

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

Illegal trade and enforcement

REVIEW OF RESOLUTION CONF. 11.3 (REV. COP19)
ON COMPLIANCE AND ENFORCEMENT

1. This document has been submitted by Kenya and New Zealand as co-Chairs of the Standing Committee's Working Group on Review of Resolution Conf. 11.3 (Rev. CoP19) on *Compliance and enforcement*.*

Background

2. At its 18th meeting (CoP18, Geneva, 2019), the Conference of the Parties adopted Decision 18.74 on *Review of Resolution Conf. 11.3 (Rev. CoP18)* which Directed the Standing Committee to review the Resolution with a view to, *inter alia*, reorganizing to improve usefulness and readability, updating and clarifying where needed, and identifying gaps.
3. To address this decision, the Standing Committee, at its 72nd meeting (Geneva, August 2019), established an intersessional working group. Based on the working group's review of the Resolution, the Standing Committee made recommendations to revise Resolution Conf. 11.3 and identified a number of gaps for consideration at the 19th meeting of the Conference of the Parties (CoP19; Panama City, 2022).
4. At CoP19, the Conference of the Parties considered the recommendations of the Standing Committee, adopted amendments to Resolution Conf. 11.3, and adopted Decision 19.66 on Review of Resolution Conf 11.3 (Rev CoP19) on *Compliance and enforcement*.

Decision 19.66 provides that, taking into account any revisions adopted at CoP19, the Standing Committee shall consider whether the following topics are gaps to be addressed in the content of Resolution Conf. 11.3 (Rev. CoP19) on Compliance and enforcement:

- a) *the role of professional bodies and whether they should be held to higher standards with regard to violations/compliance;*
- b) *whether to consider additional guidance in the Resolution relating to compliance and enforcement issues unique to trade in CITES-listed marine species, including issues pertaining to introduction from the sea;*
- c) *whether to consider adding guidance in the Resolution relating to stockpile management;*
- d) *whether to consider adding guidance in the Resolution relating to the One Health approach – a collaborative and transdisciplinary approach to achieving optimal health outcomes for people, animals, plants, and their shared environment;*

* *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.*

- e) *whether to consider adding guidance in the Resolution relating to possible outcomes from currently ongoing discussions in Standing Committee working group on electronic systems and information technologies; and*
- f) *whether to update timeframes for providing information in response to requests for information from the Secretariat on a potential compliance matter.*

The Standing Committee may also identify additional gaps to be addressed in the content of Resolution Conf. 11.3 (Rev. CoP19). In undertaking its review, the Standing Committee shall make efforts not to duplicate other relevant ongoing work and may refer any of the identified topics to be considered under other relevant work of the Standing Committee as appropriate. Based on its review, the Standing Committee shall make recommendations as appropriate to revise Resolution Conf. 11.3 (Rev. CoP19) to address gaps identified for consideration at the 20th meeting of the Conference of the Parties.

5. At its 76th meeting (Panama 2022), the Standing Committee established intersessional Working Group on Review of Res. Conf. 11.3 (Rev CoP19) drawing its mandate from the topics outlined in Decision 19.66.

Working group membership

6. The working group comprises 28 Parties and 21 Observers: Benin, Botswana, Brazil, Burkina Faso, Canada, China, Democratic Republic of the Congo, Georgia, Germany, Ghana, Guinea, India, Indonesia; Israel, Italy, Kenya (co-Chair), Liberia, Namibia, New Zealand (co-Chair), Niger, Nigeria, Peru, Singapore, South Africa, Switzerland, United Republic of Tanzania, United States of America, Zimbabwe; International Union for Conservation of Nature (IUCN); Born Free Foundation, Born Free USA, Center for Biological Diversity, China Biodiversity Conservation and Green Development Foundation, David Shepherd Wildlife Foundation, Defenders of Wildlife, Environmental Investigation Agency (EIA-UK), Forest Trends, International Fund for Animal Welfare (IFAW), International Fur Federation (IFF), IWMC-World Conservation Trust, Law of the Wild, Lewis & Clark – Global Law Alliance, Natural Resources Defence Council (NRDC), Oceana Inc., TRAFFIC, Wildlife Conservation Society (WCS), World Wide Fund for Nature (WWF), Zoo and Aquarium Association Australasia; Center for International Environmental Law (CIEL)

