

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



Seventy-fourth meeting of the Standing Committee  
Lyon (France), 7 - 11 March 2022

Interpretation and implementation matters

Regulation of trade

GUIDANCE FOR MAKING LEGAL ACQUISITION FINDINGS:  
REPORT OF THE SECRETARIAT

1. This document has been prepared by the Secretariat.

Introduction

2. At its 18th meeting (CoP18, Geneva, 2019), the Conference of the Parties adopted Decisions 18.122 to 18.124 on *Guidance for making legal acquisition findings* as follows:

**18.122 Directed to Parties**

*Parties are invited to:*

- a) *provide to the Secretariat any relevant information, experiences, or examples regarding the use of guidance in Annex 1 to Resolution Conf. 18.7 on Legal acquisition findings for verifying legal acquisition of CITES specimens to be exported and any relevant information regarding the applicability of the guidance in Annex 1 to the additional circumstances in Annex 2 to Resolution Conf. 18.7; and*
- b) *offer, on request, assistance to developing countries, for the improvement of their capacity to verify legal acquisition, based on nationally identified needs.*

**18.123 Directed to the Secretariat**

*The Secretariat shall:*

- a) *issue a Notification to the Parties requesting input pursuant to paragraph b) of Decision 18.122;*
- b) *report to the Standing Committee on the progress made in the implementation of Resolution Conf. 18.7 on the basis of information, experiences and examples submitted by the Parties;*
- c) *subject to external funding, maintain a dedicated webpage regarding the verification of legal acquisition on the CITES website and update it regularly; and*
- d) *subject to external funding, organize workshops and other capacity-building activities related to the implementation of Resolution Conf. 18.7 and disseminate training material for the verification of the legal acquisition of CITES specimens.*

### **18.124 Directed to the Standing Committee**

*The Standing Committee shall monitor progress in the implementation of Resolution Conf. 18.7, and, assess the report submitted by the Secretariat regarding the implementation of the Resolution by the Parties and where appropriate, make recommendations for improving the verification of legal acquisition by the Parties for submission to the 19th meeting of the Conference of the Parties.*

#### Implementation of Decision 18.122

3. Pursuant to paragraph b) of Decision 18.122, Parties were invited to offer, upon request, assistance to developing countries for the improvement of their capacity to verify legal acquisition, based on nationally identified needs. On the basis of the information received in response to Notification to the Parties No. 2021/060, such offers and requests for assistance are rare. Only the United States of America has indicated having provided such assistance, and only within general capacity-building programmes. In addition, the Center for International Environmental Law (CIEL) has developed a Legal Acquisition Finding (LAF) Guidelines Pilot Programme, through which it delivers assistance to several States.

#### Implementation of Decision 18.123, paragraph a)

4. In accordance with paragraph a) of Decision 18.123, the Secretariat issued Notification to the Parties No. 2021/060 on 11 October 2021, seeking information on Parties' experience regarding the use of the guidance contained in Annex 1 to Resolution Conf. 18.7 on *Legal acquisition findings* and the applicability of this guidance to the additional circumstances described in Annex 2 of Resolution Conf. 18.7.
5. In response to Notification to the Parties No. 2021/060, the Secretariat received replies from nine Parties (Malta, Peru, Philippines, Republic of Korea, Slovakia, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe) and a non-governmental organization (NGO) (Center for International Environmental Law – CIEL). The Secretariat is grateful for these responses which are available upon request.

#### Implementation of Decision 18.123, paragraph b)

6. In response to Notification to the Parties No. 2021/060, the Secretariat received information on the implementation of Resolution Conf. 18.7, and more specifically on the use of the guidance for making legal acquisition findings set out in Annex 1 to the Resolution.
7. A majority of the nine respondent Parties indicated that the guidance on legal acquisition findings set out in Annex 1 to Resolution Conf. 18.7 has been implemented in relevant national laws or regulations. Because of the limited number of responses received, it is difficult to assess to what extent this is representative.
8. Parties differ in whether they make publicly available general written instructions regarding the information required from applicants to demonstrate legal acquisition. Although the majority seems to make such instructions publicly available, three respondents indicated not doing so because it might cause confusion for applicants.
9. All respondents indicated that, in verifying legal acquisition, the Management Authority follows a risk assessment approach as recommended in paragraph 1 c) of Annex 1 to Resolution Conf. 18.7. In doing so, the Management Authority in question uses either all or a selection of the criteria set out therein.
10. Parties indicated having been confronted with other circumstances requiring the verification of legal acquisition or other legal findings as described in Annex 2 to Resolution Conf. 18.7, in particular as regards to pre-Convention specimens and parental stock of specimens bred in captivity or artificially propagated.
11. As regards to cooperation between relevant agencies and CITES Management Authorities and related due diligence for verifying imports of CITES-listed species [as addressed in Annex 1, paragraph 3 of Resolution Conf. 18.7 and paragraph 2 a) of Resolution Conf. 11.3 (Rev. CoP18)], most respondents have been confronted with situations in which there was doubt regarding the legality of the import or re-export of a CITES specimen, either because of irregularities in the export permit (e.g. insufficient information about the marking of a specimen), or because of a prior tip-off. In almost all instances, the Management Authority of the exporting State was consulted, and the issue resolved. When this was not the case, the import or re-export permit was denied.

