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MARIPOLDATA Ocean Seminar

"CITES and the Sea"

20th October, 2021

Guest Speaker: Daniel Kachelriess

Daniel Kachelriess is Senior Policy Specialist at Sea Shepherd Legal and has previously served in several roles at the interface between science, policy and law, including as Marine Species Officer at the CITES Secretariat and as Advisor to the Permanent Mission of the Republic of Maldives. In 2018 he attended the Rhodes Academy of Oceans Law and Policy.

Reading Material for the Session:

[Pavitt et al., 2021, CITES and the Sea](#) (FAO report)

[Trading experiences: what can a global ocean treaty learn from a 1970s convention on wildlife trade?](#) (IDDRI Blog Post)

[Weaving a tighter net on illegal fishing](#) (SSL Blog Post)

The monthly **MARIPOLDATA Ocean Seminar Series** offer a virtual space to get information and engage in exchanges on ocean governance issues, through presentations by international experts from academia, governments, international organisations and civil society.

To register: Please contact ina.tessnow-vonwysocki@univie.ac.at, indicating your name and institution.

More information: [MARIPOLDATA Ocean Seminar Series](#)

The MARIPOLDATA Ocean Seminar Series is part of the MARIPOLDATA project which has received funding from the European Research Council under the Horizon 2020 research and innovation programme (No 804599).

MARIPOLDATA Ocean Seminar Series

CITES and the Sea

Wednesday, October 20, 10:00 – 11:30am (CEST)

Venue: Online

The Convention on the International Trade in Endangered Species of Wild Fauna and Flora, short CITES, enjoys a reputation as one of the most effective international conservation tools and with 183 Parties, it is also one of the most universal agreements of its kind. CITES mandate is to regulate international trade in species listed on its Appendices to ensure that such trade is “not detrimental to the survival of the species in the wild”.

When CITES was negotiated and subsequently signed in 1973 its drafters clearly recognized the potential application of the Convention for marine species and included provisions specific to that context. The most notable of those is “Introduction from the Sea” (IFS), which effectively gives CITES a mandate to regulate some high seas activities.

Despite this, CITES saw limited use in the international fisheries context with the exception of a few regionally important fisheries such as Queen Conch in the Caribbean. CITES CoP16 (Bangkok, 2013) proved to be a game-changer when Parties agreed on how to implement “Introduction from the Sea” in practice and decided to add several species of commercially-exploited sharks and manta rays to the CITES Appendices. This trend was continued for subsequent CoPs (CoP17, Johannesburg, 2016; CoP18, Geneva, 2019), accompanied by dedicated capacity building from a range of actors to assist Parties implement CITES for marine species.

This presentation will start off with a brief overview of key CITES’ provisions, the history of marine species listings and insights from the related implementation support and capacity building activities. The second part of the presentation will discuss lessons learned from CITES against the backdrop of current policy processes and draw on two examples, a proposed wildlife protocol under the UN Convention against Transnational Organized Crime (UNTOC), and the new agreement on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ).



Daniel Kachelriess is Senior Policy Specialist at Sea Shepherd Legal and has previously served in several roles at the interface between science, policy and law, including as Marine Species Officer at the CITES Secretariat and as Advisor to the Permanent Mission of the Republic of Maldives. In 2018 he attended the Rhodes Academy of Oceans Law and Policy.

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More information: <https://www.maripoldata.eu/newsevents/#oceanseminarseries>

1. General Context

- The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- The agreement **regulates international trade in specimens** a) in danger of extinction; b) under the risk of getting to that stage; and c) under protection in one country, which reached out to the international community to ensure global trade regulations
- CITES also lists marine species and “Introduction from the Sea”¹ includes the regulation of trade of specimens from the High Seas
- CITES has 184 signatories to date

Main Take-Aways on Recommendations (for BBNJ)

- Need for dedicated funding and staff in Secretariats for CB&TT and effective implementation
- There are best practice examples on implementing “Introduction from the Sea” (Pre-filled forms & communication between vessel and port)
- Vessel Monitoring Systems on board to trace activities can provide a good support tool to determine legal acquisition

2. Introduction

Readings:

[Pavitt et al., 2021, CITES and the Sea](#) (FAO report)

[Trading experiences: what can a global ocean treaty learn from a 1970s convention on wildlife trade?](#) (IDDRI Blog Post)

[Weaving a tighter net on illegal fishing](#) (SSL Blog Post)

¹ See more information on [CITES Webpage on Introduction from the Sea](#)

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Introduction to CITES

In the 1960s and 70s, over-exploitation of species from international trade led to the adoption of CITES- the Convention on the International Trade in Endangered Species of Wild Fauna and Flora.

The CITES convention ensures that international trade of wildlife products is not threatening the survival of wild animal and plant species.

Many would first think of the protection of *terrestrial* animals, such as elephants or tigers, and the lucrative industries of selling wildlife products – e.g. for instruments or leather goods - which CITES is indeed covering. However, increasingly over time, there were also marine species added.

CITES identifies species in three categories in the appendices, which can be adapted in the conference of the parties meetings, happening every two years.

It regulates international trade of species that are:

- a) In danger of extinction;
- b) under the risk of getting to that stage;
- c) under protection in one country and that country reached out to the international community to ensure global trade regulations.

A licensing system authorises trade: including **import, export, re-export** and **introduction from the sea**. Introduction from the sea regards species taken from the high seas (meaning the water column in areas beyond national jurisdiction) and therefore has particular relevance to the protection of endangered marine species.

During the Seminar, Daniel Kachelriess gave an overview of key CITES' provisions, the history of marine species listings and insights from the related implementation support and capacity building activities. When governing biodiversity, it is important to draw synergies to other international instruments, coordinate efforts and ensure a comprehensive implementation, monitoring and review process. This seminar therefore serves not only to gave an overview of how CITES contributes to the prevention of trade in endangered species regarding the marine realm, but also drew links to other international instruments, and suggested how they could potentially work to complement one another. He then discussed lessons learned from CITES – looking at other ongoing policy processes, drawing on the examples of a proposed wildlife protocol under the UN Convention against Transnational Organized Crime (UNTOC), and the new agreement on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ).