Approach of the working group

7. The Co-Chairs invited working group members to respond to a questionnaire (refer to the Annex to the present document) on the topics identified in decision 19.66 with a view to determining if there are “gaps” that should be addressed in Resolution Conf. 11.3 (Rev. CoP19). The questionnaire also invited suggestions of additional “gaps” and amendments to Resolution Conf. 11.3. Responses were received from 22 working group members (10 Parties and 12 Observers).
8. The responses to the questionnaire provide a strong basis for the conversation, but considering the low numbers (less than 50% of Working Group, members responding), further deliberations are required to understand the full scope of the issues and draw conclusive recommendations for consideration by the Standing Committee. The Standing Committee may consider whether to request the Secretariat, in liaison with the Co-Chairs of the Working Group, to issue a Notification to Parties seeking responses to the Questionnaire from a broader range of Parties to gain a better understanding of the scope of the issues.
9. In light of the direction to avoid duplication with ongoing work in other related Working Groups, the Co-Chairs also invited the advice of the Chairs of the Working Groups on *the Role of CITES in Reducing the Risk of Future Zoonotic Disease* and *Electronic Systems and Information Technologies* on any discussions taking place through those working groups that this Working Group need to consider in relation to topics d) on One Health approach and e) on electronic permitting respectively.

Deliberations

10. With regard to the role of professional bodies, the majority of those who responded to the questionnaire believed that professional bodies should be held to higher standards with regards to violations and compliance, some members noting that it is the members of the professional bodies who commit the violation that should be held to higher account rather than the professional body itself. The basis for the position that professional bodies should be held to higher standards was that professional bodies generally have the knowledge, experience and expertise to better understand the consequences of failing to comply, yet are often repeat bad actors in the trade. These respondents to the questionnaire recommend increasing

penalties for violations/lack of compliance when members of professional bodies are involved in illegal trade in CITES-listed species.

11. There was less certainty about whether and how this should be addressed in Resolution Conf. 11.3 (Rev. CoP19) and more discussion is required, however, to make conclusive recommendations on how this topic could appropriately be addressed in Resolution Conf. 11.3 (Rev. CoP19) members made suggestions as follows:
 - a) In section III Regarding legislation and prosecution - encouraging provisions in domestic legislation to enable professional bodies to be held to higher standards on CITES compliance and enforcement matters (some domestic legislation already enables this)
 - b) In section IV Regarding enforcement at national level – encouraging enforcement of standards for professional bodies
 - c) Encourage professional bodies to develop codes of conduct; and to sanction/impose penalties on members who breach CITES provisions
 - d) Encourage professional bodies or Parties to provide CITES training to members
12. A majority of respondents supported the term 'professional body' being defined in the Resolution. While some suggestions for a definition were put forward (including recommendations to use examples), more discussion is required to determine a workable definition.
13. The types of professional bodies reported as involved in violations/compliance matters were reported to be diverse and include: veterinarians; zoological and aquarium facilities; universities and researchers; museum and antique collection organisations; bodies overseeing auction houses, conservation societies and rescue groups/emergency care facilities, taxidermists/hunting organisations and legal or accountancy accreditation bodies.
14. With regard to marine species, respondents indicated they are aware of the following range of compliance and enforcement issues associated with CITES listed marine species. Noting that some of these are implementation issues and may be appropriately addressed through other Resolutions or guidelines:
 - Not obtaining the required permit
 - Using an invalid permit
 - Not properly declaring content of the shipment (including misidentified species and incorrect source codes)
 - Failure to follow port requirements
 - Lack of experience and data in the preparation of Non-detriment Findings
 - Issuing Legal Acquisition Findings without appropriate/sufficient documentation
 - Failure to follow Regional Fisheries Management Organisation (RFMO) rules on CITES species
 - The need to improve the compliance of and coordination between Parties, CITES and relevant RFMOs
 - Misinterpretations of ranching
 - Confusion with regard to transit and transshipment of shark products
15. The importance of due diligence was noted in relation to trade in marine species (as with terrestrial species) and it was suggested this warranted specific reflection in Resolution Conf. 11.3 (CoP19) for example through the inclusion of the following paragraph:

