

PROPOSALS TO AMEND THE CODE

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(234–241) Some proposals to resolve problems relating to the conservation or rejection of names, suppression of works, and binding decisions

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DOI <http://dx.doi.org/10.12705/653.26>

In the course of work compiling the Appendices to the *Melbourne Code* (Wiersema & al. in *Regnum Veg.* 157. 2015) and in the editing of conservation/rejection proposals and requests for binding decisions for publication in *Taxon*, some previously overlooked issues have come to light that these proposals to amend the *ICN* (McNeill & al. in *Regnum Veg.* 154. 2012) seek to resolve.

Conservation of a replaced synonym together with its replacement name

Article 14.1 was modified in Melbourne as a result of Proposal 243 (Perry in *Taxon* 59: 1915–1916. 2010) to permit “the conservation of the name of an infraspecific taxon and of a subdivision of a genus when that name is the basionym of the name of a species or genus proposed for conservation.” The additional Proposal 245 by Perry (l.c.), also accepted in Melbourne, stipulated that “each of those names listed in Appendix III and Appendix IV of the *Vienna*

Code as being the basionym of a conserved name with a conserved type, is to be treated as conserved on the same date and with the same type as the conserved name under which it is cited.” This was implemented in these Appendices in the manner suggested by Perry in her proposal, as seen in this entry, to indicate that both names are conserved:

Stipa robusta (Vasey) Scribn. in U.S.D.A. Bull. (1895–1901) 5: 23. 19 Feb 1897 ≡ *S. viridula* var. *robusta* Vasey in Contr. U.S. Natl. Herb. 1: 56. 13 Jun 1890 [Angiosp.: Gram. / Gram.]. Typus: U.S.A., New Mexico, 1881, Vasey (US No. 993051) (typ. cons.).

But Perry’s proposals do not take into account the fact that there is at least one entry in App. IV, with a type explicitly conserved, where the infraspecific taxon listed is a replaced synonym, not a basionym:

Cenomyce stellaris Opiz, Böh. Phan. Crypt. Gew.: 141. 1823 (*Lichen rangiferinus* var. *alpestris* L., Sp. Pl.: 1153. 1 Mai 1753). Typus: Herb. Dillenius No. 107.29E, right-hand side specimen (OXF) (typ. cons.).

Despite the fact that it was the intent of the original proposal (Ahti & DePriest in Taxon 54: 185. 2005) to conserve the type of both names, the *ICN* does not currently provide for this, as the infraspecific name is not a basionym but a replaced synonym. This means that the replaced synonym is to be typified in its own right, i.e. by a specimen belonging not to *Cenomyce stellaris* but to *Cladonia evansii* Abbayes (1939), with the result that *Cladonia alpestris* (L.) Rabenh. (1887) threatens to displace the currently accepted name *Cladonia evansii*. To ensure that the types of both names are conserved and they remain homotypic, and thus to obviate the need for a proposal to preserve usage of *C. evansii*, the following amendment to Art 14.1 is proposed:

(234) Amend the last sentence of Art. 14.1 as follows (new text in bold):

“14.1. [...] The name of a subdivision of a genus or of an infraspecific taxon may be conserved with a conserved type and listed in App. III and IV, respectively, when it is the basionym or **replaced synonym** of a name of a genus or species that could not continue to be used in its current sense without conservation.”

Status of combinations and replacement names based on a conserved name

In the course of compiling the entries for Appendix IV of the *Melbourne Code* (Wiersema & al., l.c.), we evaluated the status of the 127 combinations, 68 of these newly added, currently listed in this Appendix and cross-referenced to their conserved basionyms or replaced synonyms. In most cases, the reason to conserve the latter was a threat to the listed combinations. As is customary, in order to maintain the usage of a name, it was its basionym or replaced synonym, if it had one, that was proposed for conservation. Conservation of a basionym or replaced synonym confers certain attributes to the names or combinations based on it. For example, under Art. 7.3 and 7.4 the type of a conserved basionym or replaced synonym will also be the type of any name based on it, and under Art. 61.4 a conserved spelling of a basionym will also apply to names or combinations based on it. Likewise, the latter are protected against names or combinations based on a rejected name by Art. 14.7: “A rejected