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3. CITES and the Sea

Presentation by Daniel Kachelriess

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Ina Tessnow- von Wysocki, October 2021



CITES and the Sea

MARIPOLDATA OCEAN SEMINAR SERIES

20.10.2021

Daniel Kachelriess, Sea Shepherd Legal

Sea Shepherd Legal



Our Mission & Background

- Nonprofit, public interest, environmental law firm saving marine wildlife and habitats by enforcing, strengthening and developing protective laws, treaties, policies and practices worldwide
- Led by a team of attorneys and policy specialists, partnering with scientific advisors and government officials across the globe
- Collaborating with governments to build stronger protective regimes and take a firm stance against illicit fishing and related activities

Part 1: CITES



CITES



Operates through an **intergovernmental process**,

which combines **wildlife** and **trade** themes within a legally binding instrument,

achieving **conservation and sustainable use** objectives

...by setting a common procedural mechanism



CITES Appendices



Species* regulated under CITES are divided amongst 3 Appendices:

I



II



III



** "Species" means any species, subspecies, or geographically separate population thereof*

CITES in a nutshell



- CITES regulates international trade (incl. **Introduction from the Sea**) for species listed on its Appendices by putting in place a system of permits and certificates. Appendix I = threatened species. Appendix II = species that require regulation in order for them not to become threatened.
- Many of these permits and certificates (e.g. export permit & IFS) require a:
 - **Non Detriment Finding** (NDF); and
 - **Legal Acquisition Finding** (LAF) or the equivalent process under IFS
- CITES Parties are required to report annually on international trade in species listed on the Appendices
- The Convention requires its Parties to implement its provisions through domestic legislation
- CITES decision making: Voting

CITES has “teeth”



- CITES regulates international trade (incl. **Introduction from the Sea**) for species listed on its Appendices by putting in place a system of permits and certificates.
=> Any general compliance issue: Article XIII!
- Many of these permits and certificates (e.g. export permit & IFS) require a:
 - **Non Detriment Finding (NDF)**; and **=> Review of Significant Trade**
 - **Legal Acquisition Finding (LAF)** or the equivalent process under IFS
- CITES Parties are required to report annually on international trade in species listed on the Appendices
=> Annual reports
- The Convention requires its Parties to implement its provisions through domestic legislation (or regulation)
=> National Legislation Project

A short history of CITES and the Sea



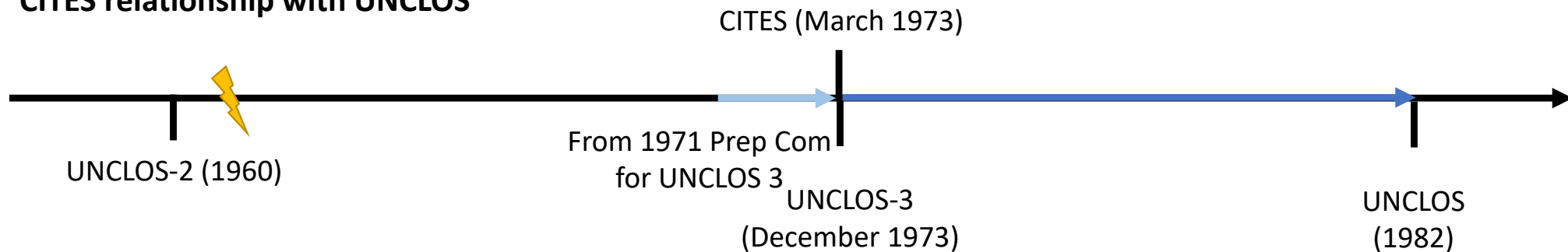
- Decisions to add species to the CITES Appendices are taken by the CoPs.
- Listing proposals to add “commercially exploited marine species” were controversial in particular, with opponents arguing that CITES has no roles in fisheries management.
- But drafters of CITES clearly had marine species in mind as evident by the inclusion of e.g.: “Introduction from the Sea” (Art I c, e), special consultation procedure for listing of marine species (Art XV 2 b) and not prejudging UNCLOS (Art XIV 6).



A short history of CITES and the Sea (2)



CITES relationship with UNCLOS



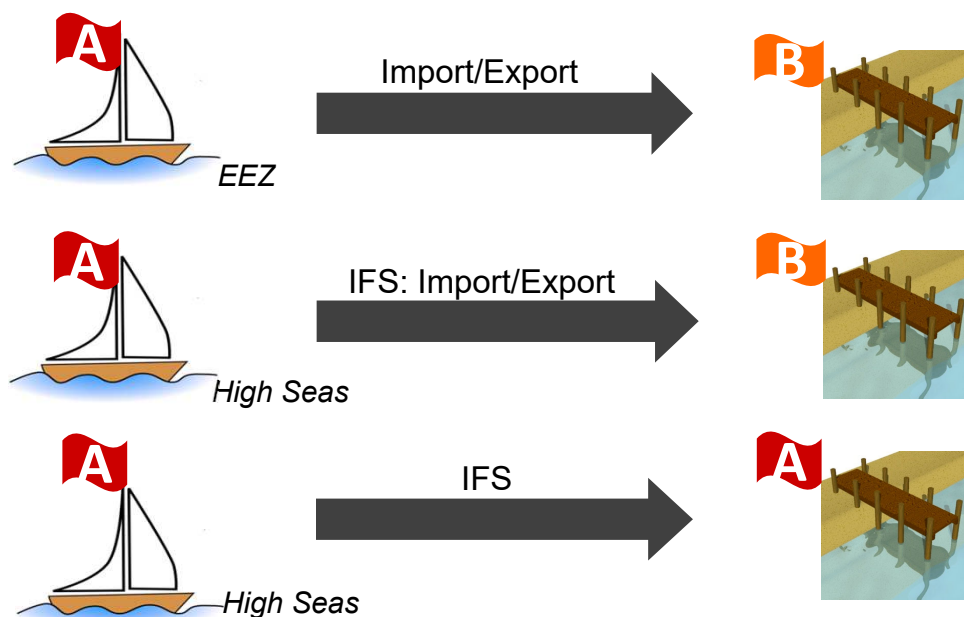
UNCLOS negotiations and concepts were in delegates' minds when negotiating CITES. Hence Article XIV, paragraph 6 of the Convention states:

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

Introduction from the Sea

Making IFS work in practice: While IFS was a trade transaction regulated under the Convention since 1973, it was not operationalized until CITES CoP16 (2013, Bangkok)

[Resolution Conf. 14.6 \(Rev.CoP16\)](#) operationalizes the provisions and foresees three scenarios:



“The father of IFS”



