

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Seventieth meeting of the Standing Committee
Rosa Khutor, Sochi (Russian Federation), 1-5 October 2018

GUIDANCE FOR VERIFYING THE LEGAL ACQUISITION
OF CITES SPECIMENS TO BE EXPORTED

Draft Resolution

Verification of legal acquisition of CITES specimens

RECALLING the provisions of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, which require a Management Authority of the State of export to establish that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

RECALLING the provisions of Article III, paragraph 4 (a), and Article IV, paragraph 5 (a) which require a Management Authority of the State of re-export to establish that the specimen was imported into that State in accordance with the provisions of the present Convention;

RECALLING the provisions of Article II, paragraph 4, which states that the Parties shall not allow trade in specimens of species included in Appendices I, II, and III except in accordance with the provisions of the present Convention;

RECALLING ALSO the provisions of Article VIII, paragraph 1, of the Convention, which requires the Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof and Resolution Conf. 8.4 (Rev. CoP15), paragraph 2, which urges the Parties to adopt appropriate measures for effective implementation of the Convention;

RECALLING FURTHER Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 5 j) and i), which recommend that “Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin” and that “no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation unless the specimen has previously been confiscated”;

CONSIDERING Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*, paragraph 2 e), which recommends that “if an importing country has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction, it i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with copies of all documentation relating to the transaction; and ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention”;

~~RECOGNIZING that Article VIII, paragraph 3 of the Convention provides that “the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay”;~~

RECOGNIZING FURTHER that the Convention places considerable responsibility upon the CITES Management Authorities to ensure that specimens of listed species entering international trade are of legal origin; and

EMPHASIZING that this Resolution is aimed at supporting Management Authorities in verifying the legal acquisition of specimens of CITES-listed species prior to the issuance of CITES documents authorizing their ~~export; international trade and strengthening cooperation between exporting, transit and importing countries for the effective implementation of the Convention;~~

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

1. RECOMMENDS that:

- a) For the purposes of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, the term “verification of legal acquisition” be used by the Parties when referring to the examination conducted by a Management Authority prior to issuing a CITES export permit to satisfy itself that the specimen was not obtained in accordance with relevant laws and regulations of that State for the protection of fauna and flora (in other words, legally acquired);
- b) To the extent possible, the determination of whether a specimen was ~~obtained in accordance with relevant laws and regulations~~ not obtained in contravention with the laws and regulations of that State for the protection of fauna and flora should take into account the whole series of actions through which the specimen is brought from its source into the possession of an exporter; and
- c) Depending on the context, the term defined above should also be used when considering exemptions and other special provisions mentioned in Annex II, on a case-by-case basis;

2. AGREES that:

- a) “Applicant” means a person who applies for a CITES document required to export, import, re-export or introduce from the sea a specimen of a CITES-listed species;
- b) “Chain of custody” means chronological documentation, to the extent practicable and in accordance with national laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen;
- c) “Risk assessment” means the evaluation of the likelihood that a specimen of a CITES-listed species was not legally acquired;

Guiding principles

3. RECOMMENDS that the following general principles be used by the Parties for verifying the legal acquisition of specimens to be exported: ~~the verification of legal acquisition:~~

- a) Procedures to conduct the verification of legal acquisition should be sufficiently flexible to allow for a risk assessment approach ~~consideration of different CITES transactions~~;
- b) To the extent possible, procedures used by a Management Authority for verifying legal acquisition of specimens to be exported to verify legal acquisition should be made publicly available to applicants to facilitate the collection of required evidence information and provide clarity to applicants requesting export permits ~~permit applicants~~;
- c) The applicant is responsible for providing sufficient information evidence for the Management Authority to determine that the specimen was legally acquired, such as statements or affidavits made under oath and carrying a penalty of perjury, import or export permits, invoices and receipts, forestry concession numbers, hunting permits or tags, or other documentary evidence;
- d) The information evidence that the Management Authority requires of an applicant ~~to demonstrate for verifying~~ legality of acquisition should be proportionate with the likelihood that a specimen of a CITES-listed species was not legally acquired;