Implementation of Decision 18.123, paragraph c)

12. Until recently, no external funding had been made available to maintain a dedicated webpage regarding the verification of legal acquisition on the CITES website as mandated by paragraph c) of Decision 18.123. At the time of writing however, funding has been obtained from the United Kingdom, and the Secretariat is compiling a bibliography, together with all relevant legislation, guidance and training material developed by the Parties, the CITES Secretariat, the Food and Agriculture Organization of the United Nations (FAO), Forest Trends, CIEL, the World Resource Institute, and other organizations. All relevant materials will be published on that webpage as soon as practicable. The Secretariat wishes to thank the United Kingdom for their generous financial and technical support to facilitate the implementation of Decision 18.123.

Implementation of Decision 18.123, paragraph d)

13. Pursuant to Decision 18.123, paragraph d), the Secretariat secured funding for and organized several workshops related to the implementation of Resolution Conf. 18.7. Those workshops were implemented in close collaboration with FAO.
  - a) In May 2021, the Secretariat and FAO jointly organized a two-day online workshop on LAFs for timber and other wood products in the Lower Mekong Region. Over 100 representatives from Cambodia, China, the Lao People's Democratic Republic, Thailand and Viet Nam took active part in the workshop, from CITES Authorities, customs, and partner organizations, as well as representatives of FAO, the International Tropical Timber Organization (ITTO), international NGOs, the private sector and academia. Participants discussed a range of processes central to verifying the origin of timber products, including concepts such as the burden of proof, chain of custody, due diligence and risk assessments. Representatives of the five CITES Management Authorities expressed their commitment to improve and further strengthen the processes for the verification of the legal origin of CITES specimens and requested support in doing so.
  - b) In October 2021, the Secretariat facilitated an online workshop to strengthen the application of the Convention in the region of Central America. The workshop was hosted by the United States Department of the Interior's International Technical Assistance Program (DOI ITAP). A total of 106 participants from Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Panama joined the workshop, which provided an overview of CITES processes in a series of lectures led by the Secretariat, which covered *inter alia* LAFs.
  - c) In November 2021, the Secretariat and FAO (through the Development Law Service (LEGN) of the Legal Office), jointly organized a three-day online training workshop to support national authorities of selected Pacific Island countries in meeting their obligations under the Convention. About 45 participants from Fiji, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu took part in the training. Representatives from Australia, New Zealand, the United States of America, four regional organizations – the Pacific Islands Forum Fisheries Agency (FFA), the Secretariat of the Pacific Community (SPC), the Secretariat of the Pacific Regional Environment Programme (SPREP), and the Western and Central Pacific Fisheries Commission (WCPFC) – and fisheries experts from civil society organizations attended the workshop as well. FAO's Fisheries and Aquaculture Division shared information and provided insights to the workshop participants, in particular on the relevance to CITES of FAO's Port States Measures Agreement (PSMA) and Catch Documentation Scheme (CDS Guidelines). The objective of the workshop was to strengthen the cooperation between fisheries and CITES authorities for the effective implementation of CITES in the fisheries sector. It involved representatives of national fisheries administrations, CITES Management and Scientific Authorities and other relevant institutions.
14. Forest Trends and the Center for International Environmental Law developed a *Handbook on Legal Acquisition Findings* that brings together information and guidance on how to prepare and develop national LAF guidelines and on the process of making a legal acquisition finding in practice. This provides a good starting point for strengthening work on national guidelines for legal acquisition findings and related training. The Standing Committee's working group on sharks and rays is considering the applicability of some chapters of the guidance presented in that handbook to develop guidance on the making of legal acquisition findings, and related assessments for introductions from the sea for CITES-listed shark species in the context of the implementation of Resolution Conf. 18.7 on *Legal acquisition findings*.
15. While some Parties have indicated that they consider the guidance provided in Annex 1 to Resolution Conf. 18.7 to be sufficiently clear, other Parties have signalled that it would be desirable to obtain more

guidance for making legal acquisition findings. Several Parties have also expressed the wish for further workshops on LAFs where information and best practices can be exchanged.

