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



Sixty-sixth meeting of the Standing Committee Geneva (Switzerland), 11-15 January 2016

Interpretation and implementation of the Convention

Compliance and enforcement

Enforcement matters

DISPOSAL OF ILLEGALLY TRADED AND CONFISCATED SPECIMENS OF APPENDIX-I, -II AND –III SPECIES: REPORT OF THE WORKING GROUP

- 1. This document has been submitted by Switzerland.*
- 2. At its 16th meeting (CoP16, Bangkok, 2013), the Conference of the Parties adopted Decision 16.47 directed to the Standing Committee as follows:

The Standing Committee shall review Resolutions Conf. 9.9, Conf. 9.10 (Rev. CoP15) and Conf. 10.7 (Rev. CoP15) with a view to determining whether to consolidate any of their provisions or simplify their provisions, and shall report its conclusions and recommendations at the 17th meeting of the Conference of the Parties.

3. At its 65th meeting (SC65, Geneva, July 2014), the Standing Committee agreed to form a working group, chaired by Switzerland with the mandate as found in Dec 16.47:

It shall review Resolutions Conf. 9.9, Conf. 9.10 (Rev. CoP15) and Conf. 10.7 (Rev. CoP15) with a view to determining whether to consolidate any of their provisions or simplify their provisions, and shall report its conclusions and recommendations at the 17th meeting of the Conference of the Parties.

The Committee further agreed that the WG would also take into account the related document prepared by Indonesia, document SC65 Inf. 26

- 4. The WG was composed of the following members: Canada, China, Côte d'Ivoire, India, Indonesia, Kuwait, Mexico, New Zealand, Niger, Peru, Portugal, the Philippines, Portugal, South Africa, the United Republic of Tanzania, the United States of America, Born Free Foundation, Humane Society International, IFAW, IUCN, Lewis and Clark College, Safari Club International, Species Survival Network, WAZA and Wildlife Impact.
- 5. The WG agreed to conduct its work by electronic means.
- 6. In a first step, the WG decided that there was a large merit in merging the three Resolutions and trying to simplify their provisions.

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.

- 7. It further agreed that the proposed amendments to the resolutions suggested in the document submitted by Indonesia would be discussed within the general discussions when merging the three resolutions. However, in the discussions no support for the inclusion was raised and therefore the proposals contained Indonesia's document were not included in the merged Resolution.
- 8. The WG also discussed whether the two annexes to Resolution Conf. 10.7 (Rev. CoP15) which give guidelines on how to dispose of confiscated live animals and plants should be retained in the merged Resolution or extracted from the Resolution. If extracted, they would be then placed on the CITES website as a guidance document and would be referenced in the merged Resolution. The WG felt that this would diminish the value and weight of these Annexes and decided to propose retention of the Annexes in the Resolution.
- 9. However, in order to amend or streamline these annexes, the WG felt that there was not enough information available about how the annexes were currently used by Parties and therefore reached out to WG members as well as Regional representatives of the Standing Committee. Due to the limited response, the WG was unable to determine whether and how parties make effective use of the annexes when disposing of confiscated live animals and plants and how the annexes might be adapted. IFAW has developed a questionnaire to potentially address this question.
- 10. The WG then moved on to merge and simplify the three Resolutions where possible. It produced a combined resolution where the respective parts of the three resolutions were highlighted by different colours and then moved on the merge and simplify them into a consolidated version. Some text parts were rewritten or adjusted to make them clearer, but no changes to the content were made. The combined as well as the consolidated Resolution are contained in Annexes I and II of this document.

Recommendations

- 11. The Standing Committee is invited to consider the consolidated Resolution in Annex II and decide whether it should be further amended or consolidated or submitted to COP17.
- 12. If the Standing Committee considers the resolution should be further amended or consolidated, the WG should be given a respective mandate.
- 13. The Standing Committee is further invited to consider whether the WG should pursue its efforts in relation to the annexes concerning the disposal of confiscated live animals and plants, in particular by :
 - Developing a questionnaire to be distributed to Parties or gather information by other means, such as a workshop or oral interviews, which would review the use and usefulness of the annexes for Parties in disposal of confiscated live animals and plants as well as evaluate current practice.
 - Analysis of available data on the disposal of confiscated live animals and plants collected through inter alia the biennial reports or other special reports.
- 14. To this effect, the WG submits two draft decisions directed to the Secretariat and the Standing Committee in Annex 3 of this document