FURTHER RECOMMENDS that, in the case of specimens of species included in Appendix I or II taken in the marine environment not under the jurisdiction of any State, if a Management Authority of the State of introduction or import has reason to believe that the specimens were not acquired in a manner consistent with applicable international laws for the conservation and management of living marine resources for the marine species in question, or were acquired through illegal, unreported, or unregulated (IUU) fishing, it should consult with the Management Authority of the State of export, if relevant, or the appropriate Secretariat or body of the treaty, convention or agreement.
16. In terms of Introduction From the Sea (IFS), it is clear implementation is particularly challenging from a compliance and enforcement perspective. Compliance and enforcement challenges identified for IFS include:

- IFS borders being not as well monitored by border agencies
 - A wide variety of different importers are involved in IFS; e.g. fisheries, scientific research (the predominant shipment in these violations for one party), personal etc.
 - The declaration process for IFS is less understood.
 - The often short timeframe between time of acquisition and importing (e.g. hours or just a few days).
 - Approving in advance is difficult when quantities are unknown.
 - Issue of non-target/unintentional acquisition
 - The difficulty of applying IFS to artisanal fishers
17. Further discussions are required to better understand the scope of the issue for IFS compliance and enforcement, and the linkages with the changes already made to Resolution Conf. 11.3 at CoP19 to reflect IFS, Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea*, and ongoing work under other Decisions, including under Decisions 19.132-19.134 on *Non-detriment findings*, Decisions 19.135-19.139 on *Non-detriment findings for specimens of Appendix-II species taken from areas beyond national jurisdiction*, and the guidance being developed by the Secretariat on IFS under Decisions 19.140-19.141 on *Introduction from the sea*.
18. With regard to stockpile management compliance issues were identified as including:
- Leakage (including theft) from stockpiles and return of specimens into illegal trade
 - Management of stockpiles by non-range States and their effect on conservation funding
 - Reporting requirements and transparency
 - Management of large stockpiles and quota management
19. It was suggested by a number of working group members that there could be a generic provision in Resolution Conf. 11.3 (CoP19) regarding stockpiles, including reporting on them, to complement the species-specific provisions on stockpiles in other Resolutions including those in Resolution Conf. 10.10 (Rev. CoP19) on *Trade in elephant specimens*. Some members suggested the provision should urge Parties to maintain an inventory of government-held and private stockpiles and make this information readily available to the Secretariat upon request, and suggested that Parties be encouraged to destroy stocks once specimens have been used as evidence and tested (where relevant) to avoid leakage.
20. On whether to update timeframes for providing information in response to requests for information from the Secretariat on a potential compliance matter, working group members reported a range of preferences. While some working group members considered the existing time frames are reasonable, or already tight, a number of responses suggest the six month timeframe in paragraph 23 b) is too long and could result in action being taken too late to impact the species' chances of survival. It was suggested that delays in receiving information on compliance measures from respective Parties too close to a CITES meeting (e.g., Standing Committee meeting where the compliance matter will be discussed) can result in that compliance matter not being reasonably assessed by the relevant committee, or delayed decision making. Proposals to shorten the time frame include reducing the six months in paragraph 23 b) to 3 months but including flexibility for the affected Party to submit an explanation within that 3 months for why it cannot respond and to provide a response to the Secretariat's request within the next 3 month. This issue however requires further discussion amongst working group members.

Further gaps identified.