name, or a combination based on a rejected name, may not be restored for a taxon that includes the type of the corresponding conserved name.” This does not mean that the conserved name must always provide the final epithet for such a taxon. When a combination with a conserved basionym is a later homonym, it is not protected by Art. 14.10: “A conserved name, with any corresponding autonym, is conserved against all earlier homonyms.” This is actually a desirable outcome: blanket conservation of any combination based on a conserved basionym against earlier homonyms might often have undesirable consequences. It was therefore necessary to separately conserve *Asterophora lycoperdoides* (Bull.) Ditmar (1809), nom. cons., based on *Agaricus lycoperdoides* Bull., nom. cons., against *Asterophora lycoperdoides* Fr. (1817), nom. rej., although this need was confused in the original proposal.

Article 14.1 states that “conserved names are legitimate even though initially they may have been illegitimate”, but, as already noted, in virtually all cases only a basionym has been proposed and approved for conservation, not the combinations based on it. This becomes even more problematic when one considers the impact of the second sentence of Art. 6.4: “A name that according to this *Code* was illegitimate when published cannot become legitimate later unless Art. 18.3 or 19.6 so provide or unless it is conserved or sanctioned.” The two mentioned Articles relate to names at the rank of family or below, and the species names under consideration (combinations with a conserved basionym) have generally not themselves been proposed for conservation, so any superfluous combinations that might have been illegitimate prior to conservation of what is now their basionym would remain so. An investigation into the cross-referenced combinations in App. IV has revealed several that, although the purpose of conservation of their once-illegitimate basionyms was to stabilize their nomenclature, remain illegitimate despite assumptions to the contrary. Among these are the alga *Porphyra purpurea* (Roth) C. Agardh; the fungi *Cladonia bacillaris* (Ach.) Genth, *Milospium graphideorum* (Nyl.) D. Hawksw., and *Teloschistes flavicans* (Sw.) Norman; the bryophytes *Brachythecium salebrosum* (Hoffm. ex F. Weber & D. Mohr) Schimp. and *Tritomaria exsecta* (Schmidel) Loeske; the spermatophytes *Dillenia suffruticosa* (Griff. ex Hook. f. & Thomson) Martelli, *Olgaea thomsonii* (Hook. f.) Iljin, *Onobrychis cornuta* (L.) Desv., and *Pycneus sanguinolentus* (Vahl) Nees; and the fossil plant *Danaeopsis marantacea* (C. Presl) Schimp. There is evidently a widespread belief, across all groups governed by the *ICN*, that such names would also have been conserved. Such a belief, while reinforced by statements in the introductions to App. IV from the *Tokyo Code* (Greuter & al. in Regnum Veg. 131. 1994) onward that “combinations based on a conserved name are therefore, in effect, similarly conserved”, is plainly not supported by the current provisions of Art. 14.

It is not necessary or even desirable that such combinations be themselves conserved. As the examples above indicate, a means to overcome illegitimacy in parallel with their basionyms is all that is required to preserve their usage. Although they lacked a basionym, necessarily legitimate, at the time of publication, upon conservation they have received one, so that Art. 52.3 [“A name that was nomenclaturally superfluous when published is not illegitimate on account of its superfluity if it has a basionym (which is necessarily legitimate; see Art. 6.10)”] provides a basis for legitimacy of these formerly illegitimate combinations. To allow this conclusion requires a slight change to the wording of Art. 6.4, as proposed below. In addition, an Example to illustrate this situation is offered for Art. 52.

(235) Amend Art. 6.4, last sentence, as follows (new text in bold):

“6.4. [...] A name that according to this *Code* was illegitimate when published cannot become legitimate later unless Art. 18.3 or 19.6 so provide or unless it, **or, if a superfluous name (Art. 52), its basionym, is conserved or sanctioned.**”

The Editorial Committee may wish to add the following Example after Art. 52.3:

“*Ex. 18bis. Wormia suffruticosa* Griff. ex Hook. f. & Thomson (1872), nom. cons., was nomenclaturally superfluous when published because of the inclusion of *W. subsessilis* Miq. (1861), nom. rej. With conservation, the previously illegitimate *W. suffruticosa* became available to serve as basionym of *Dillenia suffruticosa* (Griff. ex Hook. f. & Thomson) Martelli (1886), a superfluous name when published in that it also included *W. subsessilis* but with a basionym now legitimate.”

