# Commission Regulation (EC) No 407/2009 of 14 May 2009 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

## COMMISSION REGULATION (EC) No 407/2009

## of 14 May 2009

## amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein[(1)], and in particular Article 19(3) thereof,

Whereas:

(1) Regulation (EC) No 338/97 lists animal and plant species in respect of which trade is restricted or controlled. Those lists incorporate the lists set out in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter 'the CITES Convention'.

(2) The following species have been added to Appendix III to the CITES Convention at the request of China: *Corallium elatius*, *Corallium japonicum*, *Corallium konjoi* and *Corallium secundum*.

(3) The species *Crax daubentoni, Crax globulosa, Crax rubra, Ortalis vetula, Pauxi pauxi, Penelopina nigra, Arborophila campbelli, Arborophila charltonii, Lophura erythrophthalma, Lophura ignita, Semnornis ramphastinus, Baillonius bailloni, Pteroglossus castanotis, Ramphastos dicolorus* and *Selenidera maculirostris* – which are currently included in Annex B to the Annex to Regulation (EC) No 338/97 – are not subject to levels of international trade that might be incompatible with its survival but are included in Appendix III to the CITES Convention at the requests of Colombia, Costa Rica, Guatemala, Honduras, Malaysia and Argentina, and should therefore be transferred from Annex B to Annex C to the Annex to Regulation (EC) No 338/97.

(4) The species *Phyllomedusa sauvagii, Leptodactylus laticeps, Limnonectes macrodon, Rana shqiperica, Ranodon sibiricus, Bolitoglossa dofleini, Cynops ensicauda, Echinotriton andersoni, Pachytriton labiatus, Paramesotriton* spp., *Salamandra algira* and *Tylototriton* spp. – which are currently not listed in the Annex to Regulation (EC) No 338/97 – are being imported into the Community in such numbers as to warrant monitoring. Those species should therefore be included in Annex D to the Annex to Regulation (EC) No 338/97.

(5) At the 14th Conference of the Parties to CITES in June 2007 new nomenclatural references for animals were adopted. Some inconsistencies between the CITES

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Regulation (EC) No 407/2009. (See end of Document for details)*

Appendices and the scientific names in those nomenclatural references as regards the species *Asarcornis scutulata* and *Pezoporus occidentalis*, the families Rheobatrachidae and Phasianidae as well as the order Scandentia were discovered. Since those inconsistencies also appear in the Annex to Regulation (EC) No 338/97, it should be adapted accordingly.

(6) In view of the extent of the amendments it is appropriate, for clarity purposes, to replace the Annex to Regulation (EC) No 338/97 in its entirety.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Trade in Wild Fauna and Flora established pursuant to Article 18 of Regulation (EC) No 338/97,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EC) No 338/97 is replaced by the text in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

ANNEX

**Notes on interpretation of Annexes A, B, C and D**

1.

Species included in these Annexes A, B, C and D are referred to:

(a) by the name of the species; or

(b) as being all of the species included in a higher taxon or designated part thereof.

2.

The abbreviation “spp.” is used to denote all species of a higher taxon.

3.

Other references to taxa higher than species are for the purposes of information or classification only.

4.

Species printed in bold in Annex A are listed there in consistency with their protection as provided for by Council Directive 79/409/EEC (“Birds Directive”) or Council Directive 92/43/EEC (“Habitats Directive”).

5.

The following abbreviations are used for plant taxa below the level of species:

(a) “ssp.” is used to denote subspecies;

(b) “var(s).” is used to denote variety (varieties); and

(c) “fa” is used to denote forma.

6.

The symbols “(I)”, “(II)” and “(III)” placed against the name of a species or higher taxon refer to the Appendices of the Convention in which the species concerned are listed as indicated in notes 7 to 9. Where none of these annotations appears, the species concerned are not listed in the Appendices to the Convention.

7.

(I) against the name of a species or higher taxon indicates that the species or higher taxon concerned is included in Appendix I to the Convention.

8.

(II) against the name of a species or higher taxon indicates that the species or higher taxon concerned is included in Appendix II to the Convention.

9.

(III) against the name of a species or higher taxon indicates that it is included in Appendix III to the Convention. In this case the country with respect to which the species or higher taxon is included in Appendix III is also indicated.

10.

Hybrids may be specifically included in the Appendices but only if they form distinct and stable populations in the wild. Hybrid animals that have in their previous four generations of the lineage one or more specimens of species included in Annexes A or B shall be subject to the provisions of this Regulation just as if they were full species, even if the hybrid concerned is not specifically included in the Annexes.

11.

When a species is included in Annex A, B or C, all parts and derivatives of the species are also included in the same Annex unless the species is annotated to indicate that only specific parts and derivatives are included. In accordance with Article 2(t) of this Regulation, the symbol "#" followed by a number placed against the name of a species or higher taxon included in Annex B or C designates parts or derivatives which are specified in relation thereto for the purposes of the Regulation as follows:

#1 Designates all parts and derivatives, except:

(a) seeds, spores and pollen (including pollinia);

(b) seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers;

(c) cut flowers of artificially propagated plants; and

(d) fruits and parts and derivatives thereof of artificially propagated plants of the genus *Vanilla*.

#2 Designates all parts and derivations, except:

(a) seeds and pollen; and

(b) finished products packaged and ready for retail trade.

#3 Designates whole and sliced roots and parts of roots.

#4 Designates all parts and derivatives, except:

(a) seeds, except those from Mexican cacti originating in Mexico, and pollen;

(b) seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers;

(c) cut flowers of artificially propagated plants;

(d) fruits and parts and derivatives thereof of naturalised or artificially propagated plants; and

(e) separate stem joints (pads) and parts and derivatives thereof of naturalised or artifically propagated plants of the genus *Opuntia* subgenus *Opuntia*.

#5 Designates logs, sawn wood and veneer sheets.

#6 Designates logs, sawn wood, veneer sheets and plywood.

#7 Designates logs, wood-chips, powder and extracts.

| | |
|---|---|
| #8 | Designates underground parts (i.e. roots, rhizomes): whole, parts and powdered. |
| #9 | Designates all parts and derivatives, except those bearing a label "Produced from *Hoodia* spp. material obtained through controlled harvesting and production in collaboration with the CITES Management Authorities of Botswana/Namibia/South Africa under agreement No BW/NA/ZA xxxxxx" |
| #10 | Designates logs, sawn wood, veneer sheets, including unfinished wood articles used for the fabrication of bows for stringed musical instruments. |
| #11 | Designates logs, sawn wood, veneer sheets, plywood, powder and extracts |

12.

As none of the species or higher taxa of FLORA included in Annex A is annotated to the effect that its hybrids shall be treated in accordance with the provisions of Article 4.1 of the Regulation, this means that artificially propagated hybrids produced from one or more of these species or taxa may be traded with a certificate of artificial propagation, and that seeds and pollen (including pollinia), cut flowers, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers of these hybrids are not subject to the provisions of the Regulation.

13.

Urine, faeces and ambergris which are waste products and gained without the manipulation of the animal concerned are not subject to the provisions of the Regulation.

14.

In respect of fauna species listed in Annex D, the provisions shall apply only to live specimens and whole, or substantially whole, dead specimens except for taxa which are annotated as follows to show that other parts and derivatives are also covered:

| | |
|---|---|
| § 1 | Any whole, or substantially whole, skins, raw or tanned. |
| § 2 | Any feathers or any skin or other part with feathers on it. |

15.

In respect of flora species listed in Annex D, the provisions shall apply only to live specimens except for taxa which are annotated as follows to show that other parts and derivatives are also covered:

| | |
|---|---|
| § 3 | Dried and fresh plants, including, where appropriate; leaves, roots/ rootstock, stems, seeds/spores, bark and fruits. |
| § 4 | Logs, sawn wood and veneer sheets |

| | ***Annex A*** | ***Annex B*** | ***Annex C*** | ***Common name*** |
|---|---|---|---|---|
| FAUNA | | | | |
| **CHORDATA (CHORDATES)** | | | | |
| ***MAMMALIA*** | | | | Mammals |
| ***ARTIODACTYLA*** | | | | |
| **Antilocapridae** | | | | **Pronghorn** |
| | *Antilocapra americana* (I) (Only the | | | Mexican pronghorn |