- e) ~~Applicants are expected to know and be able to verify, to the extent practicable, the origin of the specimens they have obtained and to have minimized the risk that the specimens they are trading were illegally acquired; and~~
- f) ~~Management Authorities are encouraged to maintain records of permits issued, including the information evidence provided by the applicant regarding the legality of acquisition., to ensure the ability to respond to inquiries from the State of import or re-export;~~
4. ~~RECOMMENDS that cooperation between Management Authorities of Parties be guided by the recommendations in Resolution Conf. 11.3 (Rev. CoP 17) on Compliance and Enforcement paragraph 2 e) and Resolution 12.3 (Rev. CoP17) on Permits and Certificates paragraph 22 k) to m). following principles:~~
- a) ~~Where the Management Authority of the State of import or re-export has reason to believe that the specimen accompanied by a CITES permit or certificate may not have been legally acquired, it should:~~
- i) ~~immediately inform the Management Authority of the State whose laws are believed to have been violated;~~
- ii) ~~provide the Management Authority of that State with copies of all documentation relating to the transaction; and~~
- iii) ~~request the basis for the determination that the specimen was legally acquired; and~~
- b) ~~If after consulting with the Management Authority of the relevant State, the Management Authority of the State of import or re-export has not received satisfying information regarding the basis for the determination that the specimen was legally acquired, it should not authorize the import or re-export of the specimen concerned and should not issue an import permit or a re-export certificate;~~

Due diligence

5. ~~RECOMMENDS that:~~
- a) ~~CITES Parties should exercise due diligence when presented with a CITES permit or certificate, even if they believe it to have been issued by a competent authority, when they have a reason to believe that the specimens of CITES-listed species may not have been legally acquired;~~
- b) ~~In exercising due diligence, CITES Parties should, consult with the Management Authority of the State whose laws are believed to have been violated; and~~
- c) ~~To ensure effective cooperation between CITES Authorities of different Parties, Management Authorities should be responsive to enquiries and cooperate with the Management Authorities of other CITES Parties on matters relating to the validity of CITES export permits;~~
- 4.6. ~~RECOMMENDS that the Parties use the guidance contained in Annex I to this Resolution, when verifying the legal acquisition of CITES specimens traded under Article III, paragraph 2 (b), Article IV paragraph 2 (b) and Article V, paragraph 2 (a) and the legal acquisition of founder stock of specimens traded under Article VII paragraph 4 and 5 and when applying the exemptions and other special provisions, mentioned in Annex II; and~~
5. ~~RECOMMENDS FURTHER that Parties take note of the additional circumstances listed in Annex 2 of this Resolution where verification of legal acquisition and other legal findings are required and utilize the guidance in Annex 1 of this Resolution to the extent that is applicable; and~~
- 6.7. ~~INVITES all Parties, governmental, intergovernmental and non-governmental organizations and other sources to provide financial and/or technical assistance for the development of training material on the verification of legal acquisition, maintaining up to date a dedicated webpage on the CITES website, the organization of workshops and other building capacity activities related to the implementation of this Resolution.~~

Annex 1 [to the Draft Resolution]

Guidance for verifying the legal acquisition of CITES specimens

1. Verification of legal acquisition by the State of export for specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2 b), Article IV, paragraph 2 b), and Article V, paragraph 2 a) of the Convention

- a) Parties are recommended to include in their national regulatory framework the obligation of a Management Authority to verify, prior to issuing any CITES export permit or certificate, whether a specimen of CITES-listed species to be exported was legally acquired.
- b) To ensure due process and assist applicants in providing evidence of information demonstrating legal acquisition, each Party may, where appropriate and possible, prepare general written instructions regarding the information evidence required of an applicant and make that information publicly available. The instructions may specify that a Management Authority may require additional information evidence depending on the nature of a specific transaction.
- c) Management Authorities may choose to verify legal acquisition based on a risk assessment of the chain of custody, which may include the consideration and balancing of the following factors to the extent that they may be relevant to a particular CITES document request (the order of listing of the factors does not indicate any priority):
 - i) the Appendix in which the species is listed;
 - ii) the source of the specimen (considering whether the specimen is wild-collected, ranched, bred in captivity or artificially propagated, or of unknown origin);
 - iii) occurrence of the species in a controlled environment in the Party dealing with the application;
 - iv) geographical factors (e.g. whether the territory from which the specimen originated is affected by armed conflicts or other factors that may increase the likelihood of illegal acquisition);
 - v) documented illegal harvest or illegal trade;
 - vi) purpose of trade (commercial or non-commercial);
 - vii) history of applications from the applicant, including any history of non-compliance;
 - viii) monetary value of the specimens; and
 - ix) existence of look-alike species.
- d) Where, after considering and balancing the above factors, a Management Authority concludes that there is a high risk that the specimen requested to be exported was not legally acquired, it may choose to require additional information evidence providing more certainty and engage in further scrutiny of the chain of custody. Where a Management Authority concludes that the risk of illegal acquisition is low, it may choose to engage in less scrutiny and require less information evidence of the applicant.

2. Procedures for verification of legal acquisition by the State of export

- a) To verify legal acquisition, a Management Authority must first be aware of and understand their relevant laws for the protection of fauna and flora;
- b) Where a Management Authority is required to verify legal acquisition, it first should review all the documentary and other evidence presented by the applicant. The evidence and documentation should, to the extent practicable, provide information on the entire chain of custody back to the source of the specimen. Such information may include records demonstrating that the specimen or parental stick was removed from the wild in accordance with relevant laws (licenses, collections permits, etc.) records identifying the specific specimen (band numbers or other marks, etc.) and documenting the history of transfers of ownership (sales, receipts, invoices, etc.), and records showing that the specimen was reared at a particular facility, for

example. Where a Management Authority considers that the evidence is incomplete, it should provide the applicant with an opportunity to produce additional information evidence.

- c) If upon the review of the documentation evidence and taking into account all other relevant elements, a Management Authority is satisfied that the specimen was legally acquired, the requirement of verification of legal acquisition is fulfilled.
- d) Where a Management Authority is not satisfied that the specimen was legally acquired, it should ~~decline to~~ not issue the requested CITES document.
- e) A Management Authority may choose to share relevant information about the legal acquisition of the specimen on the CITES document. ~~Such information~~ Description of the main documentary evidence used as a basis for verification of legal acquisition or other relevant information may be included in Box 5 of the standard CITES document and ~~Such relevant information may include statements or affidavits made under oath and carrying a penalty of perjury, import or export permit numbers, invoices and receipts, forestry concession numbers, hunting permits or tags numbers, for example.~~

~~3. Verification of legal acquisition of specimens of Appendix I or II species taken in the marine environment not under the jurisdiction of any state~~

- ~~a) According to Resolution Conf.14.6 (Rev. CoP16) on *Introduction from the sea*, paragraph 2 b), “whenever any specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and is transported into a different State, the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, should be applied, with the State in which the vessel that took the specimen is registered being the State of export and the State into which the specimen is transported being the State of import”. In those circumstances, the State of export shall verify the legal acquisition of the specimen.~~
- ~~b) In the case of chartering operations, where the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4 apply pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 2 c), the State of export shall verify the legal acquisition of the specimen taken in the marine environment not under the jurisdiction of any State.~~
- ~~c) According to Resolution Conf.14.6 (Rev. CoP16), paragraph 3, the State of introduction, the State of export and the State of import should “take into account whether or not the specimen was or will be acquired and landed:
 - ~~i) in a manner consistent with applicable measures under international law for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and~~
 - ~~ii) through any illegal, unreported or unregulated (IUU) fishing activity”.~~~~
- ~~d) While recognizing the provisions in paragraph 3 c) of this Annex are different from the verification of legal acquisition, the provisions of this Resolution may provide some general guidance.~~

4. Cooperation between relevant agencies and Management Authorities of CITES Parties

- a) To ensure effective cooperation between domestic authorities (national, provincial, local, tribal) involved in the process of regulating the acquisition of specimens of CITES-listed species, the Parties may consider establishing mechanisms of inter-agency cooperation.
- b) Where necessary, Management Authorities of the Parties should consult competent intergovernmental bodies regarding the verification of legal acquisition and the fulfilment of due diligence requirements.
- c) When an exporting or re-exporting State receives a request from an importing State to verify the authenticity and validity of a CITES permit or certificate, it makes every effort to respond ~~to that request within 15 days of receiving the request~~, as indicated in Resolution Conf. 12.3 (Rev. CoP17) on Permits and Certificates in paragraph 22 l) and m).
- ~~d) If an exporting or re-exporting State is not able to verify the validity of a CITES permit or certificate within 15 days of receiving such a request from an importing State, it should provide a preliminary response within 15~~

days of receiving the request and a final response as soon as possible thereafter. The maximum period for such verification should not exceed 30 days.

5. Regarding practical tools

- a) For the purpose of establishing the chain of custody, the Parties may make use of information systems and traceability tools.
- b) In verifying legal acquisition, Parties may wish to consult existing international legal databases such as ECOLEX, FAOLEX, and the World Legal Information Institute.
- c) Where Parties consider that more certainty is required to establish that a specimen was legally acquired, Parties may have recourse to or request verification by the applicant using forensic tools such as DNA testing, stable isotope analysis, and radiocarbon dating.
- d) Management Authorities may use for their convenience the rapid guide for verifying legal acquisition below.

6. Rapid guide for the verification of legal acquisition

Whenever a Management Authority receives a request to authorize the export of a specimen of a CITES-listed species ~~is exported~~, to verify legal acquisition, the Management Authority may ask itself several questions:

1. Is there a requirement to verify legal acquisition under CITES?

Yes, where the specimen is exported under Articles III, paragraph 2 (b), Article IV, paragraph 2 (b), or Article V, paragraph 2 (a) of the Convention, see also Annex II to the draft resolution.

2. Is there a high risk the specimen may have been acquired illegally?

See paragraphs 1 c) and d) to the present annex.

3. Depending on the risk assessment and circumstances, is it necessary and practicable for the applicant to provide documentation of evidence ~~on~~ the entire chain of custody?

4. Is the information evidence submitted by the applicant sufficient to demonstrate legal acquisition? If not, what additional information evidence should be required?

See the draft resolution, paragraphs 3 c) ~~and 5 of the present Annex~~.

5. If the Management Authority is satisfied that the specimen has been legally acquired, what kind of information if any, is it ~~it is~~ practicable to share in Box 5 of the standard CITES document?

See paragraph 2 d) to the present Annex.

6. If the Management Authority is satisfied that the specimen has been legally acquired, what documents / other information evidence is it practicable to keep for the record?

See the draft resolution, paragraph 3 f)

Annex 2 [to the Draft Resolution]

~~Exemptions and other special provisions~~ Additional circumstances requiring the verification of legal acquisition or other legal findings

The Conference of the Parties has recommended that verification of legal acquisition and other legal findings, such as verifying the date of acquisition, be made in the following circumstances.

Breeding/parental stock of specimens bred in captivity or artificially propagated

1. Pursuant to Resolution Conf. 10.16 (Rev.) on *Specimens of animal species bred in captivity*, paragraph 2 b ii), and Resolution Conf. 11.11 (Rev. CoP17) on *Regulation of trade in plants*, paragraph 1 b i), a Management Authority of the State of export should verify legal acquisition of the breeding/parental stock of specimens bred in captivity or artificially propagated to be exported under Article VII, paragraphs 4 and 5 of the Convention.

'Pre-Convention' specimens

2. In accordance with Article VII, paragraph 2 of the Convention and pursuant to Resolution Conf. 13.6 (Rev. CoP16) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens*, to authorize the export of a 'pre-Convention specimen', a Management Authority shall be satisfied that a specimen was acquired before the provisions of the Convention applied to it and should therefore establish the date of acquisition or the earliest provable date on which it was first possessed by any person.

Specimens of Appendix I and II species taken in the marine environment not under the jurisdiction of any State

Pursuant to Resolution Conf.14.6 (Rev. CoP16) on *Introduction from the sea*, paragraph 2 b), "whenever any specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and is transported into a different State, the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, should be applied, with the State in which the vessel that took the specimen is registered being the State of export and the State into which the specimen is transported being the State of import". In those circumstances, the State of export shall verify the legal acquisition of the specimen.

3. In the case of chartering operations, where the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4 apply pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 2 c), the State of export shall verify the legal acquisition of the specimen taken in the marine environment not under the jurisdiction of any State.
4. Pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 3, the State of introduction, the State of export and the State of import should "take into account whether or not the specimen was or will be acquired and landed:
 - i) in a manner consistent with applicable measures under international law for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and
 - ii) through any illegal, unreported or unregulated (IUU) fishing activity".

Other exemptions and special provisions

5. Pursuant to Resolution Conf. 13.7 (Rev. CoP17) on *Control of trade in personal and household effects*, paragraph 1 b) 'personal or household effects' within the meaning of Article VII, paragraph 3 of the Convention, means specimens that are legally acquired (among other requirements).
6. Pursuant to Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, paragraph 1 b), a certificate of ownership for a live animal of a species listed in the Appendices may be issued to the personal owner of a legally acquired live animal (among other requirements).
7. Pursuant to Resolution Conf. 11.15 (Rev. CoP12) on *Non-commercial loan, donation or exchange of museum and herbarium specimens*, paragraph 3 e) iv), specimens exported under Article VII, paragraph 6 of the

Convention as part of non-commercial loan, donation or exchange between scientists or scientific institutions should be legally obtained specimens (among other requirements).

8. Pursuant to Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 12 b), a Party should only issue a Travelling Exhibition Certificate for CITES specimens belonging to a Travelling exhibition based in its state, registered with the Management Authority, and wishing to transport specimens of CITES species to other States for exhibition purpose only, on the condition that they were legally acquired and will be returned to the State in which the exhibition is based (among other requirements). ~~CITES-listed specimens belonging to a travelling exhibition and transported under Article VII, paragraph 7 of the Convention should be legally acquired.~~
9. Pursuant to Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*, paragraph 1 b), a musical instrument certificate should be issued when a CITES competent Authority is satisfied that the CITES specimens used in the manufacture of the musical instrument have not been acquired in contravention of the provisions of the Convention (among other requirements).
10. Pursuant to Resolution Conf. 17.9 on *Trade in hunting trophies of species listed in Appendix I or II*, paragraph 2 a), the export of hunting trophies of species listed in Appendix I or II should only be authorized when a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that country for the protection of fauna (among other requirements).