R.I.P Fabio Házin, † 06.06.2021

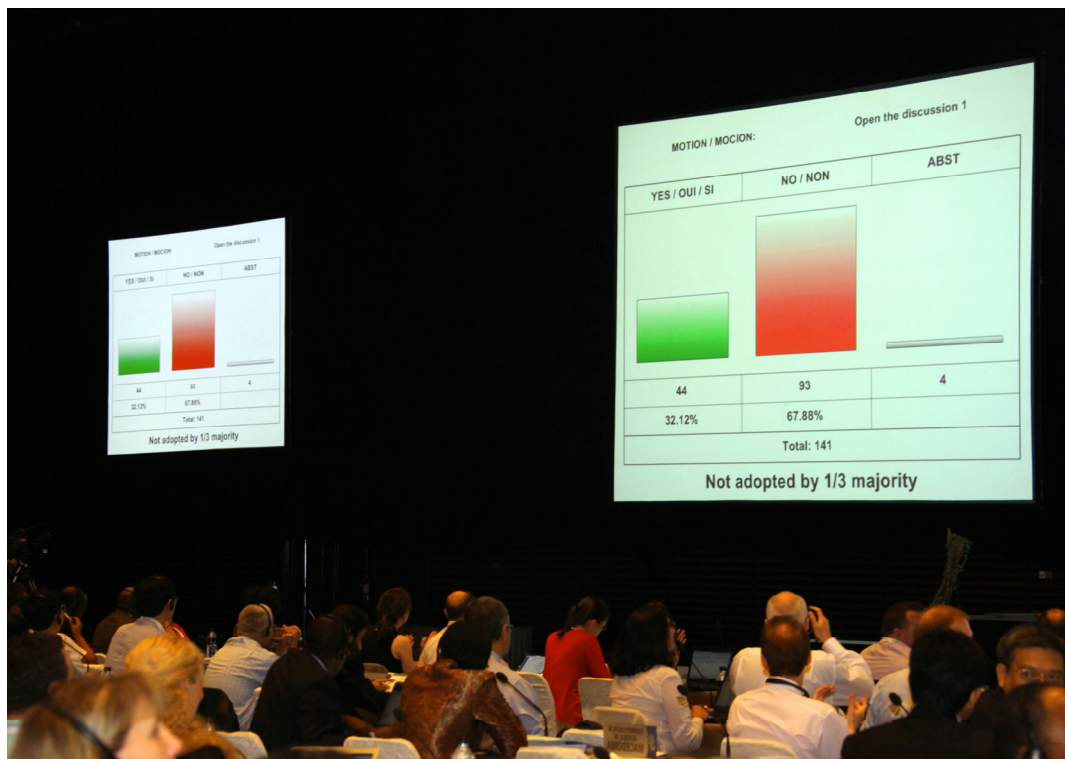
Different scenarios under IFS



CITES & the Sea

- 1: Not CITES (unless subsequent export)
- 2: Ecuador introduces from the sea
- 3: Foreign vessel exports
- 4: Foreign vessel exports via transshipment
- 5: Ecuadorian vessel exports

CITES CoP16 as watershed moment



RECIEL
Review of European Community & International Environmental Law

RECIEL 22 (3) 2013. ISSN 2050-0386

CITES at Its Best: CoP16 as a 'Watershed Moment' for the World's Wildlife

John E. Scanlon

The sixteenth meeting of the Conference of the Parties to CITES (CoP16) has been hailed as a 'watershed moment' for the Convention, with key decisions being taken on capacity-building, enforcement, financing and synergies. Significant decisions were also taken to bring many new species of precious fauna and flora, including commercially valuable timber and marine species, under the Convention. CITES parties demonstrated unprecedented levels of international cooperation at CoP16 to combat increased levels and types of wildlife crime, especially with regard to the poaching of African elephants for their ivory and rhinos for their horn. The great success of CoP16 reflects the increasing relevance of a four-decades-old convention to the conservation and sustainable use of wildlife.

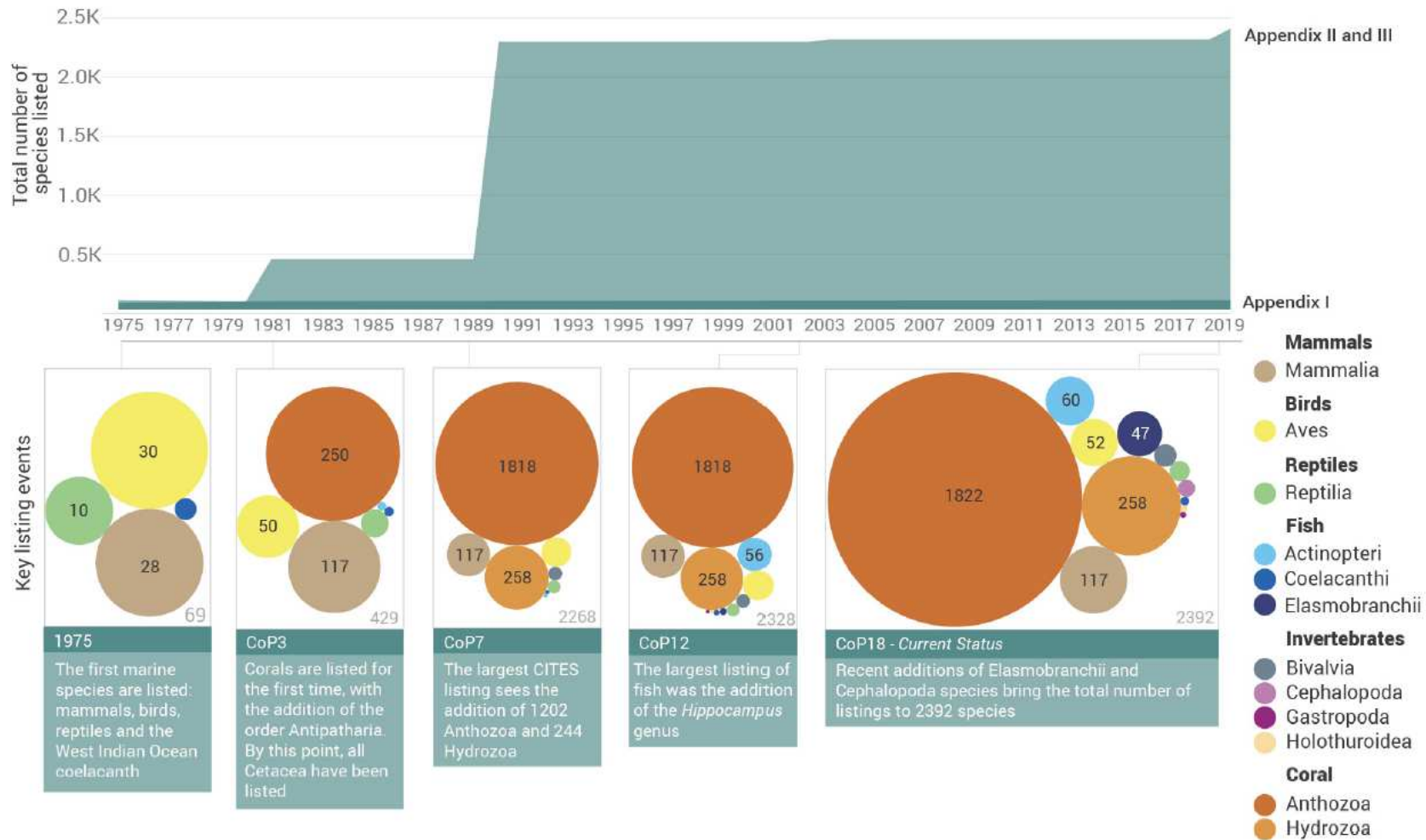
CoP16 also saw unprecedented levels of international cooperation to combat increased levels and types of wildlife crime, and parties heeded the call from the United Nations Conference on Sustainable Development (or 'Rio+20') to recognize the important role of CITES as an international agreement standing at the intersection between trade, the environment and development.³

SHARKS AND MANTA RAYS

The meeting reached a climax on its final day after a request in the closing plenary, to reopen the debate on four shark species, failed to obtain the required support from one-third of the parties. With this and other actions, CITES parties confirmed decisions taken

FIGURE 4.2

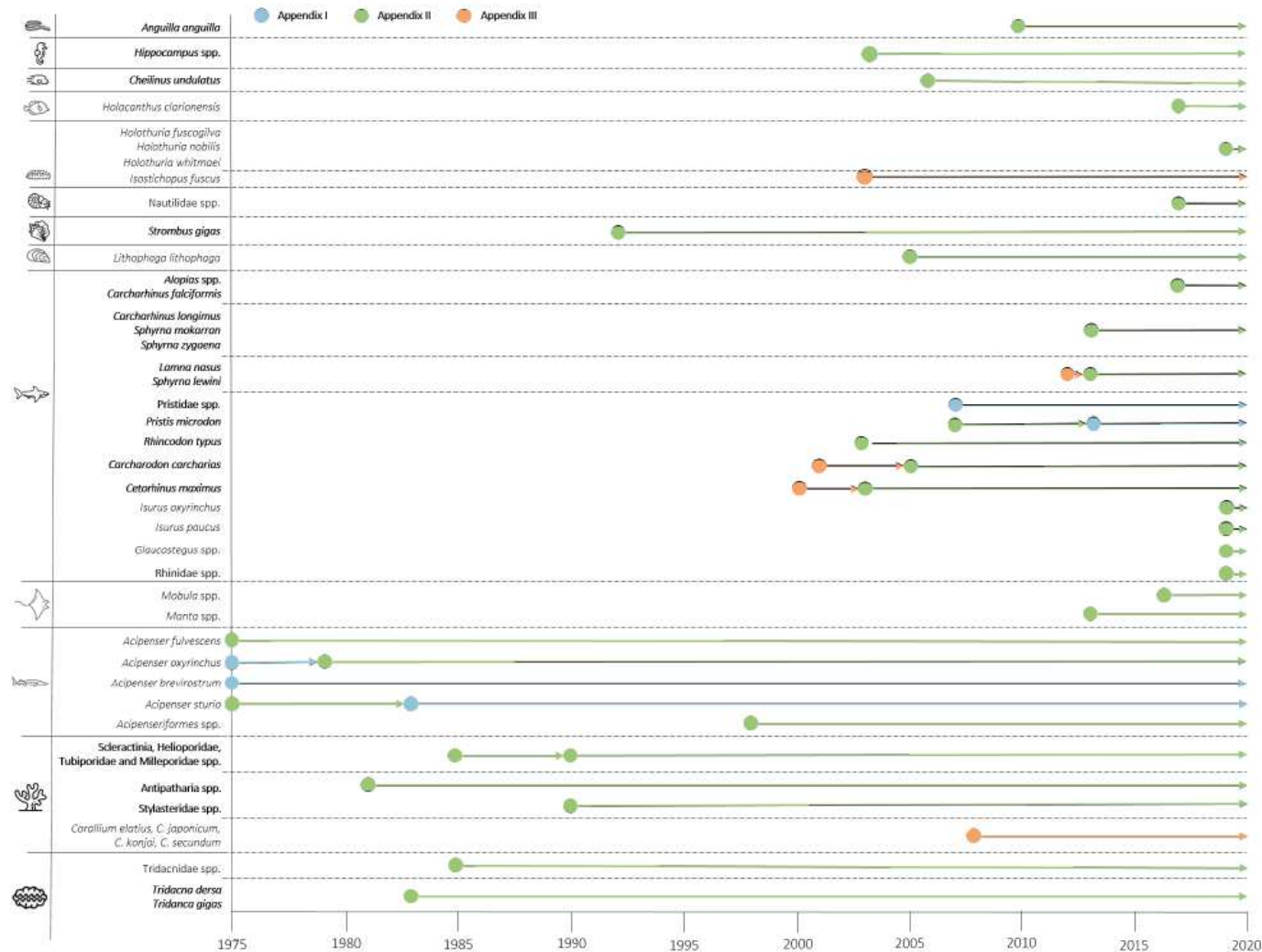
The number of marine species listed in CITES over time, with the key listing events and number of species listed by taxonomic group detailed



Source: Species+ (Available from: speciesplus.net, managed by UNEP-WCMC. Accessed 8 June 2020).

Source:
[Pavitt et al., 2021, CITES and the Sea](#)

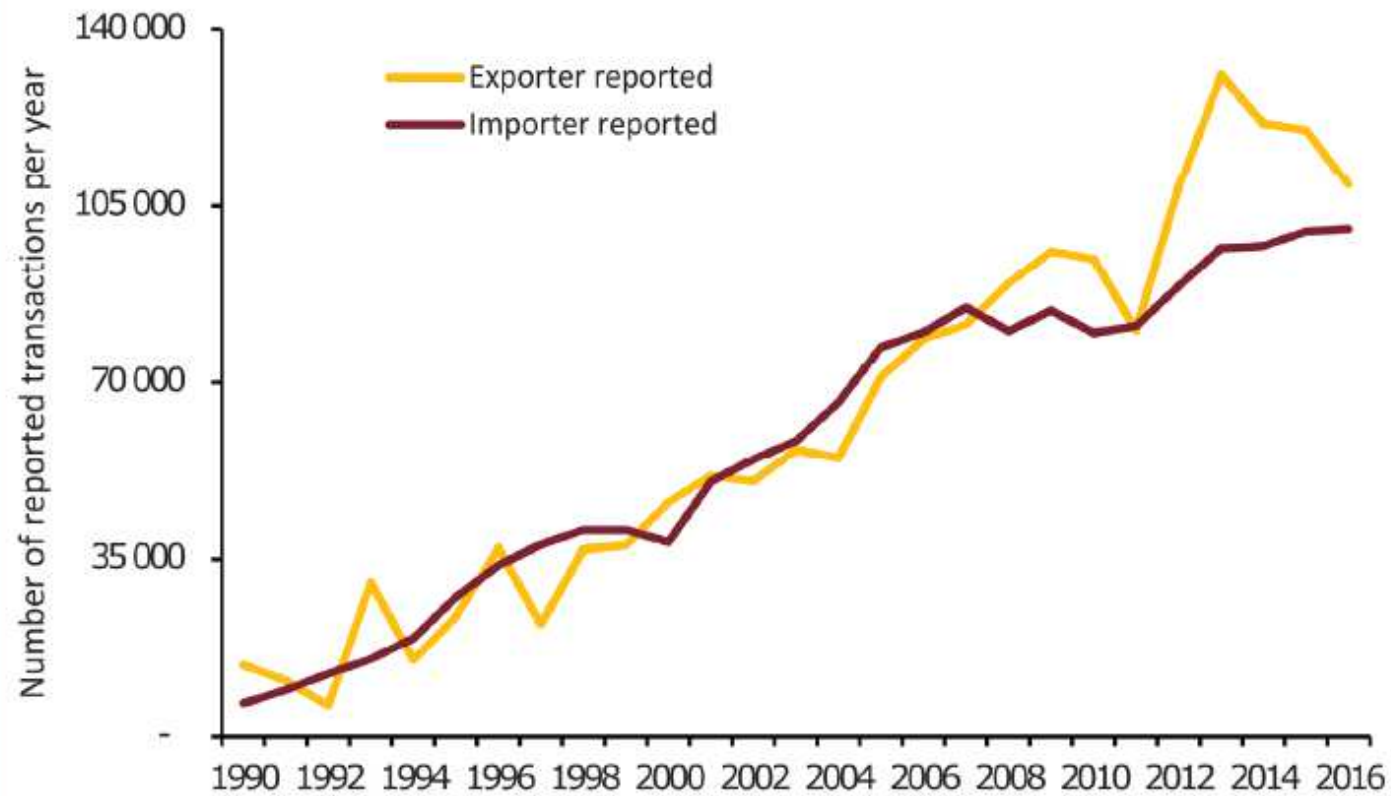
The history of the listing / implementation of listing of non-mammal, birds and reptile marine species in the CITES Appendices, by date of implementation.
Case study taxa are shown in bold