21. The following suggestions have been received to date on further potential gaps where further discussion is also required:
- a) Funding for effective compliance and enforcement, including; an option for the Secretariat to coordinate efforts to support Parties where there is no sufficient funding available at national level; funding to cover the training of professional bodies;
 - b) Further resources should be allocated to Parties for capacity building and training to ensure stockpiles of CITES specimens are inventoried, secured, and when appropriate, properly disposed of for non-commercial purposes.
 - c) More detail on international cooperation; for example recommending the liaison and sharing of intelligence and information among exporting, transit, and importing countries in all cases where illegal international trade is suspected to be involved; and recommending (in Part VI) that Parties report

difficulties in securing cooperation on illegal trade to the Secretariat for assistance similar to the transaction or permit specific guidance already provided in Part II of the Resolution

- d) Expanded guidance in application of Article XIII towards addressing compliance issues; including the need for transparency, and timely publication of action plans to address compliance.

Recommendations

23. The working group invites the Standing Committee to:

- a) take note of the present document and the progress made in implementation of Decision 19.66 on review of Resolution Conf. 11.3 (Rev. CoP19) on *Compliance and enforcement*;
- b) provide any advice or comment on the document or process at this point;
- c) agree that the working group continue its deliberations to better understand the scope of the issues, reporting to SC78 with recommendations on whether the topics in Decision 19.66 are gaps to be addressed in Resolution Conf. 11.3 (Rev. CoP19) and corresponding amendments to address them; as well as any further gaps to be addressed in the content of Resolution Conf. 11.3 (Rev. CoP19); and
- d) consider whether to request the Secretariat in liaison with the Co-Chairs of the Working Group to issue a Notification to Parties seeking responses to the Questionnaire from a broader range of Parties to gain better understanding of the scope of issues outlined in Decision 19.66 to inform any revision of Resolution Conf. 11.3 (Rev. CoP19).

QUESTIONNAIRE SENT TO WORKING GROUP MEMBERS

CITES Standing Committee working group on Review of Resolution Conf. 11.3 (Rev. CoP19) on Compliance and Enforcement

Questionnaire: Please respond by 3 July 2023

1.) the role of professional bodies and whether they should be held to higher standards with regard to violations/compliance;

Are you aware of professional bodies being involved in violations/compliance issues involving trade in CITES listed species?

Yes/No/Uncertain

If yes:

- what sort of violations/compliance issues were they?
- what sort of professional bodies were involved (please avoid breaching privacy)?

Should professional bodies be held to higher standards with regards to violation/compliance matters?

Yes/No/Uncertain

Why?

Should this matter be addressed in Resolution 11.3?

Yes/No/Uncertain

If yes, how would you like to see this addressed in the Resolution?

If no, why not?

Are there any particular questions you want to see considered further?

Should the term “professional bodies” be defined?

Yes/No/Uncertain

If yes, do you have suggestions for the definition?

ii) whether to consider additional guidance in the Resolution relating to compliance and enforcement issues unique to trade in CITES-listed marine species, including issues pertaining to introduction from the sea;

Are you aware of particular compliance or enforcement issues associated with CITES-listed marine species?

Yes/No/Uncertain

If yes, what are they (please avoid breaching privacy)?

Have you experienced compliance or enforcement issues associated with Introduction from the sea?

Yes/No /Uncertain

If yes, what are they (please avoid breaching privacy)?

Should the compliance/enforcement matters you have identified above be addressed in Resolution 11.3?

Yes/No /Uncertain

If yes, how would you like to see them addressed in the Resolution?

If no, why not?

Are there any particular questions you want to see considered further?.

iii) whether to consider adding guidance in the Resolution relating to stockpile management;

Are you aware of particular compliance and enforcement issues associated with stock pile management that should be addressed in resolution 11.3?

Yes/No/Uncertain

If yes what are they (please avoid breaching privacy)?

If yes, how would you like to see this addressed in the Resolution?

If no, why not?

Are there any particular questions you want to see considered further?.

vi) whether to update timeframes for providing information in response to requests for information from the Secretariat on a potential compliance matter;

What is your experience with the timeframes for providing response to requests on possible compliance issues?

Would you recommend any changes to the timeframes and if so what?

Identify any further gaps relating to compliance and enforcement that that could be addressed in Resolution 11.3: