

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

Forty-ninth meeting of the Standing Committee
Geneva (Switzerland), 22-25 April 2003

Interpretation and implementation of the Convention

GUIDELINES ON COMPLIANCE WITH THE CONVENTION

1. This document has been prepared by the CITES Secretariat.
2. At its 12th meeting, the Conference of the Parties adopted the following decision:

Directed to the Secretariat

12.84 On the basis of document CoP12 Doc. 26 and related discussions during the 12th meeting of the Conference of the Parties, the Secretariat shall draft a set of Guidelines on Compliance with the Convention for consideration by the Standing Committee at its 49th meeting.

3. In accordance with Decision 12.84, the Secretariat has attached, as an Annex, a set of *Draft guidelines on compliance with the Convention.*

Draft guidelines on compliance with the Convention

Objective

1. The objective of these guidelines is to assist the Standing Committee in:
 - a) reviewing Parties' overall compliance with the Convention, identifying ways to improve the implementation, and thereby the effectiveness, of the Convention and the national wildlife management policies and programmes that underlie it, and making appropriate recommendations to the Conference of the Parties;
 - b) promoting and facilitating Parties' compliance with the Convention with an emphasis on preventing non-compliance in the first instance; and
 - c) determining and addressing a Party's non-compliance with the Convention with an emphasis on identifying the cause(s) of non-compliance and bringing a Party back into compliance as quickly as possible.

Scope

2. 'Compliance' is the fulfilment by the Parties of their obligations under the Convention and any amendments to the Convention. 'Non-compliance' is the failure to fulfil those obligations.
3. Compliance issues can be either general, concerning all Parties, or specific, concerning a single Party or specified Parties.

Legal basis

4. These guidelines have their basis in and should be applied in a manner consistent with the legally-binding text of the Convention, applicable rules of international law, interpretative Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice.

General principles

5. A positive and supportive, rather than a negative and adversarial, approach should be taken towards instances of non-compliance.
6. Non-compliance should be addressed in a consultative and pragmatic manner with procedural safeguards for affected Parties (e.g. fair notice, opportunity to respond, opportunity to participate in relevant meetings of subsidiary bodies, etc.). Although non-compliance should generally be handled in a transparent manner, certain information may be treated as confidential or discussions held in a closed meeting. Reports on non-compliance should not contain any information that the affected Party has requested be kept confidential.
7. There should be consistent application of the guidelines. There should be equal treatment of Parties in similar situations and where applicable precedents are involved, but sufficient flexibility to address compliance matters on a case-by-case basis in a way that is both proportionate and fair.

8. Where compliance measures are developed, their possible conservation impact should be taken into account.
9. The guidelines should be reviewed and revised to incorporate lessons learned through their interpretation and application and to include innovative and effective practices identified in the compliance schemes of other international conventions and bodies.

Authority of the Conference of the Parties

10. As the supreme policy-making body of the Convention, the Conference of the Parties should direct and oversee the handling of compliance matters particularly through the identification of key obligations and procedures. At the request of a Party, the Conference of the Parties should review specific instances of non-compliance and related decisions of the Standing Committee. It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention.

Role of the Standing Committee

11. The Standing Committee should examine general and specific compliance matters in accordance with instructions from and authority delegated by the Conference of the Parties. It should advise and assist Parties in complying with the Convention, establish the facts and make determinations regarding non-compliance with the Convention, recommend measures to restore compliance and monitor and assess overall compliance.

Role of the Animals and Plants Committees

12. The Chairmen of the Animals and Plants Committees should consult with the Secretariat and the Standing Committee concerning the implementation of the Committees' recommendations for remedial measures for those species subject to recommendations under the Review of Significant Trade. They should also be consulted on the preparation of subsequent reports for the Standing Committee and the review of related recommendations to suspend trade that have been in place for longer than two years.

Role of the Secretariat

13. The Secretariat should assist and support the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters. It should receive, study, verify and communicate to the Parties information on compliance matters. It should advise and assist Parties in complying with the Convention, draw their attention to apparent instances of non-compliance, make recommendations for restoring compliance and track the implementation of compliance-related decisions of the Standing Committee and the Conference of the Parties.

Obligations or commitments

14. The application of these guidelines should focus on compliance with the following Convention obligations:
 - a) Designation of a Management Authority and a Scientific Authority (Article IX);
 - b) Ensuring that trade only takes place after the prior grant of certain permits or certificates showing that, *inter alia*, specimens have been legally-acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V and VI and VII);

- c) Taking of appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1);
- d) Maintenance of records of trade and preparation of periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8); and
- e) Responding to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).

Promotion and facilitation of compliance (and prevention of non-compliance)

- 15. The Secretariat should keep Parties informed as fully as possible, through Notifications to the Parties and its reports, of areas of effective compliance with the Convention, the identification of compliance problems, the actions taken to solve those problems and the successful restoration of compliance.
- 16. Advice, assistance and other capacity-building activities should focus on enabling Parties to meet the compliance obligations listed above.
- 17. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) should provide the primary means by which compliance with the Convention is monitored.
- 18. The Secretariat should advise Parties of deadlines applicable to reporting or other obligations under the Convention and offer relevant assistance.
- 19. Information and reports provided by Parties should be reviewed by the Secretariat and the results of these reviews should be provided to the Parties.
- 20. The Secretariat should maintain open, mutual and regular communication with Parties concerning compliance matters. The Secretariat should provide Parties with information it receives that indicates potential compliance problems and should use informal and formal consultations with Parties to determine whether compliance problems exist. Parties should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline, and the reasons for these problems.
- 21. If potential compliance problems are detected by the Secretariat, compliance should be facilitated by the Secretariat through the provision of advice or assistance.
- 22. A Party that has been identified by the Secretariat as having potential compliance problems should be given the opportunity to correct the causes of potential non-compliance. It may be asked by the Standing Committee to undertake additional reporting or targeted monitoring (e.g. submission of further information or provision of permit copies to the Secretariat for verification for a certain period of time) or other recommended policies or actions.
- 23. If a potential compliance problem is not resolved in spite of any assistance provided and in spite of time allowed for correction, the Secretariat or the Standing Committee should issue an informal warning to the affected Party stating that it is out of compliance, explaining the basis for that conclusion, urging the Party to investigate the matter and asking that the results of the investigation be provided to the Secretariat or the CITES subsidiary body.

Determination and addressing of non-compliance (and restoring of compliance)

Initiation of non-compliance procedure

24. The non-compliance procedure may be initiated by submissions to the Standing Committee of the Conference of the Parties by:
- a) A Party that concludes that despite its best endeavours it may be unable to comply with certain obligations under the Convention;
 - b) One or more Parties that have reservations about another Party's compliance with its obligations under the Convention;
 - c) The Standing Committee on its own initiative;
 - d) The Conference of the Parties on its own initiative; or
 - e) The Secretariat.
25. Submissions to the Standing Committee or the Conference of the Parties, which can be made orally or in writing, should include details as to which specific obligations are concerned and an assessment of the reasons why the affected Party may be unable to meet those obligations. Where possible, corroborating information, or advice where such corroborating information may be found, should be provided. The submission may include proposals for remedial action.
26. A submission should not be considered by the Standing Committee or the Conference of the Parties if it is anonymous, manifestly unreasonable, or incompatible with the provisions of these guidelines or the Convention.
27. The Secretariat may receive compliance-related information at any time and from any source. Before making a submission to the Standing Committee or the Conference of the Parties, it should screen such information to determine its reliability and relevance and consult with the affected Party.
28. The Standing Committee and the Secretariat should ensure the expedited handling of a non-compliance submission.

Information gathering and fact-finding

29. The Standing Committee should consider submissions, information and observations on non-compliance with a view to securing an amicable solution of the matter.
30. A Party that is the subject of a submission or that makes a submission should be entitled to participate in the discussions of the Standing Committee with respect to that submission and to be consulted informally or formally on the submission. The Party should not take part, however, in the preparation and adoption of any findings, any measures or any recommendations of the Standing Committee.
31. Where necessary and provided funds are available the Standing Committee should request, through the Secretariat, further information on a submission and should undertake, through the Secretariat and upon the invitation of the Party concerned, the gathering and verification of information in the territory of that Party.

32. Based on the information available to it, the Standing Committee should establish the relevant facts concerning a non-compliance submission.

Determination of non-compliance and its cause

33. The Standing Committee should determine whether a state of non-compliance exists and, if so, identify to the degree possible the likely cause of non-compliance. This determination should be based on a technical assessment of a Party's actions in relation to the relevant obligation and applicable compliance criteria. Such criteria should be clear, reasonable, fairly applied and consistent with the relevant legal obligation.

34. The Standing Committee should also consider the nature, cause, degree and frequency of non-compliance and whether the affected Party has taken or planned any steps to restore compliance before making a formal determination of non-compliance. Failure to fulfil a single Convention obligation should be sufficient to result in a determination of non-compliance.

Recommendation of measures to restore compliance

35. The Standing Committee should, after consideration of the information available to it, decide upon one or more of the following measures to address a Party's non-compliance and bring about its full compliance with the Convention:

- a) advice, information, appropriate assistance and other capacity-building support to the affected Party by the Secretariat;
- b) direct contact with the affected Party by a representative of the Standing Committee with a view to helping it find a solution;
- c) special reporting by the affected Party and data verification by the Secretariat;
- d) issuance of a formal caution directly to an affected Party warning that it is in non-compliance, requesting a response or action and indicating that, if there is none, further measures might be taken;
- e) recommended specific actions to be undertaken by the affected Party;
- f) in-country technical assessment and verification mission, upon the invitation of the Party concerned, by the Secretariat;
- g) public notification of non-compliance sent by the Secretariat to the Standing Committee or to all Parties advising that non-compliance has been brought to the attention of a Party and that there has been no satisfactory response or action;
- h) compliance action plan with agreed steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion. During this period, no additional measures would be applied provided that progress in returning to compliance continued to be made; and
- i) recommended temporary suspension of commercial or all trade in specimens of one or more CITES-listed species.

36. The affected Party should be given adequate time to implement the measure(s) recommended.

37. The possible measures above are presented in a sequential, graduated manner. A recommended suspension of trade should be warranted as a last resort where a Party's non-compliance is wilful and persistent, including cases in which a Party does not: follow recommendations; take advantage of offers of assistance; agree to a compliance action plan; or comply with an agreed plan. It should also be warranted where no domestic measures exist to enforce the Convention. Such a recommendation should be withdrawn as soon as a Party has been restored to full compliance. It should be regarded as a precautionary measure to prevent a continuing violation of the Convention that is detrimental to the survival of CITES-listed species.

Monitoring of implementation of compliance measures

38. The Standing Committee should monitor the actions taken by the Party concerned to restore compliance through, among other things, its submission of progress reports or the submission of reports by the Secretariat.

39. Specific actions as well as the date when the Party concerned is expected to return to compliance should be noted in such reports. Deadlines established by the Standing Committee should be adjusted to allow an affected Party that is making good progress to complete the steps needed to restore compliance.

40. In the event of a failure to return to compliance in a timely manner, the Standing Committee should consider other measures consistent with the list of measures provided above.

41. Existing recommendations to suspend trade should be reviewed at each Standing Committee meeting.

Declare return to compliance

42. The Standing Committee should instruct the Secretariat to notify Parties when it is satisfied that an affected Party has returned to compliance.

Review of overall compliance

43. The Standing Committee should from time to time review the implementation of these guidelines.