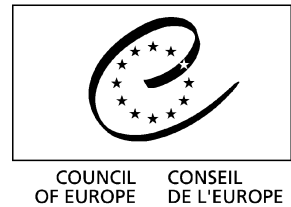


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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS

Standing Committee

20th meeting
Strasbourg, 27 November - 1 December 2000

POSSIBLE NEW FILE

Exploitation and commerce of *Lithophaga lithophaga* in Spain

*Secretariat Memorandum
prepared by
the Directorate of Sustainable Development*

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The Standing Committee is invited to consider whether a file should be opened on Spain concerning lack of effective protection of the species *Lithophaga lithophaga* (Appendix II).

Possible new file

Exploitation and commerce of *Lithophaga lithophaga*

The purpose of the «files» is to find a satisfactory solution to problems encountered in implementating the Convention and to monitor as effectively as possible the means chosen to resolve them.

I. Introduction

In an electronic message of 18th December 1999, Mr Ramón Alvarez Halcón, a Spanish malacologist, informed the Secretariat that the species *Lithophaga lithophaga* (a mollusc listed in Appendix II to the Convention) was subject to exploitation and commerce in Spain, its capture being regulated by the Spanish Ministry of Agriculture, Fisheries and Food, in apparent ignorance of its protected status. Mr Alvarez Halcón provided the Secretariat in the following months a most abundant information on the issue. In connection with the Spanish Society of Malacology, he agreed that it was this society that would present the complaint on this issue.

On 5th January 2000, the Secretariat wrote to the Ministry of Environment of Spain requesting information on the issue. On 27th April, an informal contact with the Ministry informed the secretariat that the necessary coordination was being searched with the Ministry of Agriculture, Fisheries and Food and a small study on the issue was being planned.

The Ministry of Environment replied on 23rd August 2000, informing the Secretariat that it was conducting a research report aimed to formulate concrete proposals for the conservation of the species, which is widely exploited in parts of Spain.

The report proposes to give full protection status to the species by including it in the National Catalogue of Threatened Species, to urge Regional Government to prohibit the capture of the species and to take other research and awareness measures.

II. The facts and arguments submitted

Lithophaga lithophaga is a marine bivalve mollusc species which belongs to the Mytilidae family. Its habitat are the inner calcareous rocks of the Mediterranean coasts; being a high ecological element within the rocky marine ecosystem. Its capture implies the direct and irreversible destruction of its habitat. Some of its populations have been reduced in a great extend during these last years due to a demand of this product (as sea fruit) and due to the use of pneumatical hammers and other damaging percussion methods, including in some cases the use of explosives.

L. lithophaga was included in the Appendix II of the Bern Convention – “Strictly protected fauna species” in Mediterranean sea populations – by an amendment that entered in force on the 6th of March 1998. Spain ratified the Bern Convention in 1986 (BOE n°235, 1/10/1986) and no objection was submitted to the amendment on *L. lithophaga*.

L. lithophaga is specifically and strictly protected by international law according to its inclusion in the following catalogues:

- Appendix II of the Bern Convention (mentioned above);
- Appendix IV of the HABITAT Directive (Directive 92/43/CEE) “Fauna and flora species of Communitarian interest that require a strict protection”;
- Appendix II “List of endangered or threatened species” of the Barcelona Convention (Barcelona, 10th of June 1995).

The general protection of wild species in Spain is regulated by the Natural Areas Conservation Law 4/1989, 12th of March. In its article 26.4 it states that it is prohibited to intentionally kill, damage, or disturb wild animals, specially those included in any of the categories listed in the “Endangered Species Catalogue”. It also prohibits the “in vivo” capture of any of these species and the possession, trade or commerce of the individuals (alive or dead) or its parts. The no observance of this law is typified as offence against fauna in article n°334 of the Penal Code.

The Spanish Ministry for the Environment has not yet included *L. lithophaga* in the “National Catalogue of Endangered Species”, which would be the most effective way of protecting this specie.

On the other hand the European Community, in its Regulation (CE) n°1626/94, 27th of June, established some technical measures in order to promote the conservation of the fishing resources in the Mediterranean sea. In this article 2.2 it specifically prohibits the use of pneumatical hammers or other percussion methods to collect *litophags*. The capture of *L. lithophaga* using any of these methods is typified as offence against fauna in the article n°336 of the Penal Code.

Additional laws that specifically prohibit the fishing of this specie are:

- Law 9/1998, 15th of December, on Sea Fishing in the Valencia Community (BOE n°18, of 21/1/1999);
- Enactment 109/1995, 24th of March, on the Regulation of Recreational Sea Fishing in Catalonia (DOGC n° 2040, 21st of April 1995);
- Order of 26th of February 1999 of the Ministry for Agriculture, Fishing and Food.

The non-complying of these legislation implies a grave no observance of the Law 14/1998, 1st of June, which establishes the regime of control of the fishing resources.

Paradoxically, the Ministry for Agriculture, Fishing and Food advertises *L. lithophaga* production areas, expressly authorised in the Autonomic Communities of Catalonia and Balearic Islands (BOE n° 125, 26th of May 1999), without mentioning the strict prohibition of its fishing and trade, and likewise, without mention of the few cases where there could be an exception to this prohibition according to the present environment legislation.

III. Application of the Convention

Article 6 of the Convention provides that:

“Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:

- a. *all forms of deliberate capture and keeping and deliberate killing;*
- b. *the deliberate damage to or destruction of breeding or resting sites;*

[...]

[...]

- e. *the possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognisable part or derivative thereof, where this would contribute to the effectiveness of the provisions of this article.*

Other texts:

Recommendation 56 (1997) of the Standing Committee “concerning guidelines to be taken into account while making proposals for amendment of Appendix I and II of the Convention and while adopting amendments” mentions *Lithophaga lithophaga*.

Such text recommends to take into account the ecological role of species, in particular where the species risk to become threatened by exploitation “like the mollusc *Lithophaga lithophaga*”.

Thus the reason for including such species in Appendix II was to protect it from abusive exploitation by conferring it a fully protected status.