

Mississippi, and Texas. Responsibilities of the Panel include:

a. Identifying priorities for the Gulf of Mexico Region with respect to aquatic nuisance species;

b. Making recommendations to the Task Force regarding actions to carry out aquatic invasive species programs.

c. Assisting the Task Force in coordinating Federal aquatic nuisance species program activities in the Gulf of Mexico region;

d. Coordinating, where possible, aquatic invasive species program activities in the Gulf of Mexico region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

e. Providing advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

f. Submitting an annual report describing activities within the Western region related to aquatic nuisance species prevention, research, and control.

The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: Panel administrative issues, potential new memberships, updates on the status of State ANS management plans, presentations from South Atlantic States, a discussion on the pet industry project, a discussion of the public aquarium project, work group reports, and a discussion of strategic plan development.

Dated: September 10, 2004.

**M. A. Parker,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.*

[FR Doc. 04-21781 Filed 9-28-04; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Thirteenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Announcement of Public Meeting**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the tentative U.S. negotiating positions on

agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for consideration by the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at its thirteenth regular meeting (COP13). The meeting will be held in Bangkok, Thailand, October 2-14, 2004. With this notice we also announce a public meeting to be held after the conclusion of COP13 to inform the public of the results of COP13 and invite public input on whether the United States should take a reservation on any of the amendments to the CITES Appendices adopted at the meeting.

**DATES:** In further developing U.S. negotiating positions on these issues, we will continue to consider information and comments submitted in response to our notice of July 2, 2004 (69 FR 40411). We will also continue to consider information received at the public meeting announced in that notice, which was held on August 12, 2004. The public meeting to be held after COP13 will be held on December 13, 2004, at 1:30 p.m.

**ADDRESSES:** Please send comments pertaining to resolutions and agenda items to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via e-mail at: [citescop13@fws.gov](mailto:citescop13@fws.gov). Please send comments pertaining to species proposals to the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via e-mail to: [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov). Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Management Authority and the Division of Scientific Authority.

#### **Public Meeting**

The post-COP13 public meeting will be held in the Rachel Carson Room, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building may be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, below).

#### **Available Information**

Information concerning the results of COP13 will be available after the close of the meeting on the Secretariat's Web site at <http://www.cites.org>, or upon request from the Division of Management Authority, or via our COP13 Web site at <http://international.fws.gov/cop%2013/cop13.htm>.

If you wish to contact the U.S. delegation to COP13 during the meeting, you may send an e-mail to the following address: [COP13\\_daily@fws.gov](mailto:COP13_daily@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** For information pertaining to resolutions, discussion papers, and agenda items, contact Peter O. Thomas, Ph.D., Chief, Division of Management Authority, U.S. Fish and Wildlife Service, tel. 703-358-2095; fax 703-358-2298; e-mail: [citescop13@fws.gov](mailto:citescop13@fws.gov). For information pertaining to species proposals, contact Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, tel. 703-358-1708; fax 703-358-2276; e-mail: [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES or the Convention), is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction due to trade. These species are listed in Appendices to CITES, COPIes of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our Web site at <http://international.fws.gov>, or from the official CITES Secretariat (Secretariat) Web site at <http://www.cites.org/>. Currently, 166 countries, including the United States, are Parties to CITES. CITES calls for regular meetings of the Conference of the Parties (COP) to review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations to improve the effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items submitted for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers and may speak during sessions when recognized by the meeting Chairman, but they may not vote or submit proposals. COP13 will be held in Bangkok, Thailand, October 2-14, 2004.

This is fourth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of U.S. tentative negotiating positions for COP13. In this notice we announce the tentative U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the Secretariat for consideration at COP13. In our first **Federal Register** notice of June 19, 2003 (68 FR 36831), we requested information and recommendations on species proposals, proposed resolutions and decisions, and agenda items for the United States to consider submitting for consideration at COP13. In our second **Federal Register** notice, published on January 12, 2004 (69 FR 1757), we listed each issue that the United States was considering submitting for COP13. In that notice, we also invited public comments and information on these potential proposals, announced a public meeting to discuss them, and provided information on how nongovernmental organizations based in the United States could attend COP13 as observers. At the same time we posted an expanded document on our Web site (<http://international.fws.gov/>) that provided detailed background for proposed resolutions, proposed decisions, and agenda items that the United States was considering submitting for consideration at COP13, as well as for proposed amendments to the Appendices that the United States was considering submitting. On February 5, 2004, we held the public meeting announced in our second **Federal Register** notice; at that meeting, we discussed the issues contained in our January 12 **Federal Register** notice and in our Web site posting on the same topic. In our third **Federal Register** notice, published on July 2, 2004 (69 FR 40411), we announced the provisional agenda for COP13, solicited public comment on items on the provisional agenda, and announced a public meeting to discuss the agenda items. That public meeting was held on August 12, 2004.

You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of final negotiating positions in the **Federal Register** because time and resources needed to prepare a **Federal Register** notice would detract from essential preparation for COP13.

### Tentative Negotiating Positions

In this notice we summarize the tentative U.S. negotiating positions on agenda items, resolutions, and proposals to amend the Appendices that have been submitted by other countries and the CITES Secretariat. Documents submitted by the United States for consideration of the Parties at COP13 can be found on the Secretariat's Web site at: <http://www.cites.org/eng/COP/13/docs/index.shtml>. Those documents are: COP13 Doc. 41, COP13 Doc. 47, COP13 Doc. 48, COP13 Doc. 49, COP13 Doc. 51, and COP13 Doc. 52. The United States, either alone or as a co-proponent, submitted the following proposals to amend the Appendices I and II: COP13 Prop. 5, COP13 Prop. 10, COP13 Prop. 12, COP13 Prop. 14, COP13 Prop. 16, COP13 Prop. 18, COP13 Prop. 20, COP13 Prop. 21, COP13 Prop. 23, COP13 Prop. 33, COP13 Prop. 47, and COP13 Prop. 48. In this notice, we will not provide any additional explanation of the U.S. negotiating position for documents that the United States submitted. The introduction in the text of each of the documents the United States submitted contains a discussion of the background of the issue and the rationale for submitting the document.

In this notice, numerals next to each agenda item or resolution correspond to the numbers used in the agenda for COP13 and posted on the Secretariat's Web site. When we completed the notice, the Secretariat had not yet made available documents for a number of the agenda items on the COP13 agenda. For several other documents, we are still working with other agencies in the United States and other CITES Parties in negotiating the U.S. position. The documents for which we do not currently have tentative U.S. negotiating positions are: COP13 Doc. 9.2.1, COP13 Doc. 17, COP13 Doc. 29.2, COP13 Doc. 29.3, and COP13 Doc. 56.2.

In the discussion that follows, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the Secretariat, followed by a brief explanation of the tentative U.S. negotiating position for that item. New information that may become available at COP13 could lead to modifications of these positions. The U.S. delegation will fully disclose changes in our negotiating positions and the explanations for those changes during public briefings at COP13. The United States is concerned about the budgetary implications and workload burden that will be placed upon the Parties, the Committees, and the Secretariat and intends to review all

suggested changes in view of these concerns.

### Agenda (Provisional) [Doc. 3]

#### *Opening Ceremony and Welcoming Addresses*

The Secretariat will not prepare a document on these agenda items. According to tradition, as the host country for COP13, Thailand will conduct an opening ceremony and make welcoming remarks.

#### *Strategic and Administrative Matters*

1. Rules of Procedure:  
1.1 Use of secret ballots (Doc. 1.1). *Tentative U.S. negotiating position:* Support. With Document COP13 Doc. 1.1, the Standing Committee proposes not making any changes to the Rules of Procedure of the Conference of the Parties relating to the use of secret ballots. The United States historically has not supported the use of secret ballots, believing that the process at a COP should be as transparent as possible, and that open voting encourages responsible voting by the Parties. The United States agrees that the Rules of Procedure should not be changed to facilitate the increased use of secret ballots, and would only support changes to decrease their use.

1.2 Adoption of the Rules of Procedure (Doc. 1.2). *Tentative U.S. negotiating position:* Support. The CITES Secretariat prepared document COP13 Doc. 1.2, the draft Rules of Procedure for COP13. The draft contains amendments to Rules 3.2, 3.5, and 15.1, and to the title of Rule 20 agreed to by the Standing Committee at its 50th meeting (SC50) in March 2004. As the concerns raised by the United States to these amendments were addressed by the Standing Committee, and are reflected in document CoP13 Doc. 1.2, the United States supports the draft Rules of Procedure.

2. Election of Chairman and Vice-Chairman of the meeting and of Chairman of Committees I and II (No document). *Tentative U.S. negotiating position:* Undecided. According to tradition, the host country—in this case, Thailand—will provide the Conference Chair. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference who have the required technical knowledge and skills and also reflect the geographic and cultural diversity of the CITES Parties.

3. Adoption of the agenda (Doc. 3). *Tentative U.S. negotiating position:* Support.

4. Adoption of the working programme (Doc. 4). *Tentative U.S.*

*negotiating position:* Support. Prior to a COP the working programme is provisional and changes may be made to it prior to the start of COP13 or at the beginning of the COP. The United States supports the provisional working programme posted at the time this notice was prepared.

5. Credentials Committee:

5.1 Establishment of the Credentials Committee (No document). *Tentative U.S. negotiating position:* Undecided.

5.2 Report of the Credentials Committee (No document). *Tentative U.S. negotiating position:* Undecided. The United States will follow the work of the Credentials Committee and intervene as appropriate.

6. Admission of observers (Doc. 6). *Tentative U.S. negotiating position:* Undecided. A document for this agenda item is not normally distributed prior to the start of a COP. In accordance with Article XI of the Convention, organizations technically qualified in protection, conservation or management of wild fauna and flora may participate in a COP. After being approved as an observer, a nongovernmental organization (NGO) is admitted to the COP, unless one-third of the Parties object. National NGOs are admitted as observers if their headquarters are located in a CITES Party country and if the national government of that Party approves their attendance at the COP. International NGOs are admitted by approval of the CITES Secretariat. The United States supports admission to the meeting of all technically qualified NGOs, and the United States opposes unreasonable limitations on their full participation as observers at COP13. In addition, the United States supports flexibility and openness in the process for disseminating documents produced by NGOs to Party delegates, which are vital to decision-making and scientific and technical understanding.

7. Matters related to the Standing Committee:

7.1 Report of the Chairman (Doc. 7.1). *Tentative U.S. negotiating position:* Support. The United States, as Chair of the Committee, will prepare this requisite report on the execution of the Committee's responsibilities and its activities between COP12 and COP13.

7.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. The U.S. term as North American regional representative to the Standing Committee will end at the end of COP13. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Standing Committee representation

following COP13. Canada will serve as the North American regional representative, and Mexico will serve as the alternate representative.

8. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties. *Tentative U.S. negotiating position on Agenda Items 8.1, 8.2, and 8.3:* Undecided. These are comprehensive documents that require extensive review, internal discussion, and analysis of the financial implications for Parties and the impact on the work of the Secretariat and the Committees. The United States will review the documents carefully, bearing in mind the need to balance tasks with available resources. We advocate fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties and plan to actively participate in the budget discussions at COP13. We further support a budget that represents zero-growth in Parties' voluntary contributions.

8.4 External funding (Doc. 8.4). *Tentative U.S. negotiating position:* Support. External funding is financial support provided by Parties and NGOs for projects approved as CITES priorities by the Standing Committee. The external funding procedure is designed to avoid conflicts of interest (real or apparent) when approving projects and channeling funds between the provider and the recipient. The United States continues to support the efforts to identify appropriate sources of external funding, with the oversight of the Standing Committee.

9. Committee reports and recommendations—

9.1 Animals Committee:

9.1.1 Report of the Chairman (Doc. 9.1.1). *Tentative U.S. negotiating position:* Support with exceptions. This report is largely a summary of activities conducted by the Animals Committee, or particularly by the Chairman, since COP12. Many of these activities are covered by other COP13 agenda items. There are several recommendations at the end of the report, many of which the United States supports. However, some of these carry financial implications for the Convention. Under his "Recommendations regarding training," the Chairman suggests that the Parties adopt two decisions, one directing the Parties to provide financial support for the CITES Masters Course conducted by the University of Cordoba in Spain, and the second one directing the Standing Committee and the Secretariat to seek external funding to support students for the course from developing countries and countries with economies in transition. The United States believes

that this CITES Masters Course is very worthwhile. However, due to current budgetary constraints, it must be clear that any funding for this course must come from sources other than the CITES Trust Fund, such as external sources, including voluntary contributions from Parties.

The final recommendation of the Chairman is to provide US\$30,000 annually to assist the Chairman of the Animals Committee, if sufficient financial and technical support is not provided by the Chairman's own government or institution. Due to budget limitations and recent efforts by the Parties to contain costs for the Convention's operations, it is unlikely that a decision can be taken at this time to provide additional funding to support the Chairmen of the two scientific committees (assuming a similar amount should go to each). Based on discussions from the recent meetings of the scientific committees, we realize that this proposal may not be to provide funding for the current Chairman, but for future Chairmen of both committees if they come from developing countries or small institutions without the capability of providing the necessary support for the Chairmen to execute their duties. The United States suggests, therefore, that this issue be included in the review of the scientific committees proposed by Australia (CoP13 Doc. 11.1).

9.1.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Animals Committee representation following COP13. Mr. Rodrigo A. Medellin of Mexico will serve as the North American regional representative, and Mr. Robert R. Gabel of the United States will serve as the alternate representative.

9.2 Plants Committee:

9.2.2 Election of new regional and alternate regional members (No document). *Tentative U.S. negotiating position:* Support. Following consultation with Canada and Mexico, the North American region has reached a consensus decision concerning the Plants Committee representation following COP13. Mr. Robert R. Gabel of the United States will serve as the North American regional representative to the Plants Committee, and Ms. Carolina Caceres of Canada will serve as the alternate representative until April 2005, after which time, Dr. Adrienne Sinclair, also of Canada, will serve as the alternate representative.

### 9.3 Nomenclature Committee:

9.3.1 Report of the Nomenclature Committee (Doc. 9.3.1). *Tentative U.S. negotiating position:* Undecided. The report contains numerous recommendations regarding the adoption of standard nomenclatural and taxonomic references, and we are still evaluating them and consulting with experts.

9.3.2. Appointment of the members (No document). *Tentative U.S. negotiating position:* Support. With the resignation of one of the two members of the Nomenclature Committee, a new member will have to be appointed. The United States supports the appointment of an individual with the appropriate expertise in the nomenclature of fauna to the Committee.

10. Strategic Vision (Doc. 10). *Tentative U.S. negotiating position:* Support. The Strategic Vision through 2005 presents an overview of the specific aims of the Convention, outlines seven specific goals to meet the Convention's mission, and identifies specific objectives to provide focus to the Parties in their implementation of the Convention, its Committees and the Secretariat, as well as to serve as an effective outreach and educational tool. At SC50, the Committee submitted a draft decision to the Secretariat, for adoption at COP13, to extend the time of validity of the Strategic Vision through 2005 and its Action plan, until the end of 2007. The decision would also establish a Strategic Plan Working Group as a subcommittee of the Standing Committee, which would develop a proposal for submission to COP14 for a Strategic Vision and Action Plan through 2013. The United States supports the proposed extension and the establishment of a Strategic Plan Working Group.

### 11. Review of permanent committees:

11.1 Review of the scientific committees (Doc. 11.1; Australia). *Tentative U.S. negotiating position:* Support. Australia proposes that the Standing Committee conduct a review to determine whether the current Animals and Plants Committees are the most efficient and effective means of providing scientific advice to the Convention and the Parties. They propose that a working group develop terms of reference to conduct the review. We do not fully agree that the current two scientific committees have not provided information that informs the decisions of the Parties, or that the Parties are not consistent in heeding the recommendations of these committees. Currently, the review of the listing criteria, Significant Trade Review, and the Review of the Appendices are

activities of the two technical committees that are anticipated to result in recommendations that will contribute significantly to important decisions and actions by the Parties. However, we agree that the Parties need to seek efficiencies, which should include an objective evaluation of the current committee structure, the overall effectiveness of the committees in dealing with all of the issues referred to them, the workload of each committee, and how the committees conduct their business.

11.2 Improving regional communication and representation (Doc. 11.2; Animals and Plants Committees). *Tentative U.S. negotiating position:* Support. Although this document is not yet available, the United States has attended recent meetings of the Animals and Plants Committee where this issue was discussed. We anticipate that this document will contain a number of recommendations to improve regional communication and more effective representation and participation on the technical committees, particularly in large regions with many developing countries. The United States has supported these discussions and believes any efforts to improve the effectiveness of the Convention should be supported.

11.3 Standard nomenclature and the operation of the Nomenclature Committee (Doc. 11.3; Mexico). *Tentative U.S. negotiating position:* Support with exceptions. Because of recent controversy in the Animals and Plants Committees over nomenclatural changes that have been adopted, as well as a change in how standard references are adopted and incorporated for use by the Parties, Mexico has submitted this document in which it recommends various changes, including possible changes to the terms of reference and makeup of the Nomenclature Committee. We agree that these are important issues that have caused significant concern among the Parties at the meetings of the technical committees. However, we are unsure if all of the recommendations made by Mexico are warranted or may themselves cause additional difficulties. For example, expanding the membership of the Nomenclature Committee may incur more costs for the Convention and make the committee itself more inefficient due to the controversial nature of nomenclature and taxonomy. We note that overall the Nomenclature Committee has served the Parties well. However, the United States shares the concerns of Mexico and other Parties with regard to the change in the

way standard references for taxonomy and nomenclature are being handled since COP12, and how changes to standard nomenclature can occur without input or review from the Conference of the Parties.

### 12. Cooperation with other organizations—

12.1 Synergy between CITES and CBD:

12.1.1 Achieving greater synergy in CITES and CBD implementation (Doc. 12.1.1; Ireland).

*Tentative U.S. negotiating position:* Oppose with exception. Following an expert workshop on promoting cooperation and synergy between CITES and the Convention on Biological Diversity (CBD), held on the Isle of Vilm, Germany, April 20–24, 2004, the Member States of the European Community endorsed in principle the overall objectives of that workshop and recommended a substantive discussion of its report at COP13 with a view to the adoption of some of the recommendations. While we find the intent behind the Vilm workshop supportive of moving forward a better and practical synergy between the two Conventions, we do not support Ireland's proposal to refer the recommendations of the workshop to the CITES Committees and the CBD Liaison Group. We believe that it is premature at this time to incorporate the findings and recommendations of the workshop into the Work Plan attached to the MOU. The workshop was not an official meeting of either CITES or the CBD, and few Parties had the opportunity to provide information and insight into the recommendations and conclusions. Recognizing the effort that went into this workshop, we suggest that a Standing Committee working group, if financial support can be secured, be formed to report to the Parties at COP14 on improving synergy between the two Conventions as recommended in this workshop report. We recommend that the CBD Secretariat and the CBD Liaison Group be invited to participate in the working group in order to ensure full participation and cooperation by both Conventions and their Parties.

12.1.2 Sustainable use principles and guidelines (Doc. 12.1.2; Namibia). *Tentative U.S. negotiating position:* Undecided. Namibia has submitted a draft resolution to promote collaboration between CITES and the CBD concerning the issue of sustainable use. In particular, the draft resolution asks CITES to adopt the definition of sustainable use contained in the Articles of the CBD, and seeks help from CITES in the dissemination of the CBD's Addis

Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, including their application to making CITES non-detriment findings. We are evaluating the potential implications and relevance of adopting these principles and definitions to CITES operations.

12.2 CITES listing of whale stocks and the International Whaling Commission (Doc. 12.2; Japan). *Tentative U.S. negotiating position:* Undecided. This is a draft resolution that, if adopted, would call on the International Whaling Commission (IWC) to complete a global plan for regulating and managing commercial whaling activities. The IWC has been developing the Revised Management Scheme (RMS) for several years, and the United States continues to advocate its completion. Although we are inclined to support the short operative sentence of Japan's resolution, we disagree with the basic foundation and controversial remarks in the preamble. We plan to work bilaterally with Japan before COP13 to achieve a more neutral document that may be more acceptable to a majority of Parties.

12.3 Revision of Resolution Conf. 12.4 on Cooperation between CITES and the Commission for the Conservation of Antarctic Marine Living Resources regarding trade in toothfish (Doc. 12.3; Australia). *Tentative U.S. negotiating position:* Support. Australia's proposed amendments to Resolution Conf. 12.4 would make reporting by CITES Parties to the CITES Secretariat on their use of CCAMLR *Dissostichus* Catch Documents (DCDs), and the Secretariat's transmission of those reports to CCAMLR, an ongoing effort. They note that the decisions calling for such reports (12.57 and 12.58) applied only to 2003 and they see merit in continuing the practice on an annual basis. The proposal would also change references to "illicit, unregulated and unreported fishing" to "illegal, unreported and unregulated fishing (IUU)" in order to explicitly recognize that IUU fishing poses a threat to toothfish populations. The United States supports continued cooperation between CITES and CCAMLR and Australia's proposed amendments to Resolution Conf. 12.4.

12.4 Cooperation with the Food and Agriculture Organization of the United Nations (Doc. 12.4; Japan). *Tentative U.S. negotiating position:* Oppose. This document was submitted by Japan for consideration in the event that a Memorandum of Understanding (MOU) between CITES and the Food and Agriculture Organization of the United Nations (FAO) has not been signed by COP13. If there is no MOU in place,

Japan calls for a brief report from the Chairman of the Standing Committee on the negotiations with FAO and asks the Parties to extend the timeline for this process. The Chairman of the Standing Committee and the CITES Secretariat have developed draft MOU text guided by input from the Parties and discussion with FAO. We strongly support the negotiation of an MOU between CITES and FAO to facilitate cooperation on marine issues. The United States has worked with Japan and other Parties to promote establishment of this MOU. Negotiations between the Chairman of the Standing Committee and FAO to reconcile the two drafts are ongoing under a procedure established by the Standing Committee and we are hopeful that an agreement will be concluded by COP13. However, we find Japan's recommendations unnecessary from a procedural standpoint, since there is a process already under way to conclude the agreement, and we are concerned that taking it back to the Conference of the Parties before it is concluded undermines the intensive work of the Standing Committee.

12.5 Statements of representatives of other conventions and agreements (No document). *Tentative U.S. negotiating position:* Support. The United States supports ongoing dialogue between CITES and other relevant and related conventions and agreements, and believes statements from them can be valuable at a COP.

13. Economic incentives and trade policy (Doc. 13). *Tentative U.S. negotiating position:* Oppose. This document provides a report of activities conducted under Decision 12.22 on Economic Incentives and Trade Policy and recommends further work on National Trade Policy Reviews and a second workshop on how Economic Incentives can be designed to further the specific implementation of CITES. This Secretariat-driven and low priority initiative, as compared to important CITES considerations on capacity-building, legislation development, and technical support to Parties, has rapidly expanded since COP12 and produced a massive output of activities and recommendations that requires the review of the Secretariat, the Parties, and the Committees. The United States opposes this initiative as it has great potential to continue to draw more and more of the already overburdened Secretariat's time and technical expertise away from other much more urgent and high priority needs. We are also concerned that this initiative will compete with high priority needs for limited international funds and the Secretariat's fundraising efforts.

14. Financing of the conservation of and sustainable international trade in species of wild fauna and flora (Doc. 14). *Tentative U.S. negotiating position:* Support with exception. This document describes the analysis and evaluation of information received by the Secretariat in response to Decisions 12.25 and 12.26. The United States supports these efforts and the Secretariat's exploration of the feasibility of a designated financial mechanism for implementation of the Convention, provided that the Secretariat reports its findings to and requests advice from the Standing Committee between COPs.

15. Report of the African elephant dialogue meeting (Doc. 15). *Tentative U.S. negotiating position:* Undecided until document is available for review. The African elephant dialogue meeting is scheduled to be held in Bangkok, Thailand, immediately prior to the start of COP13. When we receive the document, we will review it closely and develop our position. We note, however, that we support the range States dialogue process for debating multinational species issues, and the United States provided funding for this meeting through a grant under the African Elephant Conservation Act.

## Interpretation and Implementation of the Convention

### Review of Resolutions and Decisions

16. Review of Resolutions (Doc. 16). *Tentative U.S. negotiating position:* Support with the exceptions noted below.

Review of Resolution Conf. 4.6 (Rev. CoP12). Support. The proposed change would establish the effective date of resolutions adopted by the Conference of the Parties as 90 days after the meeting, rather than the date on which the resolutions are sent to the Parties by the Secretariat. It would set a firm date for implementation of resolutions, and mean that resolutions and species listings generally become effective on the same date.

Review of Resolution Conf. 5.11. Support. The proposed new resolution would resolve confusion surrounding the trade in pre-Convention specimens by recommending that Parties use the date a species was first listed to decide whether to issue a pre-Convention certificate.

Review of Resolution Conf. 9.21. Support. These proposed changes clarify that a Party that wants the Conference of the Parties to either establish or amend an export quota for an Appendix I species must submit a proposal, which includes details of the scientific basis for the proposed quota,

150 days before the meeting at which it is to be considered. These procedures would help Parties make sound decisions on export quotas.

Consolidation of Resolution Conf. 10.6 on control of trade in tourist souvenir specimens and Resolution Conf. 12.9 on personal and household effects. Support. Combining these two resolutions would reduce the number of resolutions and provide one document that addresses the interpretation of personal and household effects. We believe the Parties might want to further consolidate duplicative paragraphs relating to the sale of Appendix I tourist souvenirs at international airports and borders.

Review of Resolutions Conf. 10.16 (Rev.) and Conf. 12.10. Oppose with exception. The goal of the proposed changes is to harmonize the language in two different resolutions. We support the proposed change to the preamble of Resolution Conf. 10.16 (Rev.) on animal species bred in captivity. We oppose the proposal to add a reference to Article III to the definition of the term "bred for non-commercial purposes" in Resolution Conf. 12.10. Article III contains the basic provisions on trade in Appendix I specimens and should not be included in the definition of an exemption under Article VII.

Review of Resolution Conf. 11.11. Support with exception. The proposal is to delete the reference to the no-longer-used annotation °608 on the CITES list and replace it with an example of "see the annotation to Orchidaceae spp \* \* \*" The United States agrees that the reference to annotation °608 needs to be deleted, but believes that the recommendation of the Plants Committee working group (see COP13 Doc 51) to not use an example is a better approach. The use of "Orchidaceae spp." is misleading since the current exclusion from CITES controls applies only to artificially propagated hybrids of *Phalaenopsis* under specific conditions or to a few artificially propagated "supermarket" cacti hybrids.

Review of Resolution Conf. 11.21. Support with exception. We agree that the new format used by the Secretariat to publish the CITES list after COP12 necessitates the revision of this resolution on annotations. We find, however, that the revised language in paragraph b) of the first agrees relating to export quotas to be confusing. Because of the importance of CITES-adopted export quotas, we suggest deleting the reference to export quotas from b)i) and b)ii) and adding a separate subparagraph "and; iii) annotations that specify an export quota;"

### Regular and Special Reports

18. Reporting requirements (Doc. 18). *Tentative U.S. negotiating position:* Support. In this document the Secretariat reports on the issues addressed by the Standing Committee's Working Group on Reporting Requirements and endorsed by the Standing Committee, and makes a number of recommendations including that the Parties adopt: the draft biennial report format provided in Annex 4 of the document; the draft revisions of Resolutions Conf. 11.17 (Rev. COP12) and 4.6 (Rev. COP12) provided in Annexes 1 and 2 of the document; and the two draft decisions provided in Annex 3 of the document. The United States supports adoption of the biennial report format and generally supports the other recommendations in this document.

19. Appendix I species subject to export quotas:

19.1 Leopard: export quota for Namibia (Doc. 19.1; Namibia). *Tentative U.S. negotiating position:* Support. Namibia seeks approval for the increase of its leopard export quota from 100 to 250 animals. The proposed new quota represents a take of less than 5% of an estimated 8,038 leopards in the country. Thus, it is unlikely that, if properly managed, the proposed new quota will have a negative impact on the species.

19.2 Leopard: export quota for South Africa (Doc. 19.2; South Africa). *Tentative U.S. negotiating position:* Oppose. South Africa seeks approval for the increase of its leopard export quota from 75 to 150 animals. However, according to the proposal, there is no nationwide leopard population estimate or trend information available. Thus, there is no clear justification for this increase. Unless there is additional information forthcoming from the proponent to support this proposal; the United States cannot support the proposed increase.

19.3 Black rhinoceros: export quota for Namibia (Doc. 19.3; Namibia). *Tentative U.S. negotiating position:* Undecided. Namibia seeks approval for the establishment of an export quota for 5 adult male black rhinoceros (*Diceros bicornis bicornis*) hunting trophies. The proposed quota represents an annual take of less than 0.5% of the estimated current population of 1,134 black rhinos in the country. In addition, the quota would apply only to "surplus" male rhinos, primarily post-reproductive or problem animals, designated by Namibia's Management Authority. Thus, the proposed quota appears to be sustainable, based on an evaluation of the Namibian population. We note that

the Namibian black rhino population is categorized as Vulnerable by IUCN (2003), instead of Critically Endangered as for the rest of the species. However, we are also aware that range countries still must take unusual measures to protect black rhinos due to continued poaching and demand for illegal trade. Therefore, we are still evaluating the potential impact that adoption of such a proposal may have on black rhino conservation, particularly as it may affect other range countries. We also note that under the United States Endangered Species Act, the black rhinoceros is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow such imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of sport hunted trophies.

19.4 Black rhinoceros: export quota for South Africa (Doc. 19.4; South Africa). *Tentative U.S. negotiating position:* Undecided. South Africa seeks approval to establish an export quota for 10 adult male black rhinoceros (*Diceros bicornis minor*) hunting trophies. The proposed quota represents an annual take of approximately 1.0% of the estimated current population of 1,200 black rhinos in the country. However, there are outstanding questions about the overall management program including the initial size of the quota, its effective allocation and monitoring within the private sector, individual trophy selection process, and transparency in the use of revenues generated for *in-situ* black rhino conservation. We also note that under the United States Endangered Species Act, the black rhinoceros is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow such imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of sport hunted trophies.

20. Trade in vicuña cloth (Doc. 20). *Tentative U.S. negotiating position:* Support. The Secretariat has submitted a report in accordance with Resolution Conf. 11.6 that includes information for each range country on vicuña cloth exports, numbers of animals sheared, and the local populations to which the animals belong. The Secretariat suggests that these trade data should be incorporated into the annual reports instead of reported separately. Therefore, the Secretariat recommends deleting paragraph (b) of Resolution Conf. 11.6, which requires these reports. In addition, because paragraph (a) of Resolution Conf. 11.6 is redundant to

the annotations for Appendix II vicuña populations, the Secretariat recommends the repeal of Resolution Conf. 11.6 entirely.

21. Transport of live specimens (Doc. 21). *Tentative U.S. negotiating position:* Support. The United States is a member of the Transport Working Group and supports the recommendation to encourage exchange of information on transport of live animals and plants between the Animals and Plants Committees, and to broaden the scope of Resolution Conf. 10.21 to include the transportation of live plants, as well as live animals. We also welcome the recommendation to revise requirements regarding the collection, submission and analysis of data on mortality and injury or damage to health during transport of live specimens.

#### General Compliance Issues

22. National laws for implementation of the Convention (Doc. 22). *Tentative U.S. negotiating position:* Support. The United States supports the proposed decisions, which would continue and expand the current review of national laws. The United States strongly believes that the Convention's effectiveness is undermined when Party States do not have adequate national laws in place for implementing CITES.

23. Enforcement matters (Doc. 23). *Tentative U.S. negotiating position:* Support. The United States supports the proposed decisions, which would improve the flow of enforcement-related information among enforcement officials, and provide needed guidance to the public on how to submit enforcement-related information to the Secretariat.

24. Revision of Resolution Conf. 11.3 on Compliance and enforcement (Doc. 24; Kenya). *Tentative U.S. negotiating position:* Oppose. The United States supports the general issues of compliance and enforcement and supports the proposed decisions concerning these issues presented in Doc. 23. The United States does not support the use of limited Secretariat enforcement staff and resources to restore the creation of the infractions report that at past COPs proved controversial, inaccurate, and of limited use for actual enforcement efforts.

25. Guidelines on compliance with the Convention (Doc. 25; Ireland). *Tentative U.S. negotiating position:* Oppose. The United States does not support the proposal to open discussion on this document. We also oppose the establishment of a Compliance Working Group pending the completion of the process currently underway in the Standing Committee. Pursuant to

Decision 12.84, the Standing Committee is currently reviewing draft Guidelines on Compliance with the Convention, through an intersessional working group. The Committee also established a process for the working group to create a document for consideration at SC53. The United States believes this collaborative process should be allowed to continue and considers it premature to bring this issue to COP13.

#### Species Trade and Conservation Issues

26. Conservation of and trade in great apes (Doc. 26; Ireland). *Tentative U.S. negotiating position:* Support the draft decision with exception, and oppose the draft resolution. Ireland, on behalf of the Member States of the European Community, has submitted a document that includes a draft resolution urging Parties to adopt and implement legislation protecting great apes, including prohibiting all international and internal commercial trade of wild-caught specimens and strengthening enforcement controls, including anti-poaching measures. The draft resolution directs the Secretariat to work with Parties, and as a member of the Great Ape Survival Project (GRASP) partnership, to develop measures to reduce and ultimately eliminate illegal trade in great apes. The document also includes a draft decision directing the Secretariat to prepare a consolidated Resolution concerning the enforcement of trade controls in all Appendix I species, to be considered at COP14.

The United States supports the draft decision and believes a comprehensive process should be developed, possibly through a working group, whereby mechanisms from other processes (e.g., Significant Trade Review, National Legislation Project) might be used to develop a standardized approach for addressing enforcement of trade controls for all Appendix I species. The United States supports the principles and goals of the draft resolution on the conservation of and trade in great apes, but we do not support the draft resolution itself. While we applaud the efforts of GRASP, adopting the draft resolution included in this document would create yet another species-specific resolution. Many of the goals outlined in this draft resolution are already being addressed by the CITES Bushmeat Working Group and we believe that they should be addressed as part of the larger bushmeat issue.

