

Ornamental fish species listed on CITES App. III

Several South American freshwater fish species go on CITES app. III with effect from 3 January 2017.

In a notification issued on 5 October 2017, the CITES Secretariat informs that in accordance with the provisions of Article XVI, paragraph 1, of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Brazil and Colombia have requested the Secretariat to include several species of freshwater fish in CITES Appendix III.

The listings, which, in accordance with the provisions, are done unilaterally by the two countries (and thus does not follow the more elaborate listing procedures demanded for appendices I and II), will take effect as of 3 January 2017. After this date, no international trade in the listed species will be allowed without export permits (applies to export from Brazil and Colombia, respectively) or certificates of origin (applies to all other countries).

The species listed

The species that now will go under CITES regulation are:

From Brazil:

- *Hypancistrus zebra* (Loricariidae; Siluriformes), Zebra pleco / L46
- *Potamotrygon* spp. (Potamotrygonidae; Myliobatiformes), Freshwater stingrays - all Brazilian populations

From Colombia:

- *Potamotrygon constellate*
- *P. magdalenae*
- *P. motoro*
- *P. orbigny*
- *P. schroederi*
- *P. scobina*
- *P. yepezi*
- *Paratrygon aiereba*

All 8 species are Freshwater stingrays (Potamotrygonidae; Myliobatiformes).

First pet-/ornamental fish species on Appendix III

The listings come as no surprise, since various CITES entities, including workshops, Animals Committee meetings and Conferences of the Parties, have recommended Parties to list freshwater stingray species of concerns on app. III for many years. This is specifically to get better and more relevant trade data for the species, making a future appendix II listing possible, if the data obtained shows this to be desirable.

Brazil also announced a few years back that they intended to use app. III to control the trade in other freshwater fish species. The listing of *Hypancistrus zebra* can be seen as a first move, possibly a test case.

There have already been two failed attempts to list freshwater stingrays on appendix II, and both Brazil and Colombia announced at the CoP17 earlier this year that they were ready to list stingrays on app. III. Bolivia also announced that they will list *Potamotrygon motoro*, after their failed attempt to get it on app. II, but this has not yet happened.

The newly listed species and genus are the very first pet- or ornamental fish species to be listed on appendix III, and we do, thus, not have practical experience with how it will work for our industry. In fact, most other species that have been listed on this appendix, in the past, occur rarely or not at all in international trade, so there is limited trade experience with the appendix at all.

Any recommendations below are, therefore, given based more on theoretical knowledge of the provisions of the CITES convention, than on practical experience on how it might work out. ***OFI and the author takes no legal responsibility for the effects of following the recommendations given in this document.***

What is Appendix III?

Chapter 8 of the CITES Convention, article II, paragraph 3, states:

“Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.”

Any Party to the Convention (i.e. member country) have a right to unilaterally list species in Appendix III, if the country considers that it needs the cooperation of other Parties in controlling the trade. If a species has a natural distribution that covers several countries, the listing may not necessarily need to cover all range states.

This is the case with the current listings of freshwater stingrays, where only populations in Brazil and Colombia, respectively, are covered.

For species that are endemic to the country that lists the species, as is the case with several Brazilian endemic stingrays, the listing will of course cover all populations.

A Party listing any species in app. III should have in place *“national regulations [that] are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation”* (Resolution Conf. 9.25 (Rev. CoP15)).

The country(-ies) listing the species have to issue **export permits**, while all other range states issue **certificates of origin** to indicate to the importing country that no export permit is required. It has been argued that this creates loopholes that undermine the purpose of the listing, but for the time being this continues to be the demand.

How is trade managed?

All trade in specimens of species included in Appendix III must be in accordance with the Convention's Chapter 12, article V. The following demands are placed on the Export- and Import country respectively:

The Export country:

“The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the **prior grant and presentation of an export permit**. An export permit shall only be granted when the following conditions have been met:*

a) Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

b) Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment” (Article V, paragraph 2).

*) In the current case, this means Brazil and Colombia, respectively. Other range states are not covered.

There is, as per the convention text, no demand that the State of export carries out a non-detriment finding before issuing export permits, but it remains to be seen whether import countries (who are allowed to take stricter measures) will accept import if non-detriment studies have not been carried out.

The Import country:

*“The import of any specimen of a species included in Appendix III shall require ... the prior presentation of a **certificate of origin** and, where the import is from a State which has included that species in Appendix III, an **export permit**” (Article V, paragraph 3).*

Wijnstekers (2011) explains this further:

“The export of Appendix-III specimens from other countries than those having listed the species is thus not subject to CITES border controls. Such controls, however, take place at the time of import, whereby **it is necessary for the importing country to be able to establish the origin of specimens of such species**.*

*Article V provides for no less than four different documents for that purpose, one of which is an export permit similar to that to be presented at the export and import of Appendix-I and —II specimens. Such **an export permit is only required if the export is from the country having included the species in Appendix III**.*

*If the specimen is exported **from another country, a certificate of origin is required** and in the case of re-export, either a certificate that the specimen was processed***

or a certificate that it is being re-exported (i.e. a re-export certificate). The latter three documents only have to be presented at the time of import.”

*) In the current case, this means all other countries than Brazil and Colombia, respectively.

***) Most probably this will also apply for captive breeding in the export country.

Certificates of origin

Exporters in all other countries than Brazil and Colombia, respectively), will need to include certificates of origin for all specimens of the species now listed.

Resolution Conf. 12.3 (Rev. CoP15) covers the demands for such certificates and recommends, in cases of export from range countries (which in the case of the freshwater stingrays, would be several other South American countries), that:

*“a) certificates of origin for export of specimens of species listed in Appendix III **only be issued by a designated Management Authority** or by the competent authority if trade is from a State not a Party to the Convention, and that Parties not accept certificates of origin unless they are issued by such authorities;*

b) the provisions of Article V, paragraph 3, be understood to mean that a certificate of origin shall be valid for a period of not more than 12 months from the date on which it was granted, and that it may not be accepted to authorize export or import except during the period of validity; and

c) after the expiry of the said 12-month period of validity, a certificate of origin be considered as void and of no legal value whatsoever.”

Processing (which we assume will include captive breeding, even though we cannot find that this is specifically stated anywhere in the Convention, nor in Resolutions) and re-export is covered by Article V, paragraph 4, that states:

“In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.”*

*) Or captive bred, most probably.

What should breeders do?

OFI strongly recommends that all captive breeders of species now covered by CITES app. III, as soon as possible and definitely before the listing takes effect (3 January 2017), contact the CITES Management Authority in their respective countries, to have their breeding operation and breeding stock registered.

In addition, documents showing the legal acquisition of the breeding stock prior to the CITES listing must, as far as possible, be secured. While it may not be demanded yet,

depending on the policies of the respective Export country, it might become necessary in the future.

EU regulations

EU has a practice of putting in place stricter measures for CITES than what is demanded by the Convention. It is too early to say whether that could become a reality here, and we therefore advice caution with the interpretation of the following information.

For the time being, though, we assume that the EU will place all the here relevant species under Annex C of Regulation (EC) No 338/97. This would mean that, for import from all other Export countries than Brazil and Colombia, respectively, an **import notification** is required. An import notification is a declaration filled in by the importer and to be submitted together with the certificates of origin from the exporting country, to the customs office of introduction into the Community.

Export from Brazil and Colombia is likely to be handled in accordance with the Annex B demands, thus requiring an **import permit**, to be applied for at the competent authorities in the Members State.

In order to avoid problems with import, we advise all potential importers within the EU to **check with their respective CITES authorities** before proceeding with any import of the listed species.

What will happen with exports from Brazil and Colombia?

There is reason to believe that both Brazil and Colombia will continue with their current practice of issuing export quotas for some of the species now on app. III. For those species, trade is likely to continue as before the listing, but now with the added demand of CITES export permits, and - for the EU – possibly import permits.

For species in which there has been no legal export, there is hope that the listing in appendix III will effectively block the illegal export and trade.

References

CITES, 2016: *Notification to the Parties, No. 2016/056*. <https://cites.org/sites/default/files/notif/E-Notif-2016-056.pdf>

Wijnstekers, W. 2011: *The Evolution of CITES - 9th edition*. International Council for Game and Wildlife Conservation. 938 pp.
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