Source:
[Pavitt et al., 2021, CITES and the Sea](#)

FIGURE 4.2.1

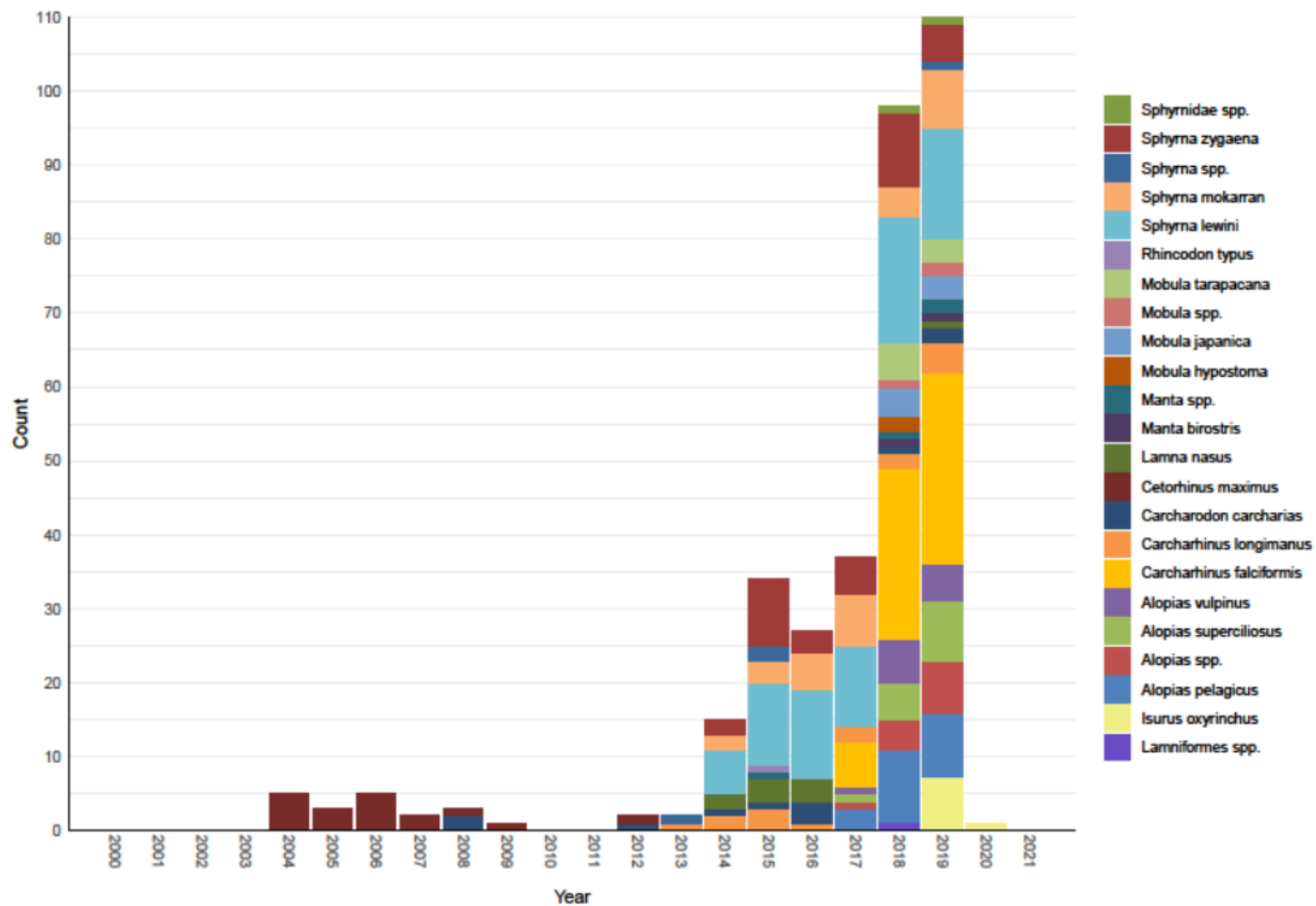
Reported number of direct transactions of Appendix II commercially exploited marine species for 1990–2016. See Box 2 for details on why reported transactions by exporters (yellow line) and importers (red line) may differ



Source: CITES Trade Database (Available from: trade.cites.org managed by UNEP-WCMC on behalf of the CITES Secretariat. Accessed 2 October 2018).

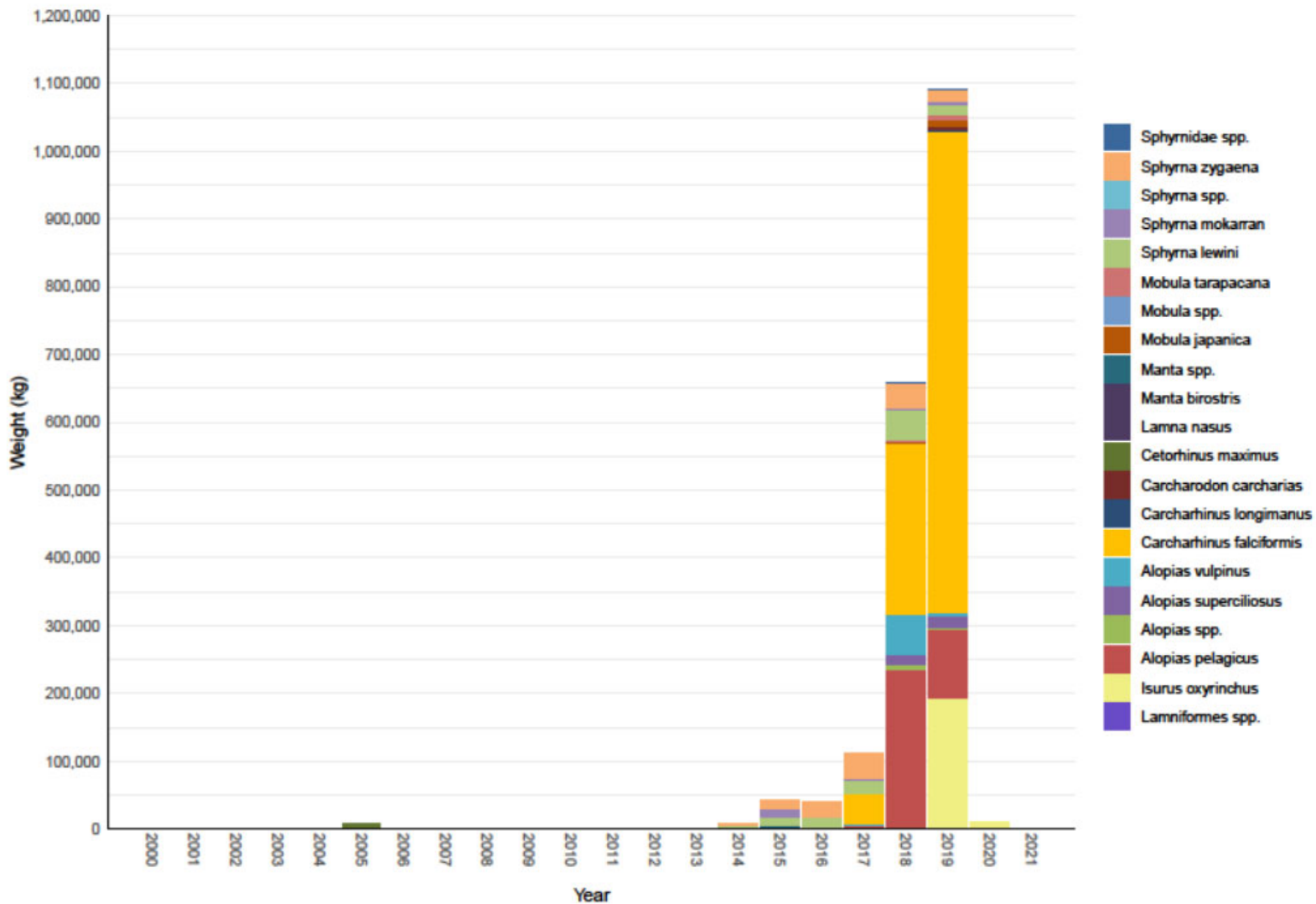
Source: [Pavitt et al., 2021, CITES and the Sea](#)