STANDING COMMITTEE WORKING GROUP (IWG) ON

DISPOSAL OF ILLEGALLY TRADED AND CONFISCATED SPECIMENS OF APPENDIX –I, -II AND –III SPECIES

Consolidated and revised version of Resolutions Conf. 9.9, 9.10 (Rev. CoP15) and 10.7 (Rev.CoP15)

RECALLING that according to Article VIII

- a) paragraph 1 (b), Parties shall take appropriate measures to provide for the confiscation or return to the State of export of specimens traded in violation of the Convention;
- b) paragraph 4 (b), confiscated live specimens shall, after consultation with the State of export, be returned to that State at the expense of that State, or to a rescue center or such other place as the Management Authority deems appropriate and consistent with the purposes of the Convention;
- c) And paragraph 4 (c), leaves open the possibility for the Management Authority to obtain the advice of a Scientific Authority or of the Secretariat ^{9.9 & 10.7}

NOTING, however, that Article VIII does not preclude the Management Authority allowing the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the (re-) exporter; ^{10.7}

ALSO RECALLING that Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention, require that, as a pre-condition for the issuance of a re-export certificate, the Management Authority of the State of re-export be "satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention"; ^{10.7}

FURTHER RECALLING Resolution Conf. 9.10 (Rev. CoP15), adopted at its ninth meeting and amended at its 10th, 13th, 14th and 15th meetings (Harare, 1997; Bangkok 2004; The Hague, 2007; Doha, 2010), on the Disposal of confiscated and accumulated specimens, which recommends inter alia to the Parties not having done so yet, to adopt legislation in order to charge to the importer who violated the convention and/or carrier the costs of returning confiscated live specimens to the country of origin or re-export; ^{9.9}

RECALLING AS WELL Resolution Conf. 10.7 (Rev. CoP15), on Disposal of confiscated live specimens of species included in the Appendices, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997) and amended at its 15th meeting (Doha, 2010); ^{9.10}

RECOGNIZING the importance of measures to ensure that the return by the importing Party to the State of export or re-export of specimens that have been traded in violation of the Convention does not result in such specimens being entered into illegal trade; ^{9.9}

ALSO RECOGNIZING that Parties have experienced problems with the disposal of [dead] specimens of Appendix-I species that have been obtained as a result of confiscation, accidental death or otherwise; ^{9.10}

NOTING that shipments of Appendix-II or -III live specimens can include large quantities of specimens for which no adequate housing can be made available, and that there may be inadequate data about country of origin and site of capture for these specimens; ^{10.7}

CONSIDERING that a Party may also provide for the internal reimbursement of expenses that result from the confiscation of a specimen traded in violation of the Convention; ^{9.10}

ALSO CONSIDERING that the successful recovery of the costs of confiscation and disposal from the party that violated the convention may be a disincentive for illegal trade ^{10.7}

FURTHER CONSIDERING that specimens once in trade may no longer form part of the reproducing wild population of the species concerned; ^{10.7}

CONSIDERING AS WELL that release to the wild may not always be in the best interest of the conservation of a species, especially one not in danger of extinction; ^{10.7}

CONCERNED about the risks of releasing confiscated specimens into the wild, such as the introduction of pathogens and parasites, genetic pollution and negative effects on the local fauna and flora; ^{10.7}

AWARE that, when specimens are exported or re-exported in violation of the Convention, often the only enforcement action taken against the exporter is the confiscation of such specimens by the importing Party; ^{9.9}

ALSO AWARE that some Parties do not allow the sale of confiscated specimens because of the message this transmits to the public and in order to exclude illegally traded specimens from entering commercial trade; ^{9.10}

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

Regarding specimens that are exported or re-exported in violation of the Convention

RECOMMENDS that:

- a) when specimens are exported or re-exported in violation of the convention, importing Parties:
 - i) consider that the seizure and confiscation of such specimens are generally preferable to the definitive refusal of the import of the specimen
 - ii) notify as soon as possible the Management Authority of the State from which the specimens were consigned of the violation and of any enforcement actions taken concerning these specimens
 - iii) <u>are</u> encouraged to take enforcement actions against the party which violated the Convention in addition to seizure and confiscation of the specimens
- b) when the import of specimens that have been exported or re-exported in violation of the Convention is refused by the country to which the specimens are consigned, the exporting or re-exporting Party take the measures necessary to ensure that such specimens are not re-entered into illegal trade, including monitoring their return to the country and providing for their confiscation; ^{9.9}

Regarding the disposal of confiscated and accumulated dead specimens

RECOMMENDS that:

- a) Parties dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable;
- b) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to achieve the purposes of the Convention, and steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal and that such disposal does not stimulate further illegal trade 9.10

Regarding the disposal of confiscated live specimens

RECOMMENDS that:

- a Management Authority before making a decision on the disposal of confiscated live specimens of species in the Appendices consult with and obtain the advice of its own Scientific Authority and, if possible, of that of the State of export or origin of the confiscated specimens, and other relevant experts
- b) each Scientific Authority in preparing its advice take note of the guidelines in Annexes 1 and 2
- c) the Secretariat be informed about any decision taken on the disposal of confiscated live specimens of species that are either in Appendix I or, if in Appendix II or III, involve commercial quantities;

- d) in the case where live specimens arrive in an importing country without the proper export permits or re-export certificates, and where an importer refuses to accept a shipment of live specimens, the shipment be confiscated and the specimens disposed of in accordance with the guidelines set out in Annex 1 or 2; and
- e) priority be given to the care of seized or confiscated wild-collected specimens of Appendix-I species and of Appendix-II species ^{10.7}

URGES Management Authorities, in consultation with Scientific Authorities and other bodies concerned, to develop action plans to deal with seized and confiscated live specimens consistent with the guidelines set out in Annex 3^{10.7}

Regarding costs associated with confiscated specimens

RECOMMENDS that:

- a) Parties make legislative provision to require the importer or the carrier who violated the Convention, or both, to meet the costs of confiscation, custody, storage, destruction or other disposal, including returning specimens to the country of origin or re-export (as appropriate) where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or last re-export so wishes; and
- b) Where such legislation does not exist and the country of origin or last re-export wishes a confiscated live specimen to be returned, that country shall cover the cost of return or shall seek financial assistance to facilitate the return and shall not automatically assume liability for the costs of confiscation, custody, storage and destruction or other disposal; and ^{9.10}

CONFIRMS that Parties have the right to allow, or should they choose to do so, not to allow the sale of confiscated dead specimens, including parts and derivatives, of Appendix-II and -III species; ^{9.10}

Regarding publicity

RECOMMENDS that:

Parties publicize information on seizures and confiscations and related enforcement actions, including prosecutions when appropriate as a deterrent to illegal trade, and informs the public as well as other Management Authorities about their procedures for dealing with seized and confiscated specimens or related prosecutions and about rescue centers; and ^{9.10}

Regarding the export or re-export of confiscated specimens

RECOMMENDS that:

- a) except in the circumstances specified in paragraphs b) and c) below, Parties not authorize any reexport of specimens for which there is evidence that they were imported in violation of the Convention;
- b) when applying Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention to specimens that were imported not in accordance with the provisions of the Convention and that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII or of this Resolution, or for investigatory or judicial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;
- c) when applying Article IV, paragraphs 2 (b) and 5 (a), of the Convention to specimens of species in Appendix II that have been confiscated as a result of attempts to import or export them illegally and that have subsequently been sold by the Management Authority, having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been obtained in accordance with the provisions of the Convention and with the laws of the State for the protection of fauna and flora for the purposes of issuing export permits or re-export certificates; and

d) permits and certificates granted in accordance with paragraph b) or c) above clearly indicate that the specimens are confiscated specimens; ^{9.10}

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf. 2.15 (San José, 1979) Exchange of Confiscated Appendix I Specimens;
- b) Resolution Conf. 3.9 (New Delhi, 1981) International Compliance Control paragraph c) ii);
- c) Resolution Conf. 3.14 (New Delhi, 1981) Disposal of Confiscated or Accumulated Specimens of Appendix I Species;
- d) Resolution Conf. 4.17 (Gaborone, 1983) Re-export of Confiscated Specimens;
- e) Resolution Conf. 4.18 (Gaborone, 1983) Disposal and Return of Illegally Traded Appendix II Specimens;
- f) Resolution Conf. 5.14 (Buenos Aires, 1985) Improving the Regulation of Trade in Plants paragraph f); and
- g) Resolution Conf. 7.6 (Lausanne, 1989) Return of Live Animals of Appendix II or III Species.
- h) Resolution Conf.9.9. Confiscation of specimens exported or re-exported in violation of the Convention
- i) Resolution Conf.9.10 Disposal of confiscated and accumulated specimens
- j) Resolution Conf.10.7 Disposal of confiscated live specimens of species included in the Appendices

Annexes 1,2 and 3 of Resolution Conf. 10.7(Rev. CoP15) form part of this document but have not been attached as the working group has not made any changes to their current form.

DISPOSAL OF ILLEGALLY TRADED AND CONFISCATED SPECIMENS OF APPENDIX –I, -II AND –III SPECIES

Draft for a consolidated version of Resolutions 9.9, 9.10 and 10.7

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1	RECALLING that Article VIII, paragraph 1 (b), of the Convention states that the Parties shall take appropriate measures to provide for the confiscation or return to the State of export of specimens traded in violation of the Convention;
2	RECALLING that according to Article VIII, paragraph 4 (b), of the Convention, confiscated live specimens shall, after consultation with the State of export, be returned to that State at the expense of that State, or to a rescue center or such other place as the Management Authority deems appropriate and consistent with the purposes of the Convention;
3	RECALLING that Article VIII, paragraph 4 (c), of the Convention, leaves open the possibility for the Management Authority to obtain the advice of a Scientific Authority or of the Secretariat
4	NOTING, however, that Article VIII does not preclude the Management Authority allowing the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the (re-)exporter
5	RECALLING that Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention, require that, as a pre-condition for the issuance of a re-export certificate, the Management Authority of the State of re-export be "satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention";
6	RECALLING Resolution Conf. 10.7 (Rev. CoP15), on Disposal of confiscated live specimens of species included in the Appendices, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997) and amended at its 15th meeting (Doha, 2010)
7	RECALLING Resolution Conf. 9.10 (Rev. CoP15), adopted at its ninth meeting and amended at its 10th, 13th, 14th and 15th meetings (Harare, 1997; Bangkok 2004; The Hague, 2007; Doha, 2010), on the Disposal of confiscated and accumulated specimens, which recommends <i>inter alia</i> to the Parties not having done so yet, to adopt legislation in order to charge to the guilty importer and/or carrier the costs of returning confiscated live specimens to the country of origin or re-export;
8	RECOGNIZING that the return by the importing Party to the State of export or re-export of specimens that have been traded in violation of the Convention may result in such specimens being entered into illegal trade unless measures are taken by the Parties concerned to prevent this
9	RECOGNIZING that Parties have experienced problems with the disposal of specimens of Appendix-I species that have been obtained as a result of confiscation, accidental death or otherwise;
10	NOTING that shipments of Appendix-II or -III live specimens often include large quantities of specimens for which no adequate housing can be made available, and that in general there are no detailed data about country of origin and site of capture for these specimens;
11	CONSIDERING that a Party may also provide for the internal reimbursement of expenses that result from the confiscation of a specimen traded in violation of the Convention;
12	CONSIDERING that the successful recovery of the costs of confiscation and disposal from the guilty party may be a disincentive for illegal trade
13	CONSIDERING that specimens once in trade no longer form part of the reproducing wild population of the species concerned
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	CONVINCED that the ultimate objective of the Convention is the continued existence of wild populations in their natural habitat
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	flora
17	AWARE that, when specimens are exported or re-exported in violation of the Convention, often the only enforcement action taken against the exporter is the confiscation of such specimens by the importing Party;
18	AWARE that some Parties do not allow the sale of confiscated specimens because of the message this transmits to the public and in order to exclude illegally traded specimens from entering commercial trade
19	THE CONFERENCE OF THE PARTIES TO THE CONVENTION
	Regarding specimens that are exported or re-exported in violation of the Convention
	RECOMMENDS that:
	a) when specimens are exported or re-exported in violation of the convention, importing Parties:
	i) consider that the seizure and confiscation of such specimens are generally preferable
	to the definitive refusal of the import of the specimen ii) notify as soon as possible the management authority of the state from which the
	specimens were consigned of the violation and of any enforcement actions taken concerning this specimens
	b) when the import of specimens that have been exported or re-exported in violation of the
	Convention is refused by the country to which the specimens are consigned, the exporting or
	re-exporting Party take the measures necessary to ensure that such specimens are not re-
	entered into illegal trade, including monitoring their return to the country and providing for their confiscation
20	
20	Regarding the disposal of confiscated and accumulated dead specimens
	RECOMMENDS that:
	 Parties dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable;
	b) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to achieve the purposes of the Convention, and steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal
21	Regarding the disposal of confiscated live specimens
	RECOMMENDS that:
	 a Management Authority before making a decision on the disposal of confiscated live specimens of species in the Appendices consult with and obtain the advice of its own Scientific Authority and, if possible, of that of the State of export of the confiscated specimens, and other relevant experts
	b) each Scientific Authority in preparing its advice take note of the guidelines in Annexes 1 and 2
	 c) the Secretariat be informed about any decision taken on the disposal of confiscated live specimens of species that are either in Appendix I or, if in Appendix II or III, involve commercial quantities;
	d) in the case where live specimens arrive in an importing country without the proper export permits or re-export certificates, and where an importer refuses to accept a shipment of live specimens, the shipment be confiscated and the specimens disposed of in accordance with the guidelines set out in Annex 1 or 2; and
	 e) priority be given to the care of seized or confiscated wild-collected specimens of Appendix-I species and of Appendix-II species
22	URGES Management Authorities, in consultation with Scientific Authorities and other bodies concerned, to develop action plans to deal with seized and confiscated live specimens consistent with the guidelines set out in Annex 3

23	Regarding costs associated with confiscated specimens
	RECOMMENDS that:
	 a) Parties make legislative provision to require the guilty importer or the carrier, or both, to meet the costs of confiscation, custody, storage, destruction or other disposal, including returning specimens to the country of origin or re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or last re-export so wishes; and
	b where such legislation does not exist and the country of origin or last re-export wishes a confiscated live specimen to be returned, that country shall seek financial assistance to facilitate the return
24	CONFIRMS that Parties have the right to allow, or should they choose to do so, not to allow the sale of confiscated dead specimens, including parts and derivatives, of Appendix-II and -III species;
25	Regarding publicity
	RECOMMENDS that:
	Parties publicize information on seizures and confiscations when appropriate as a deterrent to illegal trade, and inform the public about their procedures for dealing with seized and confiscated specimens and about rescue centers; and
26	Regarding the export or re-export of confiscated specimens
	RECOMENDS that:
	 a) except in the circumstances specified in paragraphs b) and c) below, Parties not authorize any re- export of specimens for which there is evidence that they were imported in violation of the Convention;
	b) when applying Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention to specimens that were imported not in accordance with the provisions of the Convention and that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII or of this Resolution, or for investigatory or judicial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;
	c) when applying Article IV, paragraphs 2 (b) and 5 (a), of the Convention to specimens of species in Appendix II that have been confiscated as a result of attempts to import or export them illegally and that have subsequently been sold by the Management Authority, having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been obtained in accordance with the provisions of the Convention and with the laws of the State for the protection of fauna and flora for the purposes of issuing export permits or re-export certificates; and
	 d) permits and certificates granted in accordance with paragraph b) or c) above clearly indicate that the specimens are confiscated specimens;[.]
27	REPEALS the Resolutions, or parts thereof, listed hereunder:
	a) Resolution Conf. 2.15 (San José, 1979) – Exchange of Confiscated Appendix I Specimens;
	b) Resolution Conf. 3.9 (New Delhi, 1981) – International Compliance Control – paragraph c) ii);
	 c) Resolution Conf. 3.14 (New Delhi, 1981) – Disposal of Confiscated or Accumulated Specimens of Appendix I Species;
	d) Resolution Conf. 4.17 (Gaborone, 1983) – Re-export of Confiscated Specimens;
	 e) Resolution Conf. 4.18 (Gaborone, 1983) – Disposal and Return of Illegally Traded Appendix II Specimens;
	 Resolution Conf. 5.14 (Buenos Aires, 1985) – Improving the Regulation of Trade in Plants – paragraph f); and
	g) Resolution Conf. 7.6 (Lausanne, 1989) – Return of Live Animals of Appendix II or III Species.
	h) Resolution Conf.9.9. Confiscation of specimens exported or re-exported in violation of the Convention
	i) Resolution Conf.9.10 Disposal of confiscated and accumulated specimens
	j) Resolution Conf.10.7 Disposal of confiscated live specimens of species included in the Appendices

Decision 17.xxxx

Directed to the Secretariat

The Secretariat is requested to:

- Develop a questionnaire to be distributed to Parties or gather information by other means, such as a workshop or oral interviews, which would review the use and usefulness of the annexes for Parties in disposal of confiscated live animals and plants as well as evaluate current practice.
- Conduct an analysis of available data on the disposal of confiscated live animals and plants collected through inter alia the biennial reports or other special reports.
- Submit this information to SC 69 for its consideration

Directed to the Standing Committee

The Standing Committee, at its 69th meeting, should

- evaluate the results of the activities conducted by the Secretariat under decision 17.xx and consider revising Resolution 17.xx accordingly.