Effective date of the action of conservation or rejection

As Principle VI indicates “The rules of nomenclature are retroactive unless expressly limited.” However, retroactivity does not extend to nomenclatural actions taken under the rules, such as type designations, as can be seen from the provisions in Art. 22.2, 26.2, 48.2, and 52.2, and conservation of a name, as is evident from Art. 48.2 and 52.2. While one can date a type designation from the date of its effective publication (Art. 7.9), what is the effective date of a conservation/rejection action, which is nowhere specified in the *ICN*, in terms of its effects on other names? Is it the date of publication of the respective *ICN* Appendix, which prior to the *Melbourne Code* coincided with the date of publication of the *Code* itself? Is it the date on which a decision is ratified by a plenary session of an International Botanical Congress, or is it the date on which the approval of the General Committee occurs, or the date on which that approval is published? For current conservation/rejection proposals the last of these is the most appropriate date for the purposes of Art. 14.16, 56.4 and their precursors that have been in force back to Art. 22 in the Cambridge Rules (Briquet, Int. Rules, Bot. Nomencl. 1935).

Some concrete examples where this date comes into play may help to clarify its importance:

(1) The name *Eriastrum* Wooton & Standl. was published as an avowed substitute (replacement name) for *Hugelia* Benth. (1833), non *Huegelia* Rchb. (1829). However, when *Eriastrum* was published in 1913, such a replacement name already existed in *Welwitschia* Rchb. (1837). *Eriastrum* would thus have been a superfluous, illegitimate name for *Welwitschia* Rchb., but for the conservation of *Welwitschia* Hook. f. (1862), approved on 18 May at the 1910 Congrès international de Botanique in Brussels (Briquet in Actes III^{me} Congrès Int. Bot. 1: 83. 1912) and first listed as such in the 1912 Brussels Rules (Briquet, Règles Int. Nomencl. Bot. 1912) published in Jul–Aug 1912 (Stafleu & Cowan in *Regnum Veg.* 94: 329. 1976). As Art. 14.10 indicates, a conserved name is conserved against all earlier homonyms, in this case *Welwitschia* Rchb., which although not made illegitimate by conservation of *Welwitschia* Hook. f. had become unavailable for use by 1913 by this conservation, so that when *Eriastrum* was published *Welwitschia* Rchb. ought not to have been adopted, despite the citation of its type (i.e. that of *Hugelia* Benth.) by Wooton & Standley. In relation to this example, whether the effective date of conservation of *Welwitschia* Hook. f. was the date of publication of the Brussels Rules or the date of the decision to add *Welwitschia* to the list of nomina conservanda would not affect the situation, but, had *Eriastrum*, published on 12

February 1913, been published prior to the effective date of conservation, it would have been illegitimate.

(2) There is a current nomenclature proposal (Turner in *Taxon* 63: 682–683. 2014) to conserve the name *Echites paniculatus* Roxb. (1832), non Poir. (1812). Upon conservation, Roxburgh’s binomial becomes the basionym of *Anodendron paniculatum* A. DC., giving the latter four years of priority over one competing synonym and equal priority to another, *E. parviflorus* Roxb. Establishing priority of *A. paniculatum* over *E. parviflorus* will require the publication of an effective choice under Art. 11.5, but such a choice is only possible “between legitimate names of equal priority in the corresponding rank”, i.e., once *E. paniculatus* Roxb. has been made legitimate through conservation. Any choice published before the date on which conservation takes effect has no standing.

The dates of acceptance of conservation proposals accepted by the 1905 Vienna and 1910 Brussels Congresses are readily established from the proceedings of these Congresses (17 June 1905 and 18 May 1910, see below). No decisions on conservation of names were taken at the IV International Botanical Congress (IBC) in Ithaca, New York in 1926 or at the V IBC in Cambridge (U.K.) in 1930. The VI IBC in Amsterdam in 1935 established Special Committees with authority to take decisions on conservation of names but in fact only one of those Committees reported, the Special Committee for Phanerogamae and Pteridophyta (in *Bull. Misc. Inform. Kew* 1940(3): 81–134. 1 Jun 1940), and this should be taken as the effective date of conservation for those names. The VII IBC in Stockholm in 1951 approved recommendations on conservation proposals on names of fungi but referred all other conservation proposals to what were termed Special Committees, the predecessors of the current Permanent Nomenclature Committees for particular groups. The first report of the General Committee on conserved names appeared in *Taxon* in 1954 (3: 155–156), and covered Special Committee reports on all names proposed in the *Synopsis of Proposals concerning the International Rules of Botanical Nomenclature submitted to the Seventh International Botanical Congress – Stockholm 1950* (Lanjouw, 1950). Since any proposals submitted prior to that time, not already approved through the actions of the Vienna, Brussels or Amsterdam Congresses, would not have been evaluated by the General Committee, this date must be taken into account as that of the first set of decisions by the General Committee. Because outright (utique) rejection of a name became possible only in 1978, the issue of date prior to the establishment of the General Committee procedure does not arise there.