27. Conservation of and trade in bears (Doc. 27). *Tentative U.S. negotiating position:* Support. This report was prepared by the Secretariat in response to Decision 12.27, which required the Parties that did not report to the

Secretariat on the progress made in controlling illegal trade in bear specimens to submit the requested reports. The document lists the Parties that have provided reports and describes measures taken in attempting to get reports from those Parties that had not yet responded to Decision 12.27. The Secretariat will report at COP13 on any new reports or additional information relating to bears. The United States supports the Secretariat in its effort to obtain information from Parties relating to the trade in bear specimens and looks forward to the Secretariat's report at COP13. The United States also supports the Irish proposal (COP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

28. Conservation of and trade in Asian big cats (Doc. 28). *Tentative U.S. negotiating position:* Support. In this document, the Secretariat presents a progress report on activities regarding conservation of and trade in Asian big cats and non-commercial trade in specimens of Appendix I species. The United States supports continued work on the issues of Asian big cat conservation and is concerned that commercial trade in Appendix I species by professional dealers is continuing. We urge the relevant range States to implement the recommendations arising from the CITES Technical and Political Tiger Missions. The United States also supports the Irish proposal (COP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

#### 29. Elephants:

29.1 Trade in elephant specimens (Doc. 29.1). *Tentative U.S. negotiating position:* Undecided, pending outcome of the African elephant dialogue meeting. This document was submitted by the Secretariat to report on work accomplished under Resolution Conf. 10.10 (Rev. COP12) and Decision 12.39. Decision 12.39 directed the Secretariat to assess countries with currently active internal ivory markets. The Secretariat has suggested that it may be more effective to develop sub-regional strategies to work with Parties in west and central Africa, where the majority of illegal ivory appears to originate, than to confine work to the 10 Parties identified in the original Decision 12.39. Toward



that end, a draft work plan was attached as an annex to the report. The United States supports the development of sub-regional strategies and looks forward to the results of the African elephant range States dialogue.

29.4 Illegal ivory trade and control of internal markets (Doc. 29.4; Kenya). *Tentative U.S. negotiating position:* Oppose. This document submitted by Kenya provides background information on domestic ivory markets around the world and notes concerns that illegal ivory trade may present a threat to elephant populations. Kenya supports the Secretariat's draft work plan (SC50 Doc. 21.1, Annex) and proposes that it be incorporated into Resolution Conf. 10.10 (Rev. COP12), except for an exemption for Zimbabwe. It also proposes additional amendments to Resolution Conf. 10.10 (Rev. COP12), including a 20-year moratorium on ivory trade, except for non-commercial trade in hunting trophies, following completion of sales approved at COP12. In addition to the amendments, Kenya has put forward three draft decisions regarding implementation of the amended resolution. While the United States can appreciate Kenya's position relative to conservation efforts for African elephants we believe that this issue is being addressed in a methodical and analytical way through the Standing Committee and the African Range States Dialogue meetings. We look forward to the consideration during the African Elephant Range States Dialogue of a work plan to address domestic trade problem in source range countries.

29.5 Conditions for the export of registered stocks of ivory in the annotation to the Appendix II listing of populations of *Loxodonta africana* in Botswana, Namibia and South Africa (Doc. 29.5; Kenya). *Tentative U.S. negotiating position:* Oppose. Kenya asks that the Parties re-examine the geographical scope and nature of Monitoring of Illegal Killing of Elephants (MIKE) baseline data agreed at SC49 and the mechanism for determining detrimental impacts on elephant populations agreed at SC50. Kenya proposes two draft decisions. The United States supports the decisions of the Standing Committee and is opposed to reopening these discussions at COP13.

29.6 Ivory stocks in Burundi (Doc. 29.4). *Tentative U.S. negotiating position:* Oppose. The United States is sympathetic to the Government of Burundi's position, and will be interested in the outcome of any discussions on this topic at the African Elephant Range States Dialogue meeting. However, for the most part, the

options presented in this paper appear either to involve trade in violation of existing resolutions and decisions or scenarios with little real chance for success.

30. Conservation of and trade in rhinoceroses (Doc. 30). *Tentative U.S. negotiating position:* Support. The Secretariat recommends the repeal of Resolution Conf. 9.14 (Rev.) because it believes that the value of the Resolution is doubtful and the administrative burden it places on the Parties is of little benefit. Additionally, as of the report submission deadline of April 2, 2004, the Secretariat had not received any reports from Parties on conservation of and trade in rhinoceroses. We sympathize with the Secretariat's frustration over the poor rate of report submission, and the United States also supports the Irish proposal (CoP13 Doc. 26) to develop a holistic, rather than species-specific, approach to eliminate the illegal international commercial trade in all Appendix I specimens and assist Parties in mitigating or eliminating detrimental domestic trade in those same specimens.

31. Conservation of and control of trade in Tibetan antelope (Doc. 31). *Tentative U.S. negotiating position:* Support. In compliance with Decision 12.40, the Secretariat undertook an enforcement needs mission to China and submitted a report to the Standing Committee (SC50 Doc. 20), and this information will be relayed to COP13. Therefore, the Secretariat is recommending that paragraphs (b) and (c) under "DIRECTS" in Resolution Conf. 11.8 (Rev. COP12) be deleted because the reporting requirements have been met. However, because legislation to prohibit processing and trade in Tibetan antelope wool in the State of Jammu and Kashmir, India, is not being enforced, the Secretariat also recommends that the following wording be inserted in the resolution at the end of paragraph a) under URGES, "and, in particular, that the State of Jammu and Kashmir in India halts the processing of such wool and the manufacture of shahtoosh products."

32. Conservation of *Saiga tatarica* (Doc. 32; Ireland). *Tentative U.S. negotiating position:* Support. This document contains a draft decision that, if adopted, would establish a framework of coordinated actions to be taken by all stakeholders to conserve and protect the saiga antelope. The United States has a longstanding interest in the saiga antelope and previously contributed financial support for the range State workshop on this species in May 2002 in Kalmykia. We also urged the Parties

to consider further actions for this species at AC19.

33. Conservation of and trade in tortoises and freshwater turtles (Doc. 33). *Tentative U.S. negotiating position:* Support. This is primarily a report by the Secretariat on activities related to these species since COP12. The document includes information from three range countries, China, Japan, and Malaysia, which was submitted to the Secretariat to comply with Decision 12.41. This information shows that the three range countries have made significant progress in meeting the recommendations of Resolution Conf. 11.9 on Conservation of and trade in tortoises and freshwater turtles. The United States concurs with the Secretariat's recommendations for range countries to continue their efforts for these species; to have the Animals Committee continue to provide scientific guidance to range countries on the conservation and management of these species, especially with regard to the recommendations from the 2002 Kunming workshop on turtle and tortoise trade; and to have Asian range countries for these species continue to report on progress in this area.

34. Conservation of hawksbill turtle (Doc. 34). *Tentative U.S. negotiating position:* Oppose. The CITES Secretariat has raised partial funding for a meeting of the wider Caribbean region on hawksbill conservation and management, as directed under Decision 12.46. However, full funding is not available for such a meeting, and there is currently no proposal to amend the Appendices or to take other actions with regard to this species at COP13. The United States suggests that the funding raised for the Caribbean hawksbill meeting could be redirected to support monitoring activities agreed to by the Parties at COP12 and to promote cooperation among CITES and other relevant bodies and multilateral agreements in the absence of such a regional meeting.

35. Conservation and management of sharks (Doc. 35). *Tentative U.S. negotiating position:* Undecided. Under Decision 12.47, the Chairman of the Animals Committee is to maintain a liaison with the Secretary of the Committee on Fisheries of the FAO to monitor progress in implementation of the International Plan of Action for the Conservation and Management of Sharks. This may be covered in the Report of the Chairman of the Animals Committee (Doc. 9.1.1), which was not available by July 1, 2004. There was also no separate document posted under this agenda item by July 1, 2004.



36. Conservation of and trade in *Dissostichus* species (Doc. 36). *Tentative U.S. negotiating position*: Support. This document represents the Secretariat's report on work performed under three decisions agreed on at COP12 pertaining to toothfish. Decision 12.57 asked Parties to report to the Secretariat on their use of CCAMLR *Dissostichus* Catch Documents. Information was received from 10 Parties, including the United States, and is summarized in this document. Copies of the full submissions were transmitted to CCAMLR, as recommended in Decision 12.58, and the Secretariat attended CCAMLR's 22nd Commission meeting, as called for in Decision 12.59, to promote cooperation between the two organizations. The Secretariat considers that its obligations under these decisions have been met, but recommends that information exchange and cooperation between CITES and CCAMLR should continue under Resolutions Conf. 12.4. The United States agrees that the Secretariat has fulfilled its obligations under Decisions 12.57–12.59 and supports ongoing cooperation and information exchange between CITES and CCAMLR.

37. Sea cucumbers:

37.1 Trade in sea cucumbers in the families Holothuriidae and Stichopodidae (Doc. 37.1; Animals Committee). *Tentative U.S. negotiating position*: Undecided. Under Decision 12.60, the Animals Committee was directed to prepare a discussion paper on the biological and trade status of sea cucumbers to provide guidance on actions needed for their conservation. This paper should be a reflection of recommendations resulting from a workshop on sea cucumber trade and conservation convened by the Secretariat in February 2004 in Malaysia.

37.2 Implementation of Decision 12.60 (Doc. 37.2; Ecuador). *Tentative U.S. negotiating position*: Support. Decision 12.60 directed the Animals Committee to prepare a discussion document on the trade and conservation of sea cucumbers for COP13. Ecuador's paper notes that the Committee was unable to meet the required deadlines and proposes to extend the work until COP14. The United States proposed this work on sea cucumbers at COP12, and is therefore eager to see a meaningful output from the Animals Committee.

38. Trade in stony corals (Doc. 38). *Tentative U.S. negotiating position*: Oppose. This document was prepared by the Animals Committee and should be considered along with Prop. 36 on the amended annotation for fossil corals. The document proposes specific

deletions from Resolution Conf. 12.3 to make it consistent with a proposed annotation that exempts several types of coral rock from the provisions of CITES. For reasons described below under Prop. 36, we have serious concerns about the Animals Committee's approach to fossil corals.

39. Conservation of bigleaf mahogany: report of the Working Group (Doc. 39). *Tentative U.S. negotiating position*: Support. The second meeting of the Bigleaf Mahogany Working Group (BMWG) was held October 6–8, 2003, in Belem, Brazil. The recommendations from this meeting were circulated at PC14 (February 2004). The Plants Committee prioritized the recommendations and developed a list of the five most urgent ones. The Secretariat then forwarded these five priority recommendations to the BMWG so that they could be considered in the report to COP13. However, in the report it submitted to COP13 (Annex to CoP13 Doc. 39), the BMWG included the same long list of recommendations that were circulated at PC14, and did not take into consideration the priority list developed by the Plants Committee. In Document CoP13 Doc. 39, the Secretariat recommends that the Parties take note of the report of the BMWG and turn the five priority actions recommended by the Plants Committee into decisions directed to range countries. The Secretariat also recommends that the BMWG not continue after COP13 and that, if the Parties determine that bigleaf mahogany still requires special attention after COP13, such attention should be given under the auspices of the Plants Committee.

The United States tentatively supports the recommendation of the Secretariat that the Parties adopt the five priority actions recommended by the Plants Committee as decisions directed to range countries. The United States believes that special attention should still be given to bigleaf mahogany after COP13, but tentatively supports the Secretariat's recommendation that the BMWG not continue after COP13 but that activities be undertaken under the auspices of the Plants Committee.

40. Evaluation of the Review of Significant Trade (Doc. 40). *Tentative U.S. negotiating position*: Support. This document presents the terms of reference developed by the Animals and Plants Committees for evaluating the process for the Review of Significant Trade. The purpose of this evaluation is to assess the efficacy of the Significant Trade Review process and make possible recommendations for its improvement. The United States has been actively involved in the

development of terms of reference for this review, both as a member of a joint working group of the Animals and Plants Committees, and through discussions as an observer at meetings of the two committees. The United States believes an evaluation of the process will assist the Parties and the two scientific committees to ensure that the Review of Significant Trade is effective in improving the implementation of the Convention for Appendix II species traded in significant quantities.

