

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



Seventy-seventh meeting of the Standing Committee
(Geneva, Switzerland), November 6-10, 2023

INTRODUCTION FROM THE SEA

1. This document has been submitted by Canada, at the request of the North American Region, in relation to agenda item 47*.

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

Question 1: When to issue an IFS certificate – can it be issued after the specimens have been landed in the port of the State of introduction?

1.1 ~~Noting that an Introduction from the sea~~ (IFS) certificates shall be issued only when a specimen of a species included in Appendix I or II is taken ~~in from~~ the marine environment not under the jurisdiction of any State, by a vessel registered in one State, and is transported into the same State.

1.2 The IFS certificate needs to be issued prior to the transportation into a State and cannot be issued after the specimen is landed in the port of the State of introduction. For Appendix-II species, see Article IV, paragraph 6: “the introduction from the sea of any specimen of a species included in Appendix shall require the prior grant of a certificate...”

~~1.2~~ 1.3 The IFS certificate should also be applied for and issued before the specimen has been caught, ~~in order to ensure~~ that all necessary findings can be made. This ~~ensures allows applicants to act accordingly that~~ when the findings cannot be made in advance or when they can only be made subject to certain conditions, ~~having been met, applications can act accordingly~~. Appropriate circumstances to issue an IFS certificate after a specimen is caught are:

- If a non-detriment finding (NDF) and legal acquisition finding, as appropriate, have already been made and an annual quota established.
- ~~,the certificate could be issued after the specimen is caught~~ Also, in limited circumstances where opportunistic non-commercial sampling of the specimen could not be reasonably foreseen, the IFS certificate could be issued after the specimen has been caught as long as the specimen is not yet transported into the State, or in-transit, or transhipped through any Party.

In those cases, the vessel would need to communicate the catch of specimens of CITES-listed species to the CITES Management Authority (MA) while still outside of national jurisdiction. The MA will then consult with the Scientific Authority (SA) on the non-detriment finding (NDF) and if all the conditions in Article IV are fulfilled, the MA may issue the IFS certificate before the catch is landed. Parties would need to anticipate what would happen in an instance where the specimens are obtained in the high-seas marine environment not under the jurisdiction of any State and a certificate is sought before the vessel enters territorial waters, but the SA deems the catch unsustainable while the vessel is in transit between the high-seas marine environment not under the jurisdiction of any State ~~boundary~~ and the port of landing. Presumably, the MA would not be able to issue a certificate and the specimen would be confiscated.

Question Y. What if the Party is also Party to a Regional Fisheries Body or other Convention that has management measures for species that are also listed on the CITES Appendices?

1.3 Y.1 ~~For several In the case of a species included in CITES Appendix I or II, there will most likely may~~ be binding fisheries measures in place that are stricter than the ~~Convention CITES regulations, e.g.~~ prohibiting the capture, retention, or landing of such species ~~for commercial purposes.~~

- In the case of Appendix I species, a CITES certificates or permits should not be issued under any circumstances for primarily commercial purposes.
- For Appendix I or II species, if the Party is a contracting Party to a Regional Fisheries Body that prohibits retention or landing, a CITES certificate or permit cannot be issued.
- If a CITES Party is also a Party to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), and the species in question is listed on CMS Appendix I, then take (other than limited exemptions) is prohibited, and a permit or certificate should not be issued.
- For introduction of biological samples of species in Appendix I species for scientific purposes, the a CITES certificate or permit may be issued.

- ~~R~~esearcher/scientist should ~~normally~~ apply for the IFS certificate in advance of the take of the samples and the IFS certificate should be issued prior to the sampling operation. The Secretariat notes that there may be instances where benthic sampling was done ~~on~~ in the high-seas marine environment not under the jurisdiction of any State and CITES-listed specimens were obtained unexpectedly.

Question 2: Is a specimen caught as by-catch (i.e. sharks) covered by CITES provisions?

2.1 All parts and derivatives of CITES-listed ~~marine~~ species, whether marine, terrestrial, or freshwater are covered by the provisions of the Convention unless otherwise indicated. This includes fins, meat, blubber, biological samples, etc. It makes no difference to CITES implementation whether the specimen was caught intentionally or as by-catch. The CITES provisions on trade from ~~the high-seas marine environment not under the jurisdiction of any State~~ apply, irrespectively. In other words, there is no by-catch or incidental take exemption in CITES.

Question 3: Whose responsibility - Can a Regional Fisheries Management Organization (RFMO) issue a CITES document?

3.1 Only the CITES MAs designated by each Party to the Convention have the authority to issue CITES documents. RFMOs and similar organizations have a role to play in gathering information and data that can be used for NDFs. See paragraph 7 of Article IV.

3.2 Paragraphs 4 and 5 of Article XIV suggest that there may be another type of certificate for trade in Appendix II specimens, taken by ships registered by a Party to CITES that is also party to any other treaty, convention or international agreement in force before 1 July 1975, and under the provisions of which protection is afforded to marine species included in Appendix II. In those limited cases, a certificate is required from a MA of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question. That provision does not apply to any treaty, convention, or agreement which entered into force after 1 July 1975.

Question 4: If national fisheries legislation – or RFMO measures – include a “no-retention” obligation for a species in CITES Appendix II, can trade still be authorized for those species taken in the marine environment not under the jurisdiction of any State

4.1 If a Party has adopted stricter domestic measures or is a member of an RFMO that prohibits the take, retention or landing of a species, those measures would prevail and no trade in that species should be authorized by that same Party as it would not be legally acquired and the MA could not make a Legal Acquisition Finding.

However, ~~other~~ Parties to CITES that are not bound by such stricter measures may authorize trade in the species concerned. Furthermore, if the management of a CITES-listed species is covered by several RFMOs, where one prohibits retention of the species and another does not, a Party may only authorize international trade in specimens of the species where the harvest of such species is permitted in the RFMO Convention Area.

The Secretariat understands that an RFMO requirement, just like CITES, will have national implementing legislation and requirements on its Parties/Members for fisheries that fall under the RFMO remit. For instance, if an RFMO ~~is banning~~ has banned onboard retention, transshipment, landing, storing, selling or offering for sale any part or whole carcass of a shark species that is included in CITES Appendix II, then, if one of the members of that RFMO ~~wished to retain and trade~~, would not be authorized to trade in that

shark species, they would not be able to do so as they also could not make a ~~LAF~~ **Legal Acquisition Finding**. Management Authorities are invited to verify if “participating territories” and “co-operating non-members” are also bound by specific RFMO conservation and management measures.

Question x: If a CITES Party is Party to another treaty that prohibits take or trade in a CITES-listed species, what are the implications?

X.1 A good example is the Convention on the Conservation of Migratory Species of Wild Animals (CMS). If a CITES-listed species is also listed on CMS Appendix I, then take (other than limited exemptions) is prohibited, and a CITES permit or certificate should not be issued unless it meets those narrow exemptions (which do not include commercial trade). There are CITES-listed marine species included on CMS Appendix I and CITES Parties that are also CMS Parties should be particularly vigilant therefore, in the making of Legal Acquisition Findings and issuance of subsequent CITES certificates or permits.

Question 5: What is the relationship between illegal, unreported, unregulated (IUU) fishing and CITES – Can a CITES document be issued to authorize trade in specimens of CITES-listed species that have been caught as IUU?

5.1 Trade under CITES can be authorized only when four main conditions are met:

- ~~a)~~ Legal acquisition: the specimens have been obtained in conformity with all applicable legislation;
- ~~b)~~ Sustainable harvesting: trade is not detrimental to the survival of the species in the wild; ~~and~~
- ~~c)~~ Traceable: a valid CITES document has been issued by the relevant competent authority; ~~and~~
- ~~d)~~ For living specimens: the MA is satisfied that they will be prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment. For live Appendix-I specimens being imported, the SA has to be satisfied that the facility they are going to is suitably equipped to house and care for it.

5.2 ~~If these conditions are met, it is not possible that the specimens are also IUU: by definition they cannot be illegal or unreported. If the species is included in the CITES appendices, it is by definition not unregulated either. In other words, a CITES document cannot authorize trade in IUU specimens. For the four conditions outlined in paragraph 5.1 to be met, the specimens of CITES-listed species cannot be illegal or unreported. Valid CITES documentation cannot authorize trade in specimens of CITES-listed species caught by vessels engaged in illegal or unreported fishing. In all cases of IUU fishing, CITES Parties should use the criteria outlined in paragraph 5.1 to evaluate whether trade in a given species should be authorized.~~

Question 6: CITES trade from the marine environment beyond national jurisdiction ~~the sea under flags of convenience (FOC)~~ – what is the flag State’s responsibility?

6.1 Whether a Flag State is aware of CITES requirements or not, or a vessel flies a flag of a country other than where the vessel is owned or based, the obligations of all Flag States that are CITES Parties are the same. The Secretariat received some questions from States with large fleets about their obligations to issue CITES documents considering that they are not always aware of the CITES-related activities undertaken by vessels flying their flags. The responsibilities of the State of introduction, export, import

or re-export for regulating trade in CITES Appendix I and II marine species are well defined in Articles III and IV of the Convention. The State where a vessel is registered is obligated to comply with all CITES requirements, if that State is a CITES Party. Flag States ~~shall assume~~ must implement those obligations under CITES responsibilities by monitoring, regulating and controlling the activities of all vessels flying their flag.

~~6.2 The Standing Committee may consider instructing the Secretariat to explore the feasibility of having a register with the list of flag-of-convenience States and territories. The list could include the vessels which are authorized to take CITES-listed species in the respective zones. If such a list is created, it could be used to improve the matching between declared catches and reported trade involving vessels that are registered in the States and territories which appear on that list.~~

~~6.3 In this regard, the Standing Committee may also wish to consider instructing the Secretariat to approach and work with the States and territories in question with a view to encouraging them to fulfil their CITES responsibilities as a flag State.~~

Question 7: Transit and transshipment – can customs authorities seize specimens that are in transit or being transhipped and were declared as harvested in international waters but are not accompanied by a CITES document?

7.1 Yes and they should. The Secretariat received some questions from customs officers about seizing CITES shark specimens that were in transit without CITES documents. For the purpose of Article VII, paragraph 1 of the Convention, the paragraph a) of Resolution Conf. 9.7 (Rev. CoP15) on Transit and transshipment states that ‘transit or transshipment of specimens’ be interpreted to refer only to: i) specimens that remain in customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic’.

7.2 For sharks in particular, paragraph d) of Decision 19.222 encourages the Parties to ‘inspect, to the extent possible under their national legislation, shipments of shark parts and derivatives in transit or being transhipped, to verify presence of CITES-listed species and verify the presence of a valid CITES permit or certificate as required under the Convention or to obtain satisfactory proof of its existence’.

7.3 The Secretariat advised customs officers that contacted the Secretariat with specific questions on how to deal with cases where CITES-listed specimens are declared to customs or detected during an inspection. In those cases, the customs officers should verify the presence of valid CITES documents. ~~Depending on the State of introduction or the State of import of those specimens, they need to verify if that country had entered reservations.~~

7.4 If the shipment does not have CITES documentation and the State has not entered a reservation, the specimens should be seized in accordance with procedures established in national legislation, and the Secretariat and the country of destination should be informed. As explained in question 1 above, the

documents should be issued prior to the transit of the specimens and the argument that the documents are being requested upon arrival to the port is not admissible.

Question 8: Can a Party that has entered a reservation with respect to a marine species included in CITES Appendix I request an authorization to transit or transship specimens of such species harvested in the ~~high-seas~~ marine environment not under the jurisdiction of any State through ports of other CITES Parties without any CITES document?

8.1 No, see question 7. If the shipment that is in transit or being transshipped through a Party does not have valid CITES documentation, then the specimens should be seized. The Convention stipulates that Parties that have entered a reservation shall be treated as a State not a Party to the Convention with respect to trade in the species concerned (Article XV, paragraph 3). Trade with States not a Party to the Convention is regulated by Article X of the Convention. This stipulates that for Parties to trade with non-Parties, Parties should demand comparable documentation to the CITES documents.

8.2 Secondly, CITES Parties have adopted Resolution Conf. 4.25 (Rev. CoP19) on Reservations that recommends that Parties that have entered a reservation with regard to a species in Appendix I treat that species as if they were included in Appendix II for all purposes, including documentation and control. This means that a Party that has entered a reservation with respect to a species included in Appendix I can export this to another Party that has made a reservation with respect to the same species (including subspecies and population) using the provisions of Article IV of the Convention. The list of Parties that have entered reservations can be found here: <https://cites.org/eng/app/reserve.php>

Question 9: Are scientific biological samples taken from CITES-listed species in the ~~high-seas~~ marine environment not under the jurisdiction of any State covered by CITES?

9.1 Yes. CITES covers any specimen taken from a species included in the Appendices, even for non-lethal or non-destructive sampling, such as the collection of DNA samples from skin biopsies.

Question 10: Can CITES Simplified procedures be applied to biological samples taken in ~~high-seas~~ marine environment not under the jurisdiction of any State?

10.1 Yes. The simplified procedures contained in Resolution Conf. 12.3 (Rev. CoP19) on Permits and certificates, section XIII, ~~applies~~ may apply to any species and specimen where trade is considered to have none or negligible impact on the conservation status of the species. See the CITES webpage on the CITES permit system at https://cites.org/eng/prog/Permit_system