

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

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

Compliance

POSSESSION OF SPECIMENS OF SPECIES INCLUDED IN APPENDIX I

1. This document has been prepared by the Secretariat.
2. At its 19th meeting (CoP19; Panama City, 2022), the Conference of the Parties adopted Decision 19.61 on *Possession of specimens of species included in Appendix I* as follows:

Directed to the Standing Committee, with the assistance of the Secretariat

19.67 *The Standing Committee, with the assistance of the Secretariat, shall:*

- a) *explore whether further non-binding guidance is needed on the implementation of the Convention with respect to possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, to help address illegal international trade and, if so, request the Secretariat to prepare draft guidance for its endorsement;*
 - b) *consider whether additional recommendations related to the possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, in relevant Resolutions are warranted to address illegal international trade in such specimens; and*
 - c) *make recommendations for consideration at the 20th meeting of the Conference of the Parties, including appropriate revisions to existing Resolutions, relating to the regulation of possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, to help address illegal international trade in such specimens.*
3. Article VIII of the Convention on *Measures to be taken by the Parties* provides in paragraph 1: “The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens.”
 4. In Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention*, the Conference of the Parties further directed the Secretariat:
 - a) *to identify those Parties whose domestic measures do not provide them with the authority to:*
 - i) *designate at least one Management Authority and one Scientific Authority;*

- ii) *prohibit trade in specimens in violation of the Convention;*
 - iii) *penalize such trade; or*
 - iv) *confiscate specimens illegally traded or possessed;*
- b) *to seek from each Party so identified information indicating the procedures, action and time-frames that are envisaged in order to adopt, as a matter of the highest priority, the measures necessary for effective implementation of the Convention; and*
- c) *to report its findings, recommendations or progress to the Standing Committee and at each meeting of the Conference of the Parties.*
5. Pursuant to Article VIII and Resolution Conf. 8.4 (Rev. CoP15), national legislation of the Parties to the Convention should thus allow for the regulation and penalization of possession of specimens of species included in the Convention Appendices – including Appendix I.
 6. Through its analyses of national legislation, the Secretariat has noted that a recurrent gap in national legislation is the absence of prohibition of the possession of illegally traded specimens of CITES-species. Resolution Conf. 8.4 (Rev. CoP15) does not list such prohibition as one of the basic requirements of legislation.
 7. The Standing Committee could consider recommending to the Conference of the Parties amending Resolution Conf. 8.4 (Rev. CoP15) to more clearly require that domestic measures prohibit possession of specimens obtained in violation of the Convention to facilitate enforcement of the prohibition of trade in violation of the Convention.
 8. Meanwhile, when reviewing draft and enacted national legislation submitted to it by Parties, the Secretariat recommends that such legislation clearly prohibits and penalizes possession of CITES specimens that have been obtained contrary to the Convention.
 9. In this context, the first edition of the report on *World Wildlife Crime: Trafficking in protected species*, produced by the United Nations Office on Drugs and Crime (UNODC) in collaboration with partners, provided a first attempt to understand the international market for illegal trade in CITES-species based on data on 164,000 seizures in 120 countries. One of the policy implications of the report reads:

Illegal trade could be reduced if each country were to prohibit, under national law, the possession of wildlife that was illegally harvested in, or illegally obtained from, anywhere else in the world.
 10. Consequently, and in accordance with Article III, paragraph 2 (b), Article IV paragraph 2 (b), Article V, paragraph 2 (a), and Article VII paragraphs 4 and 5 of the Convention, the legal basis of possession may be an important element for the Management Authorities of the State of export to analyse when determining that a specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.
 11. To assist Parties in the development of effective and enforceable legislation, the CITES Secretariat – in collaboration with Parties to the Convention and partners – prepared a revised draft of the Model Law in October 2021. The Model Law provides for examples of provisions that Parties may use as inspiration for developing their own legislation and does cover the question of possession, in accordance with Article VIII of the Convention and Resolution Conf. 8.4 (Rev. CoP15). The Model Law is publicly available on the [CITES website](#).
 12. In Decision 17.87 (Rev. CoP18) on *Domestic markets for frequently illegally traded specimens*, the Conference of the Parties directed the Secretariat to undertake a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, other than elephant ivory; and to report the findings and recommendations of this study, as well its own recommendations, to the Standing Committee.
 13. Pursuant to this Decision, the Secretariat worked with the Environmental Law Institute (ELI) to analyze existing regulatory frameworks for domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, particularly where a consumer market is or may be supplied by illegal imports. The study, which focuses on national controls regulating domestic

trade in Appendix I-listed species, was summarized to the Conference of the Parties at CoP19 in document [CoP19 Doc. 39](#) and made available in information document [CoP19 Inf. 42](#).

14. In the review of the trends in legal controls on domestic trade of Appendix I-listed species, the study analysed the regulation of possession of Appendix I-listed species in the legal framework of the ten Parties to the Convention selected for review and noted that possession – when expressly regulated – is regulated in different ways in the Parties' legal frameworks (pp. 39-40). It further noted that there may be varying types or degrees of penalties applicable to illegal possession as well (p. 46). The study then developed six recommendations to improve regulation of domestic possession and trade in Appendix I-listed species (pp. 49-53). Such recommendations could be considered by the Parties to the Convention when developing or amending their national legislation, including to cover adequately the question of possession of specimens of species included in Appendix I.
15. The Secretariat is also available to provide advice to the Parties on the regulation of possession of specimens of species included in Appendix I in the context of the review of national legislation under the National Legislation Project.

Recommendations

16. The Standing Committee is invited to:
 - a) remind Parties to the Convention that the regulation and penalization of possession of specimens of species included in the Appendices – including Appendix I – is a requirement under Article VIII of the Convention;
 - b) consider recommending to the Conference of the Parties amending Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention* to require more clearly that domestic measures prohibit possession of specimens obtained in violation of the Convention, to facilitate enforcement of the prohibition of trade in violation of the Convention;
 - c) remind Parties whose legislation is in Category 2 and Category 3 under the National Legislation Project that possession is one of the areas being analysed by the Secretariat in the context of the review of national legislation; and
 - c) invite Parties whose legislation is in Category 1 under the National Legislation Project to identify potential loopholes in their national CITES-implementing legislation, in particular with regard to the possession of illegally traded specimens of CITES-listed species, and to adopt any necessary amendments.