement conservation and management measures in high sea areas.





Two CITES-listed fish species are recognized under UNCLOS as being highly migratory, with their range encompassing high sea areas, i.e. Basking Shark *Cetorhinus maximus* and Whale Shark *Rhincodon typus* (left).

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While the marine jurisdiction of coastal States is generally clear under fisheries regimes, this is not the case under CITES, as the Parties have not yet adopted a common interpretation to clarify what constitutes waters under a State's jurisdiction in the context of the Convention.

The problem: a lack of clarity leading to uncertainty

As a common view on marine jurisdiction has not been adopted under CITES, the line on the water beyond which introduction from the sea provisions would apply has not been established and so is open to interpretation by individual Parties. Given the range of marine species already listed in the CITES Appendices, potential exists for confusion and conflict on this point.

There are already two CITES-listed fish species recognized under UNCLOS as being highly migratory, with their range encompassing high sea areas, i.e. Basking and Whale Sharks. Specimens from these species clearly have the potential to be introduced from the sea as they may be harvested from the high seas as well as from coastal waters. However, it is not only in relation to these highly migratory species that a common interpretation is required, as it is equally important to know how far State jurisdiction over national coastal harvests extends in regard to implementing CITES provisions.

Theoretically, the captain of a fishing boat landing a catch of species listed in Appendix II currently would be unsure which CITES provisions, if any, would apply to that catch. For example, if a Whale Shark were caught 80 nautical miles off shore and landed, there is no standard by which a Party may determine whether that catch should be subject to the requirements for species introduced from the sea or whether CITES documentation would not be required because the catch should be treated as domestic harvest.

The solution: adopt a definition at CoP13 based on the UNCLOS

Adopting a common interpretation of what constitutes waters under national jurisdiction is a relatively straightforward task, as relevant international marine law that can be drawn on by the Parties is already in force, specifically UNCLOS. Not only is there accepted international law in this area but there is also well-established State practice in the conservation and management of marine resources that provides practical experience in the exercising of coastal State jurisdiction; i.e., countries have generally exercised conservation and management of marine resources within their EEZ or equivalent zone of national jurisdiction. It is therefore an area in which CITES could readily draw on, and support, existing fisheries management practice.

Further, in practical terms it would appear that individual Parties are already following the jurisdictional regimes established under UNCLOS when applying CITES provisions, otherwise certificates of introduction for species such as Giant Clams, Queen Conch and corals harvested from off-shore reefs would presumably have been granted.

The opportunity to discuss and clarify the interpretation of introduction from the sea at CoP13 is provided through the document submitted by the USA on this issue (*CoP13 Doc. 41*), which recommends that it be interpreted in a manner consistent with UNCLOS.

Recommendation:

TRAFFIC and WWF recommend that Parties adopt an interpretation for CITES of what constitutes waters under national jurisdiction, based on existing interpretations of UNCLOS provisions, at CoP13. This will provide certainty for the fishing industry, as well as for national Management and Scientific Authorities, with regard to the implementation of this important aspect of CITES for marine species.

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