Comment on the proposed conservation of the specific name of *Macropodus concolor* Ahl, 1937 (Osteichthyes, OSPHRONEMIDAE)
(Case 3255; see BZN **60**: 206–207; **61**: 114–116, 173–174, 256–257)

The professional systematic ichthyologists listed below (1–17) have individually submitted comments indicating that they consider the application to be pointless and unhelpful. They all recorded their preference for using the correct name for this species, *Macropodus spechti* Schreitmüller, 1936, concurring with the comments of Kottelat, Kullander, Fang, Britz & Ferraris (BZN **61**: 114–116) and recommend that the Commission rejects the proposals.

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1. The comment by Schindler & Staeck (see BZN **61**: 256–257) comprises, in our opinion, a series of invalid arguments and apparent misinterpretations of the Code, aimed to preserve the name *Macropodus concolor* Ahl, 1937 over the older available name *M. spechti* Schreitmüller, 1936. As stated correctly by Kottelat et al. (BZN **61**: 114–116), *Macropodus concolor* Ahl, 1937 is a permanently unavailable junior primary homonym of *M. concolor* Schreitmüller, 1936 and a junior objective synonym of *M. spechti*. Schindler & Staeck's arguments are discussed below.

2. Schindler & Staeck claimed that Schreitmüller's work (1936a, b) was published in popular aquarium magazines in contrast to Ahl's work, published in a zoological journal. This is irrelevant since all of these works satisfy the criteria of publication under the Code (see Chapter 3, Articles 8 and 9).

3. Schindler & Staeck misinterpreted the Code when they argued that *M. concolor* Ahl, 1937 is not acceptable because it is a junior primary homonym of *M. concolor* Schreitmüller, 1936 and because Schreitmüller (1936b) disclaimed the intention to create a nomen novum. The Code regulates the disclaiming of whole publications (Article 8.2) and names and acts in a published work (Article 8.3). These Articles refer to the publication in which the disclaimer is printed. There is no provision in the Code for a retroactive disclaimer. Similarly misleading, Schindler & Staeck argued that Schreitmüller did not publish his 1936b work with the purpose to provide a public and permanent record. In fact, he did publish the article 1936b in a widely distributed aquarium journal, giving a permanent record to the public. Maybe his intention was not to give a permanent record of the name *M. opercularis concolor* Schreitmüller, 1936, but this is exactly what he did. Therefore, the argument that Article 8.1.1 was not being fulfilled has to be rejected. Schindler & Staeck erred again, citing Article 13 they claimed that Schreitmüller's (1936) work does not fulfil the

requirements of a formal description. This is clearly not the case as Article 13.1.2 explicitly allows the citation of a bibliographic reference giving the required characters. This means that Schreitmüller (1936b), besides reproducing his original figure, incorporated all characters included in his original description of *M. spechti* (1936a). Therefore, Schreitmüller's 1936b work fulfils the formal requirements of descriptions as argued by Kottelat et al. (BZN **61**: 114–116) exactly as did his earlier publication (1936a).

4. There is no reason to doubt that Schreitmüller (1936b) used the name *Macropodus opercularis concolor* for the first time as a valid taxon. It is easy to reverse Schindler & Staeck's argument: why should Schreitmüller have published his 1936b statement, if not for introducing the new name?

5. Schindler & Staeck argued that *M. concolor* Schreitmüller, 1936, like *M. spechti* Schreitmüller, 1936, was a nomen oblitum. As explained elsewhere in detail (see BZN **60**: 206–207; **61**: 173–174 and Herder & Freyhof, 2002), *M. spechti* Schreitmüller, 1936 is not a nomen oblitum. Paepke's 1994 act declaring *M. spechti* Schreitmüller, 1936 as a nomen oblitum was de facto not admissible, because it was published after 1 January 1973 (Article 23.12). Schindler & Staeck's arguments to treat *M. spechti* as a nomen oblitum have been disproved (see BZN **61**: 114–117; 173–174). Though they repeated their view (BZN **61**: 256–257), they failed, as Paepke (BZN **61**: 173) did, to give any valid argument for their repeated demand.

6. Schindler & Staeck recorded that Paepke (1994), not Freyhof & Herder (2002), published the first revision of the genus *Macropodus*. However, this is irrelevant to the case discussed here.

7. The argument opposing our application that the Black Paradise Fish could be compared to cases of commercially important species (Kottelat et al., BZN **61**: 114–116) is specious. From our fieldwork in Vietnam, we can agree that the species is known to some local people around Hue under its local but not under the scientific name. We visited many fish markets within the distribution area of *Macropodus* in Vietnam but recorded only one specimen in a basket of mixed small fish. In fact we doubt that the name *M. concolor* is used in Vietnam. We have been unable to see a single reference to it in the Vietnamese literature. It is hard to understand why the exceptional conservation of a taxon only used as an aquarium pet should be given more importance than that of the commercially highly important rainbow trout *Oncorhynchus mykiss*, which was renamed following the Code.

8. Schindler & Staeck criticized Herder & Freyhof for having used the name *M. concolor* Ahl themselves before publishing their revision (Herder & Freyhof, 2002). We fail to see the pertinence of the argument. We maintain that this was the only responsible attitude awaiting the publication of our nomenclatural conclusions.

9. To conclude, all of the arguments given by Schindler & Staeck (BZN **60**: 206–207; **61**: 256–257) are flawed or result from a misunderstanding of the Code. Paepke (BZN **61**: 173) also did not give any valid argument. Although we recognize Schindler & Staeck's as well as Paepke's efforts to find arguments for preserving a name which has been used by aquarists for many years, we recommend that the Commission does not approve the application.