(236) Amend Art. 14.16 as follows (new text in bold) and add a new Note:

“14.16. When a proposal for the conservation of a name has been approved by the General Committee after study by the Committee for the taxonomic group concerned, retention of that name is authorized subject to the decision of a later International Botanical Congress (see also Art. 34.2 and 56.4). **Before 1 January 1954, conservation takes effect on the date of decision taken or authorized by the relevant International Botanical Congress. On or after that date, it takes effect on the date of effective publication (Art. 29–31) of the General Committee’s approval.**”

“*Note 4.* The effective dates for International Botanical Congress (IBC) decisions on conservation of names made before 1954 are as follows:

(a) Conservation of names in the 1906 Vienna Rules became effective on 17 Jun 1905 at the II IBC in Vienna (see *Verh. Int. Bot. Kongr. Wien* 1905: 135–137. 1906).

(b) Conservation of names in the 1912 Brussels Rules became effective on 18 May 1910 at the III IBC in Brussels (see Actes Congr. Int. Bot. Bruxelles 1910: 67–83. 1912).

(c) Conservation of names in the 1952 Stockholm Code include:

(i) Those of the Special Committee for Phanerogamae and Pteridophyta, which became effective on 1 Jun 1940 under authority of the VI IBC of Amsterdam 1935 (see Bull. Misc. Inform. Kew 1940(3): 81–134).

(ii) Those of the Special Committee for Fungi, which became effective on 20 Jul 1950 at the VII IBC in Stockholm (see Regnum Veg. 1: 549–550. 1953).

After 1954, the date of the General Committee decision on a particular conservation proposal can be determined by consulting the proposals database at <http://botany.si.edu/references/codes/props/index.cfm>.”

(237) Amend Art. 56.4 as follows (new text in bold) and add a new Note:

“56.4. When a proposal for the rejection of a name under Art. 56 has been approved by the General Committee after study by the Committee for the taxonomic group concerned, rejection of that name is authorized subject to the decision of a later International Botanical Congress (see also Art. 14.16 and 34.2). **Rejection takes effect on the date of effective publication (Art. 29–31) of the General Committee’s approval.**”

“*Note 1.* The date of the General Committee decision on a particular rejection proposal can be determined by consulting the proposals database at <http://botany.si.edu/references/codes/props/index.cfm>.”

Effective dates of suppression of publications, and binding decisions on descriptive statements or homonymy of confusable names

In contrast to formal nomenclature decisions relating to conservation or rejection of names, the effects of which are not retroactive, those relating to suppressed works and binding decisions must necessarily be retroactive. A “name” in a specified rank from a particular suppressed work, which upon the suppression of this work under Art. 34 is ruled as not validly published, must always be considered so. Thus at no time could it have affected the legitimacy of any name due to considerations of homonymy or superfluity. The same must also be true of names ruled as not validly published under Art. 38.4, whereas those ruled as validly published under this Article are considered to have always been so, with consequent effects on homonymy and superfluity.

Likewise, names ruled by binding decisions under Art. 53.5 to be treated as homonyms have always been so. The implication of this retroactivity can be seen in two contrasting cases: (1) *Forsellesia* Greene (1893) was published as a nomen novum (replacement name) for *Glossopetalon* A. Gray (1853), non *Glossopetalum* Schreb. (1789); (2) *Saharanthus* M.B. Crespo & Lledó (2000) was published as a nomen novum for *Lerrouxia* Caball. (1935), non *Lerouxia* Mérat (1812). Whereas *Glossopetalum* and *Glossopetalon* have by binding decision been considered not to be treatable as homonyms, leaving *Glossopetalon* as the correct name for what some have called *Forsellesia*, the binding decision on whether *Lerouxia* and *Lerrouxia* should be treated as homonyms has been strongly recommended by the Committee for Vascular Plants, and if carried forward will lead to adoption of the name *Saharanthus* for *Lerrouxia*. In both cases the desired outcome of these decisions will be consistent with their being retroactive, making *Forsellesia* an illegitimate superfluous

name for the legitimate *Glossopetalon* and *Saharanthus* a legitimate replacement name for the illegitimate *Lerrouxia*. Were these effects not made retroactive, *Saharanthus* would have been illegitimate when published and in need of conservation, and *Forsellesia* would not have been available to replace *Glossopetalon* should the binding decision on that name have been reversed.

To make it clear that such decisions are retroactive requires the following three proposals:

(238) Amend Art. 34.2 as follows (new text in bold, deleted text in strikethrough):

“34.2. When a proposal for the suppression of a publication has been approved by the General Committee after study by the committees for the taxonomic groups concerned, suppression of that publication, ~~is authorized~~ subject to the decision of a later International Botanical Congress (see also Art. 14.16 and 56.4), **takes retroactive effect.**”

(239) Amend Art. 38.4 as follows (new text in bold):

“38.4. When it is doubtful whether a descriptive statement satisfies the requirement of Art. 38.1(a) for a “description or diagnosis”, a request for a decision may be submitted to the General Committee (see Div. III), which will refer it for examination to the Committee for the appropriate taxonomic group. A recommendation, whether or not to treat the name concerned as validly published, may then be put forward to an International Botanical Congress and, if ratified, will become a binding decision **with retroactive effect**. These binding decisions are listed in App. VII.”

(240) Amend Art. 53.5 as follows (new text in bold):

“53.5. When it is doubtful whether names or their epithets are sufficiently alike to be confused, a request for a decision may be submitted to the General Committee (see Div. III), which will refer it for examination to the committee(s) for the appropriate taxonomic group(s). A recommendation, whether or not to treat the names concerned as homonyms, may then be put forward to an International Botanical Congress and, if ratified, will become a binding decision **with retroactive effect**. These binding decisions are listed in App. VIII.”

Epitypes and types of conserved names

Article 9.8 defines an epitype as “a specimen or illustration selected to serve as an interpretative type **when the holotype, lectotype, or previously designated neotype, or all original material associated with a validly published name**, is demonstrably ambiguous and cannot be critically identified for purposes of the precise application of the name to a taxon. Designation of an epitype is not effected unless the **holotype, lectotype, or neotype** that the epitype supports is explicitly cited (see Art. 9.20).” Note that this provision does not establish the means of selecting an epitype to interpret a type of a name of a species or infraspecific taxon conserved under Art. 14.8 or 14.9, or of a generic name conserved under Art. 10.4. A Note added to Art. 9.8 might make this clearer, lest someone propose an epitype for an existing conserved name that might change its intended application.

(241) Add a new Note under Art. 9.8 on epitypes:

“*Note 5bis.* Designation of an epitype to support a specimen or illustration that is the type of a name conserved in App. III or IV is not provided for by this Article.”

Despite the lack of a provision for designating an epitype to support a specimen or illustration that serves as the type of a conserved name, it should be pointed out that there is nothing to prevent such a designation to support an eligible type **before** conservation is achieved. In fact, there are currently three names listed in Appendix IV (the alga *Coleochaete orbicularis* Pringsh., the fungus *Agaricus lycoperdoides* Bull., and the bryophyte *Jungermannia palmata* Hedw.) of the *Melbourne Code* with indicated epitypes to support illustrations indicated or designated as holotypes or lectotypes when conservation was originally proposed. In addition, there is another proposal currently under consideration for conservation (No. 2198,

Agaricus laterinus Batsch) with a designated epitype. Although it may have been preferable to propose the epitype as a conserved type in these cases, assuming a proposal would be successful, a proposed conserved type would lack any standing if the proposal were unsuccessful. The provisions of Art. 9.20 and 14.8 will preserve its standing vis-à-vis the listed type upon conservation of the associated name.

Acknowledgements

We are grateful to Kanchi Gandhi, Gerry Moore, Nick Turland, and Gea Zijlstra for helpful discussion on the issues underlying these proposals.