Number of commercial trade transactions by species



Source: Document [AC31 Doc. 25-Addendum](#)

Volume of trade by species, where reported in kg

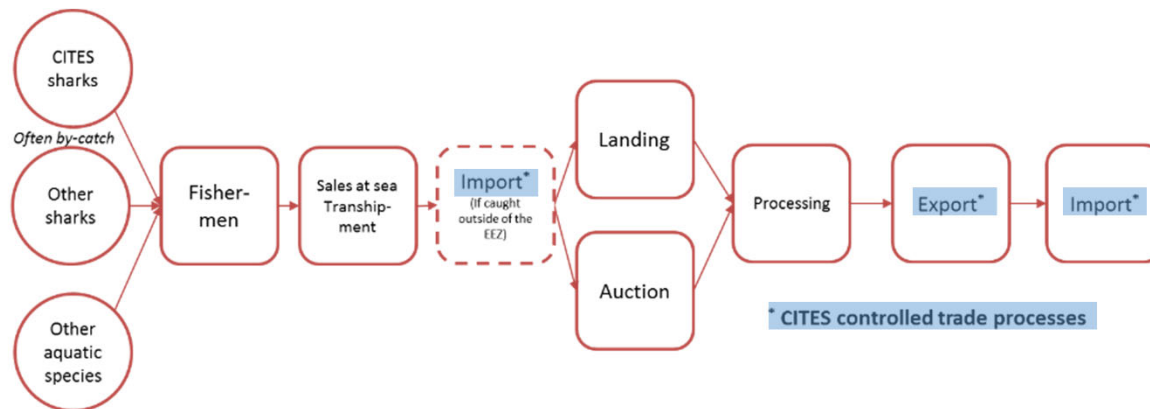


Source: Document [AC31 Doc. 25-Addendum](#)



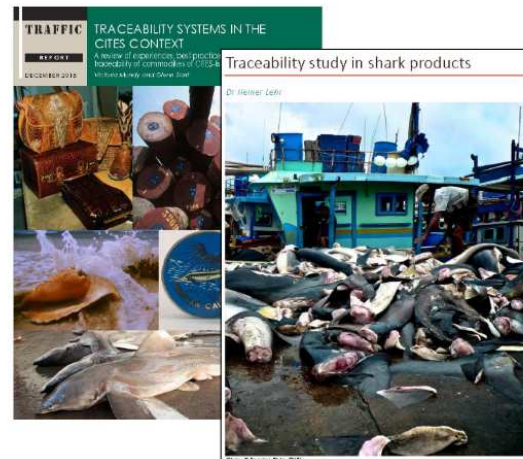
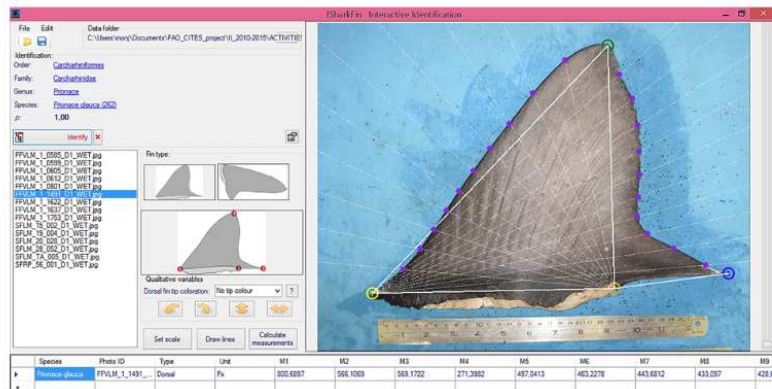
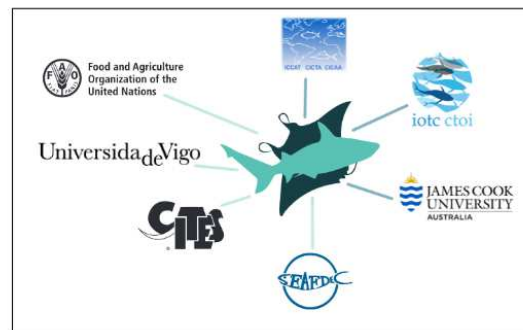
CITES' role in fisheries

- At the interface between conservation and international trade for fisheries,
- Focusing on species that have declined to a level that requires strong trade and management measures to maintain or rebuild populations,
- Complements the work of other organizations to improve fisheries management,
- Including by adding effective compliance procedures.



Source: [Statement by CITES Secretary General, 20.03.2017](#)

“Socialising” CITES in fisheries : capacity building



Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) through national fisheries legal frameworks: a study and a guide

“Socialising” CITES in fisheries : some learnings



Successes

- Dedicated funding for implementation support and capacity building helps!
- Identify challenges and deliver needs-driven capacity building.
- Partnerships are key (!)

Challenges

- Balancing reach (regional approach) vs precision (national level) – (Partnerships help!)
- Overcoming “old” enmities and bridging different cultures between fisheries & environment
- National level coordination
- Introduction from the Sea
- It takes time...



Part 2: What can be learnt from CITES for other fora?

Trading experiences: what can BBNJ learn from CITES? (1)



- CITES continues to evolve and is generally seen as maintaining its relevance and effectiveness. How?
 - **Continuous monitoring and review of legislation and implementation by the Secretariat and Parties (e.g. National legislation project)**

National Legislation Project (1)

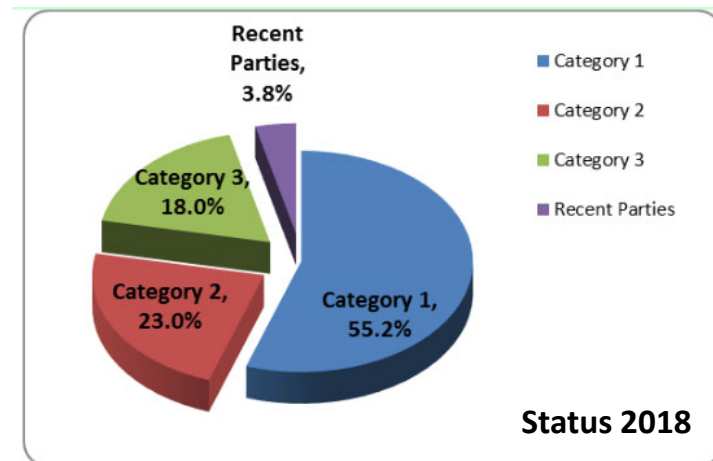


- [Article VIII, paragraph 1](#), requires all Parties to take appropriate measures to enforce the provisions of the Convention (...)
- [Resolution Conf. 8.4 \(Rev. CoP15\)](#) on National laws for implementation of the Convention sets out minimum requirements AND a compliance regime
- The National Legislation Project (NLP) is the Convention's primary mechanism for encouraging and assisting Parties' legislative efforts. National legislation is to meet the CITES minimum requirements for national legislation as expressed in Resolution Conf. 8.4 (Rev. CoP15):
 - designate at least one Management Authority and one Scientific Authority;
 - prohibit trade in specimens in violation of the Convention;
 - penalize such trade; or
 - confiscate specimens illegally traded or possessed

National Legislation Project (2)



- Parties' legislation is analyzed by the Secretariat in relation to these four minimum requirements and placed in one of three categories, as follows:
 - Category 1: legislation that is believed generally to meet the requirements for implementation of CITES
 - Category 2: legislation that is believed generally not to meet all of the requirements for the implementation of CITES
 - Category 3: legislation that is believed generally not to meet the requirements for the implementation of CITES.
- CITES Secretariat “starts” process / monitors legislative progress [pursuant to [Resolution 8.4 \(Rev CoP15\)](#)]
- Standing Committee takes decisions (formal warning, suspension of all trade)



Trading experiences: what can BBNJ learn from CITES? (2)



- CITES continues to evolve and is generally seen as maintaining its relevance and effectiveness. How?
 - Continuous monitoring and review of legislation and implementation by the Secretariat and Parties (e.g. National legislation project)
 - **Dedicated forum for discussion through a subsidiary body dedicated to implementation and compliance (Standing Committee)**

CITES Standing Committee



- The decision to enact most compliance measures, including where a country has not implemented recommendations under RST are decided by the CITES Standing Committee
- Representation of Parties through a regional key:

Africa	Asia	Europe	North America	Central & South America & the Caribbean	Oceania
4	3	4	1	3	1

- The committee also includes the host country (Switzerland) and the host of the previous and future Conferences of the Parties.
- Parties, IGOs, NGOs participate as observers.
- Decision making: “as far as possible” consensus. If not, the Chair or Members of at least 2 regions can call for a vote. Simple majority decides. Depository government breaks ties.

Trading experiences: what can BBNJ learn from CITES? (3)

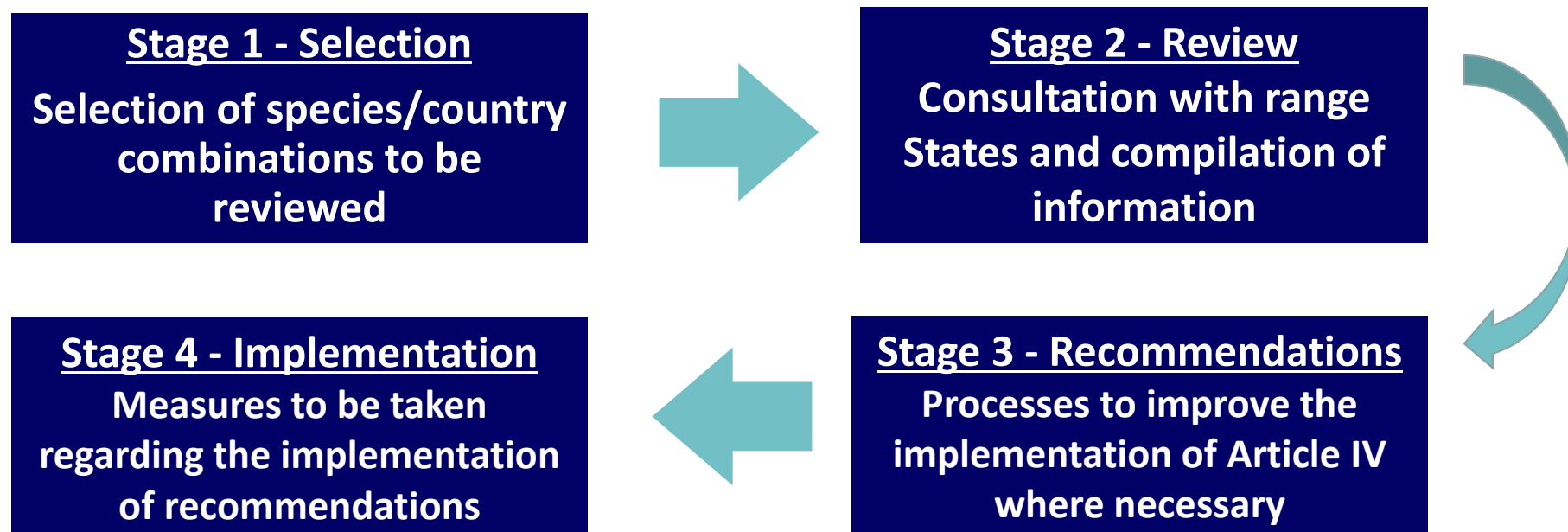


- CITES continues to evolve and is generally seen as maintaining its relevance and effectiveness. How?
 - Continuous monitoring and review of legislation and implementation by the Secretariat and Parties (e.g. National legislation project)
 - Dedicated forum for discussion through a subsidiary body dedicated to implementation and compliance (Standing Committee)
 - **Collaborative, non-adversarial approaches to advancing implementation, complemented by compliance measures as a last resort (e.g. RST).**



Review of Significant Trade

- Review of Significant Trade acts as a safety net to ensure compliance with Article IV of CITES [[Resolution Conf. 12.8 \(Rev.CoP18\)](#)]



Trading experiences: what can BBNJ learn from CITES? (4)



- CITES continues to evolve and is generally seen as maintaining its relevance and effectiveness. How?
 - Continuous monitoring and review of legislation and implementation by the Secretariat and Parties (e.g. National legislation project)
 - Dedicated forum for discussion through a subsidiary body dedicated to implementation and compliance (Standing Committee)
 - Collaborative, non-adversarial approaches to advancing implementation complemented by compliance measures as a last resort (e.g. RST).
 - Decision making by vote as last resort.
- **CITES effectively has a mandate (through IFS) to regulate the collection (and subsequent international trade) of MGRs from listed species in ABNJ.**

A wildlife protocol under UNTOC: what could it contribute to the fight against IUU Fishing?



~~END~~
WILDLIFE
~~CRIME~~



[Proposed protocol text](#)

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International response to IUU Fishing



Applicability to IUU Fishing: key draft elements (1)



Article 3. Use of Terms

*“Trafficking” shall mean the import, export, transport, sale (including by electronic means), receipt, **introduction from the sea**, acquisition, possession, purchase, delivery, movement or transfer of specimens of **wild fauna and flora**.*

1. “Wild Fauna and Flora” needs to include fish. Footnote 20 in the draft protocol explicitly states that “While this protocol leaves the precise definition of “wild fauna and flora” to each State, the term as used throughout the protocol does refer to “specimens of both wild plant and animal species,” including “animals, birds and fish, as well as timber and non-timber forest products.”

Applicability to IUU Fishing: key draft elements (2)



Article 3. Use of Terms

*“Trafficking” shall mean the import, export, transport, sale (including by electronic means), receipt, **introduction from the sea**, acquisition, possession, purchase, delivery, movement or transfer of specimens of **wild fauna and flora**.*

2. Including “introduction from the Sea” (sensu CITES) in the definition of “trafficking” opens applicability of the protocol to fisheries activities in the High Seas.

CITES Article I e): “Introduction from the sea” means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

Applicability to IUU Fishing: key draft elements (3)



Article 5. Criminalization

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the trafficking in any specimen, knowing that the specimen was taken, possessed, distributed, transported, purchased or sold in contravention of:

(a) Any international agreement concerning or relating to the protection, conservation, management, trade or use of wild fauna or flora binding on the State Party; or

3. Potential to complement and “add teeth” to many relevant international instruments that have no or weak compliance and enforcement provisions.

Questions?



Thank you for
your attention!



4. Questions and Discussion

Politics of CITES

Voting procedure of CITES

The voting procedure in CITES is not consensus-based. In fact, none of the marine species would be listed if it was agreed on consensus. Daniel Kachelriess shared that voting was initially very tight with just a few votes deciding over the protection of particular species, as there was always a big group of states that did not want CITES to play a role in fisheries.

International level

Daniel Kachelriess shared insights from recent COPs: Currently, CITES community has a large group of 40-50 countries that are supporting the marine listings, then another group of similar size is against CITES in fisheries, and the rest not having a strong predetermined stance. Regional coordination exists but is not uniform in proposals in CITES.

National level

Also, on the national level, politics play a role when it comes to CITES. An Ocean Seminar participant shared their experience on the polarisation between national actors regarding the marine CITES listings. Costa Rica was discussed as an example where strong polarisation on CITES shark measures have existed.

Data collection in CITES

State parties are responsible for data collection in CITES. Countries keep track of their CITES data and regularly (once a year in October) submit the collected data from the preceding year (Annual National Report).

Therefore, there is no independent data collection by the secretariat, however, countries and civil society can bring mismatches to attention of the respective technical committee – in the case of sharks, the Animals Committee. If the recorded data by a certain state is for instance not consistent with expert knowledge on fisheries and market dynamics (e.g. sharks appearing on the market even though catches were not reported in the database), these inconsistencies can be mentioned to the committee.

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Capacity Building and Technology Transfer (CB&TT)

CB&TT in CITES has been depended on funding provided by individual countries or civil society actors. Daniel Kachelriess discussed the example of an EU-funded capacity building project on CITES provisions for marine species and pointed out that while great, 1.3 million for 3 years was not a lot of money to introduce a whole new sector to CITES provisions, especially as many new actors need to be made aware of the convention and become involved, including fisheries ministries and Regional Fisheries Management Organisations (RFMOs).

Therefore, he highlighted the importance of a dedicated funding mechanism for work on marine species under CITES and dedicated staff in the secretariat. He applauds having a main focal point for CITES issues in the Food and Agriculture Organisation (FAO).

Implementation of the Introduction from the Sea Provision

Several states still experience difficulties in implementing the “Introduction from the Sea” provision. There are, however, some best practice examples that can be referred to in this regard.

One way of facilitating the implementation of the provision is by using prefilled certificates. This allows fishers with a license to catch CITES listed species to present the documentation of their catch to the port authorities.

Another successful example is provided by Norway and Costa Rica, where fishers can get in contact with the landing port while they are at sea, communicating their estimated arrival and the CITES listed catch. In this way, the port authorities are prepared to receive the vessel and the required documents are present when landing takes place.

Daniel Kachelriess reported that there are several workstreams ongoing in CITES at the moment, facilitating the implementation of this provision and called for sharing of best practice examples of countries in the intersessional period (in between Conference of the Parties Meetings), to identify best practice of introduction from the sea.

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CITES and relation to other agreements

Synergies to other agreements are inherently necessary to achieve coherent biodiversity governance. Agreements within the biodiversity regime are important, however, links also need to be drawn to other multilateral agreements that are looking at other issues.

Relationship: CITES and WTO

As CITES places restrictions on international trade, it was drafted in a way to not undermine the World Trade Organisation (WTO). They work together at the technical level to avoid conflicts. While CITES is not attending WTO meetings, there is close coordination between the two.

CITES and BBNJ

When Daniel Kachelriess was working in CITES, the Secretariat sought a mandate from the COP to follow BBNJ negotiations, given the interlinkages between CITES and BBNJ, and after some initial hesitation, it was granted. However, there were still administrative hindrances and limited capacity of staff. Pursuant to [Decision 17.81](#), the CITES Secretariat has followed the intersessional period of the BBNJ agreement

State parties in BBNJ do not seem to link the BBNJ process to CITES. This could be because there is a limited amount of best-practices of the introduction from the sea provision and many countries are still struggling with its implementation. It only became relevant in 2013/14 and the legislative processes take time. The opinion that a link to CITES could be a cumbersome process further leads to the separation of the two processes.

Learnings from CITES for BBNJ

Funding and Staff needed

Dedicated people and growing personal trust over time is crucial and also suggested for BBNJ: To have dedicated funding and staff that can provide guidance will be needed in BBNJ, also regarding the potential clearing house mechanism. In order to go beyond simply providing access to a website, staff will be important that can take on a coordinating role.

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Tracing of MGRs in ABNJ

In the BBNJ case, it would be important to analyse the different ways, over which MGR specimens from ABNJ can reach countries. While the collection of samples will be on the high seas, the transportation of them might not be with the same vessel and might not stay in the port of landing.

It would be required to trace the specimen from legal origination to the facility and lastly to the final commercialised product.

The MARIPOLDATA Team is happy to further contribute to keeping the momentum by bringing together policy-makers, scientists, and civil society from around the world in the monthly Ocean Seminars to discuss relevant ocean issues and present timely research, inviting experts in the field.

We thank Daniel Kachelriess for the presentation and discussion on CITES and the Sea.

The MARIPOLDATA Team is looking forward to upcoming Sessions!

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Ina Tessnow- von Wysocki, October 2021