*Trade Control and Marking Issues*

42. Commercial trade in Appendix I species (Doc. 42; Israel). *Tentative U.S. negotiating position*: Oppose with exception. The United States supports the principle behind this document and appreciates Israel's efforts on this issue. Israel proposes amending Resolution Conf. 5.10 to clarify that when making a determination of whether an import is for "primarily commercial purposes," an importing Party should take into account the nature of the transaction between the exporter and the importer to ensure that a commercial transaction does not underlie the transfer of Appendix I specimens. The United States agrees that there appears to be a loop-hole in implementation of this resolution, and that some Appendix I specimens are being transferred for commercial purposes. This is contrary to the fundamental principles of Article II of the Convention that trade in Appendix I specimens " \* \* \* must only be authorized in exceptional circumstances." To close the apparent loop-hole, we encourage Parties to agree to a broader interpretation of "to be used" for primarily commercial purposes in Article III, paragraphs 3(c) and 5(c), whereby the importing Party would look at both the intended use in the importing country and the nature of the transaction between the exporter and importer. However, we believe that many transfers have some commercial aspects, which does not automatically mean the import is for primarily commercial purposes. Thus, we believe that the importing Party in making its determination should ensure that the commercial transaction is not the primary purpose of the transfer, rather than "ensure that a commercial transaction does not underlie the transfer" as proposed by Israel.

43. Management of annual export quotas (Doc. 43). *Tentative U.S. negotiating position*: Support. At COP12, the United States submitted the document that provided the basis for the formation of the Export Quota Working Group (EQWG). While we are

disappointed that further progress on this issue has not been achieved since COP12, the United States supports the approach outlined by the Secretariat and approved by the Standing Committee. The United States will remain engaged in this important process because export quotas for Appendix II species constitute one of the primary controls on the trade in Appendix II specimens under CITES, and the management and implementation of such quotas needs to be more consistent.

44. Use of CITES certificates with ATA or TIR carnets (Doc. 44). *Tentative U.S. negotiating position:* Support with exception. The United States supports this proposal, if it is amended to clarify that the official who is responsible for validating CITES documents would need to be the official to enter the carnet number on the CITES document at the first point of exit. The proposal would provide the appropriate level of monitoring of trade for CITES-listed sample collections that are being exhibited at trade shows in a number of countries before returning home. The first exporting country retains the responsibility of ensuring that specimens are legal and the trade is not detrimental, while cross-border movement of sample collections is facilitated by the CITES document being accompanied by an ATA carnet.

45. Electronic permitting systems for CITES specimens (Doc. 45; Ireland). *Tentative U.S. negotiating position:* Oppose. Ireland, on behalf of the Member States of the European Community, has submitted a proposed decision for the Secretariat to establish guidelines for an electronic permitting system for the Parties. This system would eventually create a paper-less permitting system that would allow Parties to use IT technology for the submission of applications, issuance of documents, clearance at the port of entry and reporting for all CITES specimens. At SC50, the Working Group on Reporting Requirements recommended that the Standing Committee address this issue in its report to COP13 and instruct the Secretariat, in consultation with UNEP-WCMC and interested Parties, to develop and test software and "internet-based modules" for permit issuance and reporting. The United States welcomes discussion of this issue at COP13, but believes that the majority of recommendations in the document are premature. We believe that the Standing Committee should continue to work on this issue and that a Resolution on this issue is not appropriate at this time.

46. Retrospective issuance of permits (Doc. 46; Ireland). *Tentative U.S. negotiating position:* Oppose. Ireland, on behalf of the Member States of the European Community, has submitted a proposal to amend section XIII of Resolution Conf. 12.3 to expand the language concerning when a retrospectively issued permit or certificate could be accepted by Parties, giving greater leniency in accepting such documents for non-commercial shipments. The United States believes that the current language in section XIII fully addresses this issue and does not need to be expanded.

50. Plant specimens subject to exemptions (Doc. 50; Switzerland). *Tentative U.S. negotiating position:* Support. Several exemptions allow international trade in live plant specimens without CITES permits until circumstances change and the plants no longer qualify for the exemption. For example, a plant grown from an exempt flaked seedling or tissue culture requires a CITES export permit to be traded internationally. The United States supports this proposal, which would help Parties use consistent information on CITES permits and, thus, help in the analysis of trade data.

53. Revision of Resolution Conf. 9.10 (Rev.) on Disposal of illegally traded, confiscated and accumulated specimens (Doc. 53; Kenya). *Tentative U.S. negotiating position:* Support. The United States supports the proposal to replace language from Resolution Conf. 9.10 that was omitted during the consolidation process. The United States does not object to the addition of language on disposal of Appendix III specimens and agrees that Parties have the right to not sell confiscated dead Appendix II and III specimens.

54. Identification Manual (Doc. 54). *Tentative U.S. negotiating position:* Support. This document is a report from the Secretariat on progress in the development of identification materials for listed species.

#### *Exemptions and Special Trade Provisions*

55. Personal and household effects. *Tentative U.S. negotiating position on Agenda Items 55.1, 55.2, and 55.3:* Support with the exceptions noted below. The United States supports China's proposal to have the Secretariat maintain a list by country of specific specimens that require an export permit when traded as personal or household effects. Importing Parties would generally assume that an export permit is not required if the exporting Party had not notified the Secretariat of a requirement. Under the Lacey Act,

however, the United States would require an export permit if the Party requires an export permit, even if that Party had not notified the Secretariat of the requirement. The United States also supports Ireland's and Australia's proposals to add specimens of certain coral, shells of giant clam, and seahorse to the current list of Appendix II species that do not require CITES permits for personal effects when the quantities do not exceed a specified number. We believe that the coral exemption needs to be discussed to clarify if it includes manufactured products. Both lists could assist enforcement personnel and help facilitate trade in personal and household effects when such trade is not of conservation concern. However, the United States hopes that over time the list of specimens does not become so long as to create a burden to enforcement personnel.

56. Operations that breed Appendix I species in captivity for commercial purposes:

56.1 Evaluation of the process for registration (Doc. 56.1). *Tentative U.S. negotiating position:* Support. This document presents the conclusions and recommendations derived from a review of problems the Parties have experienced in implementing the registration procedures contained in Resolution Conf. 12.10 for commercial captive-breeding operations for Appendix I species. The United States agrees with the Animals Committee that it is too soon to recommend changes to Resolution Conf. 12.10, since this resolution has been revised at both COP11 and COP12. However, the United States also agrees that the Standing Committee should examine the issue of trade in Appendix I species from non-registered commercial breeding operations.

The United States notes that the consultation process contained in the current resolution has been valuable in precluding registration of operations—and preventing trade from them—when they were determined not to be producing specimens that meet the CITES definition of "bred in captivity."

56.3 Relationship between *ex situ* breeding and *in situ* conservation:

56.3.1 Report of the Animals Committee (Doc. 56.3.1). *Tentative U.S. negotiating position:* Oppose. The Animals Committee has spent considerable time and effort on the evaluation of the relationship between *ex situ* captive-breeding operations for Appendix I species and conservation of these species *in situ*. The United States concurs that further deliberation on this issue within the Animals Committee could be time-consuming, with

potentially no clear outcome. We agree that this issue is linked to other topics, such as the relationship between CITES and the Convention on Biological Diversity, but is not strictly related to implementation of the Convention. The United States believes the recommendations contained in the document from Mexico (Doc. 56.3.2) provide reasonable guidance to the Parties on this issue and should preclude the need for further deliberations on this topic. As an alternative, the United States would advocate that the Parties focus more broadly on measures that reduce trade threats to Appendix I species and encourage their conservation, with a goal of eventual downlisting or even delisting from the Appendices.

56.3.2 Relationship between commercial *ex situ* breeding operations and *in situ* conservation of Appendix I species (Doc. 56.3.2; Mexico). *Tentative U.S. negotiating position:* Support. The United States has had a longstanding interest in issues related to the captive breeding of Appendix I animals. We are supportive of efforts to consider how conservation of these species in the wild can be encouraged, including through voluntary partnerships between range countries and captive-breeding operations in non-range countries.

#### Amendment of the Appendices

57. Criteria for amendments of Appendices I and II (Doc. 57). *Tentative U.S. negotiating position:* Support although the document was not available for review. The United States was an active participant in the process to review and revise the existing criteria, having served as chairman or co-chairman of the listing criteria working groups at PC13 (Geneva, August 2003), AC19 (Geneva, August 2003), and AC20 (Johannesburg, March-April 2004). Thus, we can anticipate the content of the document. The document will reflect a comprehensive evaluation of the applicability of the criteria to a wide range of taxa, which has served as a basis for recommendations to revise Resolution Conf. 9.24.

58. Annotations for medicinal plants in the Appendices (Doc. 58). *Tentative U.S. negotiating position:* Support. This document is a report on the Plants Committee's review of medicinal plant annotations to harmonize the terms used, so that they accurately refer to the parts and derivatives included in a listing and are consistently used across species. The United States has been actively involved in the Plants Committee's review and supports the continuation of this work to its completion.

59. Standard nomenclature:  
59.1 Standard nomenclature for birds (Doc. 59.1; Mexico). *Tentative U.S. negotiating position:* Support. Since COP12, at meetings of the Animals Committee, Mexico has raised concerns about the standard reference, *Handbook of the Birds of the World* (del Hoyo *et al.*, eds., 1997, 1999) adopted at COP12 for Psittaciformes (parrots and their relatives) and Trochilidae (hummingbirds). Mexico has raised questions about the scientific rigor behind the taxonomy presented in the new reference, noting that it has also complicated the listing of the yellow-headed amazon parrot (*Amazona ochrocephala*) and its subspecies. Mexico recommends that the Parties should return to using the reference by Sibley and Monroe (1990) as the standard reference for taxonomy and nomenclature for all birds. The United States believes that Mexico's recommendation has merit, to reduce confusion (*i.e.*, by maintaining a single taxonomic reference for birds) and to be conservative with regard to the use of taxonomy that has had longstanding application in CITES.

59.2 Recognition of *Chamaeleo excubitor* as a separate species (Doc. 59.2; Kenya). *Tentative U.S. negotiating position:* Support. Kenya has provided documentation and a rationale for treating this taxon as a separate and distinct taxon from *C. fischeri*, with which it is currently treated as a synonym. Kenya asks that this be considered by the Nomenclature Committee to assist in the regulation and monitoring of trade in this species. We agree that it is entirely appropriate for the Nomenclature Committee to evaluate the situation and provide a recommendation on whether or not to separate these two species of chameleon in the CITES checklist.

60. Proposals to amend Appendices I and II (Doc. 60).

*Prop. 1.* Exempt from the provisions of the Convention *in vitro* cultivated DNA, cells or cell lines, urine and feces, medicines and other pharmaceutical products, and fossils (Ireland). *Tentative U.S. negotiating position:* Oppose. The proposal stipulates that the exempted DNA, cells or cell lines, and medicines and pharmaceutical products would not contain any part of the original organism from which it was derived. This proposal is similar to the next proposal (Prop. 2), but includes additional types of specimens to be exempted, which were not included in the recommendations of the Standing Committee working group. Furthermore, we have consulted with U.S. geneticists about the terminology used in this

proposal and have concluded that the term "*in vitro* cultivated DNA" is not widely used in the scientific community, but that "synthetic DNA," "amplified DNA," or "replicated DNA" would be preferable. The United States also advocates the development of a clear definition of "fossil" so that, if this proposal is adopted, implementation problems can be avoided and so that the term is not interpreted so broadly as to be potentially detrimental to listed species.

*Prop. 2.* Exempt from the provisions of the Convention *in vitro* cultivated DNA, urine and feces, synthetically produced medicines and other pharmaceutical products, and fossils (Switzerland as the Depositary Government, at the request of the Standing Committee). *Tentative U.S. negotiating position:* Support with exception. A similar proposal was submitted to COP12, but was withdrawn for technical reasons. This proposal stipulates that the exempted DNA as well as medicines and pharmaceutical products would not contain any part of the original organism from which it was derived. The proposal reflects the outcome of deliberations of a working group, established by the Standing Committee, in which the United States participated. The United States already exempts synthetic DNA, feces, and urine from CITES requirements. As with the previous proposal, we have concerns regarding the term "*in vitro* cultivated DNA" and "fossil" (see Prop. 1 above).

*Prop. 3.* Transfer the Irrawaddy dolphin (*Orcaella brevirostris*) from Appendix II to Appendix I (Thailand). *Tentative U.S. negotiating position:* Undecided. The Irrawaddy dolphin is widely distributed through bays and some rivers from Australia to the Philippines and into eastern India. The Standing Sub-Committee on Small Cetaceans of the Scientific Committee of the International Whaling Commission recently reviewed the status of this species and reported that densities appear to be low in most areas and several populations are believed to be seriously depleted. The Sub-Committee expressed concern about reports of live capture from small populations of the species. Incidental take in fisheries and habitat degradation are also causes of concern. The proposal does not provide much information about the current extent of trade in these dolphins, or why a ban on international commercial trade would help conserve the species (which is protected in most range States). We will continue to investigate the information in the proposal and from other sources, with a view toward

understanding the current level of illegal trade and the vulnerability of the species to extinction in the near term.

*Prop. 4.* Transfer from Appendix I to Appendix II the Okhotsk Sea—West Pacific stock, the Northeast Atlantic stock, and the North Atlantic Central stock of the northern minke whale (*Balaenoptera acutorostrata*) (Japan). *Tentative U.S. negotiating position:* Oppose. As with past proposals to downlist whales under CITES, the United States opposes this proposal because of the need for IWC–CITES coordination (as repeatedly expressed in CITES Resolutions), the lack of an international management regime under the International Convention for the Regulation of Whaling, the lack of international consensus on tracking whale products with DNA registers, and the stipulations of the CITES downlisting criteria.

*Prop. 6.* Transfer all Appendix I populations of lion (*Panthera leo*) to Appendix I (Kenya). *Tentative U.S. negotiating position:* Oppose. The African populations of the species are proposed for inclusion in Appendix I (the Asian subspecies, *P.l. persica*, is already listed in Appendix I) on the basis that all are declining, and those of West and Central Africa are fragmented, small, and isolated. Although African lions have experienced declines due to a number of factors, these are primarily related to loss of habitat, reductions in prey populations, and killing of lions as “problem animals.” International trade in lion specimens, primarily hunting trophies, is limited, but has the potential to exacerbate population declines if not managed at sustainable levels. We believe that listing of the species in Appendix I may be premature, and a more appropriate action would be to include the species in the Significant Trade Review of the Animals Committee, to review the basis for current trade levels, particularly since the proponent has indicated that hunting quotas could be considered even if the species were to be placed in Appendix I.

*Prop. 7.* Amendment of the annotation regarding the Namibian population of African elephant (*Loxodonta africana*), listed in Appendix II, to allow an annual export quota of raw ivory, trade in worked ivory for commercial purposes, and trade in leather and hair goods for commercial purposes (Namibia). *Tentative U.S. negotiating position:* Oppose with exception. This and other elephant issues will be discussed at an African Elephant Range States Dialogue meeting just prior to COP13, and the United States intends to await the outcome of deliberations by

the range countries. However, we particularly note that no determination has yet been made as to whether conditions have been met for the one-off sale of ivory from Namibia approved by the Conference of the Parties at COP12, so the consideration of additional ivory trade, especially a sustained annual quota, may be premature. The available information suggests that trade in elephant leather and hair products are not linked to poaching, and as such the U.S. has supported such trade in the past.

*Prop. 8.* Amendment of the annotation regarding the South African population of African elephant (*Loxodonta africana*), listed in Appendix II, to allow trade in leather goods for commercial purposes (South Africa). *Tentative U.S. negotiating position:* Support. At COP12, the proposal by South Africa with regard to its elephant population (COP12 Prop. 8) was to allow, among other things, commercial trade in leather goods. During debate on the proposal and subsequent amendments, this was inadvertently modified to refer to non-commercial trade in leather goods, which was adopted. South Africa has submitted the current proposal to reflect their original intent. This and other elephant issues will be discussed at an African Elephant Range States Dialogue meeting just prior to COP13. The United States intends to await the outcome of deliberations by the range countries and may adjust its final position on this proposal based on the outcome of that meeting.

*Prop. 9.* Transfer of the Southern white rhinoceros (*Ceratotherium simum simum*) population of Swaziland from Appendix I to Appendix II for the exclusive purpose of allowing trade in live animals and hunting trophies (Swaziland). *Tentative U.S. negotiating position:* Support. We understand that Swaziland has only two small but stable or increasing populations of this species (a total of approximately 60 animals in 2003) in protected areas constituting a small proportion of the country's land area. However, the Southern white rhinos in Swaziland are considered to be part of the South African metapopulation of this subspecies (Swaziland previously having been part of South Africa, with the majority of its current border contiguous with South Africa). Because the South African population of this subspecies has already been downlisted to Appendix II, it makes biological sense to also transfer Swaziland's population to Appendix II. We note that the purpose of this proposal is to allow only limited trade in live animals and trophies, much of which would be allowed even if the

species were to be retained in Appendix I, and is therefore precautionary.

*Prop. 11.* Transfer of the lesser sulphur-crested cockatoo (*Cacatua sulphurea*) from Appendix II to Appendix I (Indonesia). *Tentative U.S. negotiating position:* Support. This species has long been a focus of international concern. The species is considered Critically Endangered by IUCN, and both Germany and the United States have considered submitting proposals for previous COPs to include this species in Appendix I. Illegal trade in the species continues to be a problem, and wild-caught birds may be traded as captive-bred specimens once they leave Indonesia. The species qualifies for Appendix I based on its biological status and the continued threat from trade.

*Prop. 13.* Transfer of Finsch's amazon parrot (*Amazona finschi*) from Appendix II to Appendix I (Mexico). *Tentative U.S. negotiating position:* Support. This species has experienced significant declines in Mexico, where it is an endemic species. This is a species that has been historically smuggled into the United States in significant numbers, and illegal shipments have also been seized elsewhere. Recent studies in Mexico indicate that the species cannot currently sustain harvest for commercial trade. The United States previously considered proposing this species for inclusion in Appendix I, but deferred to Mexico to take appropriate action.

*Prop. 15.* Transfer of the spider tortoise (*Pyxis arachnoides*) from Appendix II to Appendix I (Madagascar). *Tentative U.S. negotiating position:* Oppose. This species is endemic to Madagascar and has been subject to increased demand for legal and illegal trade in recent years. Deterioration and loss of habitat are potential threats to this species, but actual relationship of these factors to the status of the species is not well documented in the proposal. The population is estimated at over 10,000 individuals, but the area of distribution and extent of population fragmentation is currently unknown and under discussion. At least through 2000–2001, trade in the species was not well regulated, and seizures of the species and anecdotal information point to ongoing illegal trade. Due to the country-wide review of trade in CITES-listed species, exports of this species from Madagascar may be better managed and regulated than in the past. Because of improvements in trade controls by the range country, combined with the lack of information to indicate an imminent threat to the species, it is

difficult to conclude that this species currently qualifies for Appendix I listing.

*Prop. 17.* Include the Malayan snail-eating turtle (*Malayemys subtrijuga*) in Appendix II (Indonesia). This proposal is the same as Prop. 16. Due to wording discrepancies, the Secretariat considered this to be a separate proposal from Indonesia, whereas Indonesia had indicated to us that they had submitted a letter indicating their intent to co-sponsor the U.S. proposal. No actual proposal, other than the letter, was submitted by Indonesia.

*Prop. 19.* Include the Malayan flat-shelled turtle (*Notochelys platynota*) in Appendix I (Indonesia). This proposal is the same as Prop. 18. See discussion in Prop. 17, above.

*Prop. 22.* Include the Fly River turtle (*Carettochelys insculpta*) in Appendix II (Indonesia). This proposal is the same as Prop. 21. See discussion in Prop. 17, above.

*Prop. 24.* Transfer of the Cuban population of the American crocodile (*Crocodylus acutus*) from Appendix I to Appendix II under the ranching provisions of Resolution Conf. 11.16 (Cuba). *Tentative U.S. negotiating position:* Support. Based on 10 years of monitoring, as well as other information demonstrating general compliance with the ranching resolution, the population appears to qualify for downlisting as proposed. The proposal is endorsed by the IUCN Crocodile Specialist Group. We note that under the United States Endangered Species Act, the American crocodile is listed as endangered. The historic practice under our stricter domestic measure is that the necessary findings to allow commercial imports into the United States have not been made, and pending any change in practice, the United States would not allow imports of skins or products originating from ranching populations.

*Prop. 25.* Transfer of the Namibian population of Nile crocodile (*Crocodylus niloticus*) from Appendix I to Appendix II (Namibia). *Tentative U.S. negotiating position:* Support with exceptions. The population of this species in Namibia is limited in distribution, because of the arid conditions in most of the country, but where it occurs the population is considered to be stable or increasing and not subject to significant harvest pressures or other factors. The proposed downlisting is purported to be primarily to allow trade in hunting trophies, with no other planned exports. The Namibian population of this species may be considered part of the metapopulation of neighboring countries, and their populations are already listed in

Appendix II. However, there are concerns that Namibia has not provided actual population information in the proposal, and the IUCN Crocodile Specialist Group has not provided an opinion on the proposal. Both of these may be forthcoming before or at the COP.

*Prop. 26.* Maintenance of the Zambian population of Nile crocodile (*Crocodylus niloticus*) in Appendix II, with an annual quota of 548 wild specimens (Zambia). *Tentative U.S. negotiating position:* Support. It is the U.S. interpretation of Resolution Conf. 11.16 that such a proposal from Zambia is not necessary, but only that they should consult with the Secretariat when they modify exports of wild-origin specimens from levels established in their original ranching proposal adopted by the Parties. It can be expected that, if a ranching program is successful and results in the improved status of the ranching population, a higher level of sustainable harvest may ultimately be achieved. It is known that one population, that of the Luangwa River, increased by 63% between 1996 and 2003.

*Prop. 27.* Include all species of leaf-tailed geckos (*Uroplatus* spp.) in Appendix II (Madagascar). *Tentative U.S. negotiating position:* Support. The proposal is to list *U. alluaudi* due to its restricted range and rarity, and the remaining species as look-alikes. U.S. trade data show that thousands have been imported in recent years. We also note that these species continue to be the subject of articles in reptile hobbyist magazines, which promote keeping them and state that they are available as wild-collected specimens.

*Prop. 28.* Include all species of leaf-nosed snakes (*Langaha* spp.) in Appendix II (Madagascar). *Tentative U.S. negotiating position:* Oppose. The proponent states that these species should be included in the Appendices as a precautionary measure, due to their rarity. Although two of the species (*L. alluaudi* and *L. pseudoalluaudi*) have restricted distributions and all species are found infrequently, the proponent clearly states and documents that trade in the species is very limited. None of the species is listed by the IUCN (2004). Given that this proposal lacks any scientific information on population status or trends, and that there is no evidence of a substantial number of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Madagascar wishes to regulate and monitor trade in this endemic species.

*Prop. 29.* Include a tree snake (*Lycodyras* [= *Stenophis*] *citrinus*) in

Appendix II (Madagascar). *Tentative U.S. negotiating position:* Oppose. Although *L. citrinus* appears to be restricted to two national parks and nearby areas, the proposal states that "in the wild, the animal is rather plentiful locally." Furthermore, the proponent clearly states and documents that trade in the species is very limited (4 exported in 2001, 15 in 2002, and 0 in 2003). The species is not listed by IUCN (2004). Given that this proposal lacks any scientific information to indicate that the species is significantly affected by trade, an Appendix III listing would be more appropriate if Madagascar wishes to regulate and monitor trade in this endemic species.

*Prop. 30.* Include the Mt. Kenya bush viper (*Atheris desaixi*) in Appendix II (Kenya). *Tentative U.S. negotiating position:* Oppose. This species is only found in Kenya. Despite a lack of any population surveys or monitoring, Kenya assumes the population is in decline due to habitat loss and increased removal of specimens for trade. The species is protected under Kenyan law. There has been illegal trade in the species, as evidenced by a confiscation of 27 specimens destined for the United States between 1999 and 2000. Although there are no data on the number of specimens in the global captive population, the proponent states that the number is presumed to be significant. This species is not listed by IUCN (2004). Given that this proposal lacks any scientific population status information and that there is no evidence of a substantial number of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Kenya wishes to regulate and monitor trade in this endemic species.

*Prop. 31.* Inclusion of Kenya horned viper (*Bitis worthingtoni*) in Appendix II (Kenya). *Tentative U.S. negotiating position:* Oppose. This species is endemic to Kenya. Despite the lack of any population surveys or monitoring, Kenya assumes the population is in decline due to habitat loss and increased removal of specimens for trade. The species is protected under Kenyan law. There has been illegal trade in the species, as evidenced by a confiscation of 37 specimens destined for the United States between 1999 and 2000. Germany reported 19 specimens illegally imported between May and October 1999. Although there are no data on the number of specimens in the global captive population, the proponent states that the number is presumed to be significant. This species is not listed by IUCN (2004). Given that this proposal lacks any scientific

population status information, and that there is no evidence of a large amount of specimens in legal or illegal trade, an Appendix III listing would be more appropriate if Kenya wishes to regulate and monitor trade in this endemic species.

*Prop. 32.* Inclusion of the great white shark (*Carcharodon carcharias*) in Appendix II with a zero quota (Australia, Madagascar). *Tentative U.S. negotiating position:* Support with exception. Australia and the United States unsuccessfully proposed this species for listing in Appendix I at COP11. In March 2004, the CITES Animals Committee evaluated an Australian proposal to list white sharks in Appendix I and determined that the species appeared to qualify for Appendix II. The current proposal provides substantial information about the species' decline in various parts of its range, and presents some compelling reasons to list the species in Appendix II. We are concerned that the zero quota contained in the proposal is more restrictive than an Appendix I listing and would bar any international movement in scientific research samples or other non-commercial, non-detrimental trade. We note that the Fisheries Department of the FAO convened a panel of fisheries experts in July 2004, in part to review this proposal. The panel could not ascertain the global status for the species, but indicated that some regional and national populations appeared threatened by unsustainable catches in recent years. Catches in other regions appeared sustainable, while the status of some populations remained uncertain. Given these results, the expected continued demand for white shark products, the species' vulnerability to overexploitation, and the international scope of trade in its parts, we support the adoption of the proposal with some modification to its zero quota.

*Prop. 34.* Deletion of the annotation "sensu D'Abrera" from the listings of *Ornithoptera* spp., *Trogonoptera* spp., and *Troides* spp. in Appendix II (Switzerland as Depository Government, at the request of the Nomenclature Committee). *Tentative U.S. negotiating position:* Support. This deletion would serve to bring this listing in line with the rules adopted by the Nomenclature Committee (*i.e.*, that the choice of nomenclatural standard is not part of the listing process, but is a decision made by the Nomenclature Committee) and would not affect the status of the listed butterflies. More information on this will be presented by the Nomenclature Committee, as part of its report, which is not yet available.

*Prop. 35.* Inclusion of the European date mussel (*Lithophaga lithophaga*) in Appendix II (Italy, Slovenia, on behalf of the Member States of the European Community). *Tentative U.S. negotiating position:* Support. Listing in Appendix II is proposed to help regulate international trade, document shifting international trade, prevent illegal trade, and promote sustainable harvest methods for the species that will help to conserve coastal limestone rock habitat. The proponents state that trade in the species is shifting from Western Mediterranean countries that limit or ban collection, utilization, and export of the species to northern and eastern European countries, where conservation of the species is limited. Discussions with the proponents indicate that illegal trade has increased, as evidenced by the confiscation of several tons of the species annually in Italy and Slovenia. Current harvest methods are considered unsustainable and destructive to the local habitat, and over-harvest is negatively affecting the population status of this late-maturing species.

*Prop. 36.* Amendment of the annotation to Helioporidae, Tubiporidae, Scleractinia, Milleporidae, and Stylasteridae to exempt fossils, and specifically coral rock, except for live rock (Switzerland as the Depository Government, at the request of the Animals Committee). *Tentative U.S. negotiating position:* Oppose. This proposal arose from discussions in the Animals Committee, which could not reach consensus on a scientific and geological definition of fossil corals. It instead endorsed a list of coral products that could be considered fossils, hoping to ease confusion among customs officers and law enforcement personnel about this issue. The list distinguishes "fossil" from "non-fossil" coral rocks by their shipping method, size, and presence or absence of attached invertebrate organisms. The intent of this list is to retain "live rock" (as defined by CITES) in Appendix II while excluding all other coral rock specimens as fossils. Although we originally agreed with the Animals Committee proposal in March 2004, we have since conferred with our law enforcement personnel on this issue. These discussions have raised serious concerns about the precedent, ecological risk, and enforceability of the proposed annotation. U.S. wildlife inspectors indicate that many shipments of coral "live rock" are already packed in ways that would characterize them as fossils and thus exempt them from CITES controls under the proposed definition. Furthermore, inspections of coral rock

shipments could become unacceptably burdensome and subjective if officials must decide whether the brief descriptions in the Swiss proposal apply to a given shipping method or a given type of commodity.

*Prop. 37.* Inclusion of *Hoodia* spp. in Appendix II (with an exemption for certain materials produced by proponent countries that will bear a label stating that export is in compliance with the requirements of the CITES Management Authority) (Submitted by Botswana, Namibia, South Africa). *Tentative U.S. negotiating position:* Oppose. *Hoodia* spp. is native to the proponent states, as well as Angola and possibly Zimbabwe. The proposal discusses the threat of over-harvest of wild populations in light of the recent increased popularity of *H. gordonii*, mainly in Europe and North America, due to its appetite-suppressing qualities in dietary supplements.

Despite legislation in the proponent countries to regulate the harvest and export of *Hoodia* spp., potential, although unquantified, illegal collection may threaten existing wild populations. Species are not clearly enumerated, nor are their ranges. The proposed exemption is problematic, and information from other range countries (*i.e.*, Angola and Zimbabwe) is lacking. If the purpose of the listing is to ensure legal control, then an Appendix III listing would be more appropriate.

*Prop. 38.* Annotate Euphorbiaceae in Appendix II to exempt artificially propagated specimens of *Euphorbia lactea* from CITES provisions if they are grafted on *Euphorbia neriifolia*, color mutants, or crested-branch forming or fan-shaped (Thailand). *Tentative U.S. negotiating position:* Support with exception. Although the United States agrees in principle with the proposal, as written, we are concerned that the proposal does not exempt the rootstock of *E. neriifolia* from CITES controls. Therefore, the rootstock of the grafted specimens proposed for exemption would still be regulated as an Appendix II species. We are unsure whether the term "color mutant" is adequately descriptive, which may lead to wild specimens traded under the exemption because the species is naturally dark green with whitish-green bands (variegated) along the midrib of the plant. Modifications are needed to improve this proposal before it is adopted. The proponent should revise the proposal before the Parties take a decision on it.

*Prop. 39.* Annotate Euphorbiaceae in Appendix II to exempt artificially propagated specimens of *Euphorbia milii* from CITES provisions if they are



traded in shipments of 100 or more specimens and are readily recognizable as artificially propagated specimens (Thailand). *Tentative U.S. negotiating position*: Oppose. The proponents state that the proposal is to exempt artificially propagated "poysean" cultivars of *Euphorbia milii*. However, the poysean is a hybrid of *Euphorbia milii* and *Euphorbia lophogona*, and should be referred to as *Euphorbia x lomi*. Both species and hybrid are popular ornamental plants. The species are endemic to Madagascar and have been reported to hybridize in the wild. Neither species is listed in the 1997 *IUCN Red List of Threatened Plants*. However, eight forms (varieties and subspecies) of *Euphorbia milii* have recently been assessed by IUCN as Vulnerable and two as Endangered.

We are concerned that the proponent did not include *Euphorbia lophogona* in the proposal, nor any information on trade in wild-collected specimens of these species and their wild forms, and the implications this exemption may have for enforcement and control of trade in wild specimens. Amending the proposal to include *Euphorbia lophogona* would expand the scope of this proposal. Therefore, the proponent should consider withdrawing the proposal to address these deficiencies and submit it to the next meeting of the Plants Committee for a more thorough review and discussion, and possible resubmission for consideration at COP14.

*Prop. 40.* Annotation of Orchidaceae in Appendix II to exempt all hybrids from the provisions of the Convention (Thailand). *Tentative U.S. negotiating position*: Oppose. This proposal was discussed at the PC14. The United States and other Parties advised Thailand at the time that this proposal was overly broad, could result in enforcement difficulties, and was premature given the lack of experience with the more limited exemption of *Phalaenopsis* adopted at COP12.

*Prop. 41.* Annotation of Orchidaceae in Appendix II to exempt hybrids of seven genera when they are in flower with at least one fully open flower, and when they are potted and labeled, and professionally processed for commercial retail sale. Exempt specimens must also exhibit the characteristics of artificially propagated plants (Switzerland). *Tentative U.S. negotiating position*: Support. This proposal was discussed at PC14, where the Parties advised that such a proposal could be considered at COP13 if identification materials were provided with the proposal so that they would be available before the exemption would go into effect. The proponent has

provided as an annex to the proposal extensive color images of the various types of hybrids that would be exempted. This proposal is similar to the original proposal submitted by the United States for COP12 (CoP12 Prop. 51) and includes most of the same genera, but includes a further requirement that the plants must be in flower, which would aid greatly in identification.

*Prop. 42.* Amendment of the current annotation of Orchidaceae in Appendix II so that shipments of *Phalaenopsis* hybrids may qualify for an exemption to the provisions of the Convention when shipments contain a minimum of 20 rather than 100 specimens per container, with the other requirements remaining unchanged (Switzerland as the Depository Government, at the request of the Plants Committee).

*Tentative U.S. negotiating position*: Support. At PC14 the United States reported that an informal survey of orchid importing and exporting countries, including the United States, had indicated that the annotation adopted at COP12 to exempt *Phalaenopsis* hybrids was not being applied, partly because the minimum number of plants per container, 100, was too high to be practical. It was agreed by the Plants Committee to have a proposal submitted to COP13 to reduce this number to 20, which is still a sufficient number to judge uniformity and consistency to evaluate whether the plants are artificially propagated.

*Prop. 43.* Transfer the Christmas orchid (*Cattleya trianaei*) from Appendix I to Appendix II (Colombia). *Tentative U.S. negotiating position*: Oppose. This orchid species was included in Appendix I in 1975; all other species of the genus *Cattleya* are listed in Appendix II. It is an epiphyte endemic to the Colombian Andes. In the late 19th and early 20th Centuries, the species was severely over-collected to near extinction. It is currently listed as Indeterminate (yet to be determined as Vulnerable or Endangered) in the 1997 *IUCN Red List of Threatened Plants*.

The information provided in the proposal appears to represent preliminary findings on the current status of the species, but indicates that the majority of historically documented subpopulations have not been studied. The proposal to transfer the species to Appendix II is based on presumptions that the species will recover, not that it has recovered, and also on the fact that current trade consists of artificially propagated specimens that are well regulated. No recent illegal trade has been documented. The proposal does not provide sufficient information about

the current status of the wild population to determine whether or not the species continues to meet the biological criteria for Appendix I, and therefore such a proposal seems premature.

*Prop. 44.* Transfer the blue vanda orchid (*Vanda coerulea*) from Appendix I to Appendix II (Thailand). *Tentative U.S. negotiating position*: Oppose. This orchid was severely depleted in portions of its range due to over-collection in the past, although, the proponent states that most range countries' populations are believed to have recovered and that export of wild-collected specimens is prohibited in all range countries by domestic legislation. The preferred specimens for trade in this species are artificially propagated specimens of select clones and hybrids, which are vastly superior in color and form to wild-collected specimens. This species is listed as Rare in the 1997 *IUCN Red List of Threatened Plants*, although currently the main threat to the species is forest conversion and not collection from the wild for international trade. There is still concern, however, that this species continues to be collected from the wild, particularly in India and Myanmar.

*Prop. 45.* Annotation of *Cistanche deserticola* to include all parts and derivatives except seeds, spores, and pollen; flaked seedlings and tissue cultures; and cut flowers from artificially propagated plants (China). *Tentative U.S. negotiating position*: Support. Since its inclusion in Appendix II at COP11, there has been confusion and problems with properly annotating the listing to ensure that the correct parts are regulated. This proposal is intended to correct this longstanding problem.

*Prop. 46.* Transfer *Dypsis decipiens* (syn. *Chrysalidocarpus decipiens*) from Appendix II to Appendix I (Madagascar). *Tentative U.S. negotiating position*: Support. In 1995, the wild population of this slow-growing endemic palm species was estimated at 200 individuals. Because seed was excluded from the 1975 Appendix II listing, unchecked trade in wild seed continues. The proponents believe that uplisting is necessary to save this species from extinction. Biologically, this species qualifies for inclusion in Appendix I, although seeds of this species cannot be readily distinguished from other palms. Still, listing in Appendix I may prove useful by requiring non-range countries to clearly demonstrate the origin of seed used to grow artificially propagated plants. This will be especially important if the recommended changes to Resolution Conf. 11.11 are adopted (see agenda



item 51), since plants grown from exempt parts (e.g., seeds) would be treated as artificially propagated. An alternative to the current proposal would be to annotate the current listing so that seeds are included and no longer exempt.

*Prop. 49.* Inclusion of *Aquilaria* spp. and *Gyrinops* spp. in Appendix II (except *A. malaccensis*, which is already listed) (Indonesia). *Tentative U.S. negotiating position:* Oppose. Immediately after listing of *A. malaccensis* Appendix II at COP9, the Parties recognized that several other genera in the family Thymelaeaceae (up to seven genera, all of which have species native to Indonesia) produce the resinous heartwood, known as agarwood, which is the commodity in trade. It is unclear why only two of these genera are included in this proposal and how the expansion of this listing (which does not propose including parts and derivatives) would improve the control of trade in agarwood. Trade in agarwood has been studied by the Plants Committee, which has not yet developed final recommendations for achieving sustainability in the harvest and trade of agarwood, or advised whether additional agarwood-producing species should be listed. Therefore, the proposal from Indonesia may be premature.

*Prop. 50.* Inclusion of ramin (*Gonystylus* spp.) in Appendix II with an annotation to include all parts and derivatives except seeds, spores, and pollen; flaked seedlings and tissue cultures; and cut flowers from artificially propagated plants (Indonesia). *Tentative U.S. negotiating position:* Undecided. The genus *Gonystylus* consists of 29–40 species of tropical hardwoods, the vast majority of which are found on Borneo. All species have declined throughout their ranges, with 15 species listed as vulnerable in the 1997 *IUCN Red List of Threatened Plants*. Of the six species known to be commercially valuable, *G. bancanus* is the dominant species traded as ramin wood. *Gonystylus bancanus* occurs in peat-swamp, lowland freshwater swamp, and coastal peat-swamp forests of Indonesia and Malaysia. The vast majority of ramin in trade is from Indonesia (Kalimantan) with smaller amounts from Malaysia (Sarawak and Sabah). However, most of the ramin stocks in Indonesia and Malaysia have been depleted over the last 30 years. At COP8 and COP9, the Netherlands proposed *Gonystylus bancanus* for listing in Appendix II, only to withdraw the proposals at those meetings. In 2001, Indonesia included all *Gonystylus* species in Appendix III with annotation

#1 (same annotation as this proposal), and subsequently prohibited the export of all ramin logs and saw timber. In 2002, Malaysia imposed a complete ban on the import of all ramin logs from Indonesia. Despite these measures, illegal logging of ramin for the international market still occurs in Indonesia and has resulted in deforestation in many of the country's national parks. We understand that Indonesia and Malaysia continue to negotiate over this proposal and which parts and products might be included if it is adopted. We are not certain of the position of other range countries, including Malaysia, on inclusion of these species in Appendix II and what such a listing might practically accomplish beyond the current Appendix III listing by Indonesia. We are consulting with the range countries, as well as experts and other importing countries to clarify that range of support for, and the anticipated effect of, this proposal.

61. Inclusion of species in Appendix III (Doc. 61; Switzerland, the Secretariat). *Tentative U.S. negotiating position:* Support. In 1994, the Parties adopted criteria for inclusion of species in Appendix III in Resolution Conf. 9.25 (Rev.), which was later amended at COP10. If a proposal to amend the Appendices I or II is adopted at COP13 that includes an annotation to exempt certain types of specimens (e.g., feces), this document then proposes to revise the criteria for inclusion of species in Appendix III to include the same annotation unless otherwise noted by the listing Party. Additionally, this document calls for the repeal of Resolution Conf. 1.5 (Rev. COP12) since a species cannot be included in more than one Appendix. The United States supports the view that general exemptions that apply to species included in Appendices I and II also apply to species included in Appendix III. The United States also supports repealing Resolution Conf 1.5, since a species cannot be included in more than one Appendix.

#### Other Themes and Issues

##### 62. Bushmeat:

62.1 Bushmeat Working Group (Doc. 62.1). *Tentative U.S. negotiating position:* Support the adoption of the draft resolution but oppose the adoption of the two draft decisions. This document reports on the progress of the Working Group since its establishment at COP11. It contains a draft resolution that incorporates the lessons learned to date and identifies issues the Group believes must be addressed in order to regulate bushmeat in a sustainable

manner and combat illegal trade. The document also contains two draft decisions. The first draft decision encourages the Working Group, which it suggests be renamed the Central African Bushmeat Working Group, to continue its work and report to the Secretariat on its progress. The second draft decision encourages governments and other donors to support the implementation of national action/management plans and the development of a database of information on trade in bushmeat. Because bushmeat continues to be traded internationally, both regionally and on a larger scale, the United States believes that it is appropriate that the issue remain a focus within CITES and supports the adoption of the draft resolution. We recommend that the draft resolution also include a recommendation that the Working Group report to the COP as appropriate on its progress. We do not support the adoption of the first draft decision because we believe that the Working Group should retain its present name in order to encourage other regions facing similar issues to become involved in this work. Also, we believe that the reporting recommendation should be included in the draft resolution. We believe that the recommendations included in the second draft decision are more fully addressed in the draft decision included in document COP13 Doc. 62.2.

62.2 Bushmeat (Doc. 62.2; Ireland). *Tentative U.S. negotiating position:* Support. Recognizing that bushmeat trade is largely restricted to domestic markets and many of the species involved are not listed under CITES, Ireland believes that more needs to be done to encourage other international organizations to provide assistance in regulating the trade in bushmeat. The draft decision contained in the document directs the Secretariat to encourage increased involvement of the Parties to the Convention on Biological Diversity (CBD), through the Secretariat of the CBD, and the FAO in this issue. It further calls on the FAO to convene a workshop of international organizations, subject to sufficient funding, to facilitate the development of an action plan to address the problems underlying the unsustainable trade in bushmeat.

#### Conclusion of the Meeting

63. Determination of the time and venue of the next regular meeting of the Conference of the Parties (No document). *Tentative U.S. negotiating position:* Support. The Secretariat does not normally circulate a document on the time and venue of the next COP. We

anticipate receiving information on this at COP13, at which time the United States will develop a negotiating position. The United States favors holding COP14 in a country where all Parties and observers will be admitted without political difficulties.

64. Closing remarks (No document):

#### Future Actions

During our regular public briefings at COP13, we will discuss any changes in our negotiating positions. After COP13, we will host a public meeting to (*see ADDRESSES*, Public Meeting, above) to announce results of COP13 and invite public input on whether the United States should take a reservation on any of the amendments adopted to the CITES Appendices. While CITES provides a period of 90 days from the close of a COP for any Party to enter a reservation with respect to an amendment to Appendices I or II, the United States has never entered a reservation on any CITES listing. As discussed in the **Federal Register** notice of November 17, 1987 (52 FR 43924), entering a reservation would do very little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted CITES, and has not taken a reservation with regard to the species, part, or derivative, the United States would continue to require CITES documents as a condition of import. A reservation by the United States also would provide exporters in this country with little relief from the need for the U.S. export documents. Receiving countries that are party to CITES will require CITES-equivalent documentation from the United States even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving countries) only if they issue documents containing all of the information required in CITES permits and certificates.

**Authority:** This **Federal Register** notice has been published under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 17, 2004.

**Marshall P. Jones, Jr.,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 04-21780 Filed 9-28-04; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-910-0777-XP-241A]

#### State of Arizona Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Arizona Resource Advisory Council Meeting notice.

**SUMMARY:** This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on October 27, 2004, at the Crowne Plaza located at 2532 W. Peoria Avenue, Phoenix, Arizona. It will begin at 9 a.m. and conclude at 4 p.m. The agenda items to be covered include: Review of the August 18, 2004, meeting minutes; BLM State Director's update on statewide issues; new RAC member orientation; presentations on Mineral Split-Estate, Service First, and Draft Report to Congress on Section 321 of the Defense Authorization Act; and Arizona land use planning updates; RAC questions on written reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; reports from RAC members; and discussion of future meetings. A public comment period will be provided at 11:30 a.m. on October 27, 2004, for any interested publics who wish to address the Council.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215.

**Joanie Losacco,**

*Acting Arizona State Director.*

[FR Doc. 04-21822 Filed 9-28-04; 8:45 am]

**BILLING CODE 4310-32-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-930-1430-ET; Nev-045154; 4-08807]

#### Public Land Order No. 7617; Partial Revocation of Public Land Order No. 2307; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes Public Land Order No. 2307 insofar as

it affects approximately 19 acres of land withdrawn for use by the Department of the Air Force in Nye County, Nevada. This order opens the land to surface entry, mining, mineral leasing, and mineral material disposals.

**DATES:** October 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Wendy Seley, BLM Tonopah Field Station, P.O. Box 911, 1553 South Main, Tonopah, Nevada 89049, (775) 482-7800.

**SUPPLEMENTARY INFORMATION:** On March 21, 1961, Public Land Order No. 2307 withdrew three parcels of land which included a Department of the Air Force radar site. The radar site is no longer needed and has been relinquished by the Air Force.

#### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 2307, which withdrew public land for use by the Department of the Air Force for the Beatty Range Radar Site, is hereby revoked insofar as it affects the following described land:

#### Mount Diablo Meridian

T. 10 S., R. 46 E.,

Sec. 9, unsurveyed. Commencing for reference at a point on a high peak whose approximate geographical location is latitude 37°05' and longitude 116°49' thence south 466.69 feet to the point of beginning; thence West, 466.69 feet; North, 933.38 feet; East, 933.38 feet; South, 933.38 feet; West, 466.69 feet to the point of beginning.

The tract described contains approximately 19 acres in Nye County.

2. At 9 a.m. on October 29, 2004, the land described in paragraph 1, will be opened to the operation of the public land laws generally, the operation of the mineral leasing laws, and the mineral material laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 29, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 29, 2004, the land described in paragraph 1, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of