16. In response to the Parties' views in paragraph 15 above, the Secretariat has undertaken an initial revision of the rapid guide for making legal acquisition findings. The revised rapid guide is designed in a manner that is sufficiently standardised to be applicable by all Parties for all transactions. The revisions to the rapid guide are largely based on what is contained in paragraph 5 of the Annex 1 of Resolution Conf. 18.7. It also contains elements of the *Handbook on Legal Acquisition Findings* mentioned in paragraph 14 above. A digital application is under consideration to further assist interested Parties in the automatization of relevant steps. The revised rapid guide is in the Annex to the present document for the consideration of the Standing Committee.
17. The Secretariat draws the attention of the Parties to the fact that the rapid guide contains only the key elements to make a legal acquisition finding. In accordance with Article XIV, Parties have the right to adopt stricter domestic measures than those provided for in the Convention, e.g. by requiring permits for import of specimens of species in Appendix II, by further restricting or prohibiting export of specimens of species included in Appendix II or by restricting the application of certain exemptions provided in the Convention. Parties opting for stricter domestic measures are reminded that they should inform the Secretariat accordingly, as recommended in Resolution Conf. 4.22 on *Proof of foreign law*.

### Recommendations

18. The Standing Committee is invited to:
  - a) take note of the present document and review the 'Rapid guide for the making of legal acquisition findings' in the Annex to the present document; and
  - b) as per Decision 18.124, consider submitting the 'Rapid guide for the making of legal acquisition findings', as revised, and the following draft decisions to the Conference of the Parties at its 19th meeting:

#### **19.AA Directed to the Parties**

Parties are invited to test the 'Rapid guide for making legal acquisition findings' developed by the Secretariat and offer, upon request, peer assistance to other Parties for the improvement of their capacity to verify legal acquisition for different taxa.

#### **19.BB Directed to the Secretariat**

The Secretariat shall:

- a) subject to external funding, develop digital solutions to automate relevant parts of the 'Rapid guide for making legal acquisition findings' and maintain a dedicated webpage regarding the verification of legal acquisition for different taxa and specimens on the CITES website and update it regularly;
- b) subject to external funding, organize workshops and other capacity-building activities related to the implementation of Resolution Conf. 18.7 on Legal acquisition findings and disseminate training material for the verification of the legal acquisition of CITES specimens; and
- c) report to the Standing Committee on the progress made in the implementation of Resolution Conf. 18.7 on the basis of information, experiences and examples submitted by the Parties.

#### **19.CC Directed to the Standing Committee**

The Standing Committee shall monitor progress in the implementation of Resolution Conf. 18.7, assess any reports submitted by the Secretariat as per Decision 19.BB., paragraph c) and, where appropriate, make recommendations for improving the verification of legal acquisition by the Parties for submission to the 20th meeting of the Conference of the Parties.

Rapid guide for the making of legal acquisition findings

This proposed expansion of the ‘Rapid guide for the verification of legal acquisition’ contained in Resolution Conf. 18.7. has been prepared by the Secretariat to assist CITES Management authorities in the making of the legal acquisition findings. It is designed in a manner that is sufficiently standardised to be applicable by all Parties to all transactions. The guide is not prescriptive and is designed to be used to complement existing tools, adapted to different taxa, e.g., marine species, timber products, terrestrial fauna, non-timber forest products, etc., or adopted wholesale, as CITES authorities think appropriate. It is the prerogative of each Party to decide how it incorporates CITES obligations into national procedures, considering its needs and legal practice. A digital application is under consideration to further assist interested Parties in the automation of relevant steps.

In accordance with Article XIV, Parties have the right to adopt stricter domestic measures than provided for in the Convention, e.g., by requiring additional conditions, by further restricting or prohibiting commercial trade of certain specimens of species included in Appendices II and III or by restricting the application of certain exemptions provided in the Convention. Parties opting for stricter domestic measures should inform the Secretariat accordingly as recommended in Resolution Conf. 4.22 on *Proof of foreign law*.

**Rapid guide**

Whenever a Management Authority receives a request to authorize the export of a specimen of a CITES-listed species, the Management Authority may ask itself several questions to verify legal acquisition:

**1. Is there a requirement to verify legal acquisition under CITES?**

Yes, where the specimen is exported under Article III paragraph 2 (b), Article IV paragraph 2 (b) or Article V paragraph 2 (a) of the Convention. See also Annex 2 to Resolution Conf. 18.7 on *Legal acquisition findings*.

**2. Is there a high risk the specimen may have been acquired illegally?**

According to Annex 1, para 1 c) of Resolution Conf. 18.7 a risk assessment approach allows for the balancing of several factors in order to gauge the risk that the specimen is the product of some illegal activity or that the documentation provided may be inaccurate or fraudulent. If the MA chooses to follow a risk assessment approach, the following is a non-comprehensive list of factors and considerations, noting that national circumstances might dictate additional factors:

<b>Factors in Resolution Conf. 18.7, Annex 1</b>	<b>Considerations</b>
i) The Appendix in which the species is listed	Higher conservation risk if the species is included in Appendix I. Higher volumes of trade in species listed in Appendices II or III may increase likelihood of laundering illegal specimens.
ii) The source of the specimen	Is there enough evidence provided for the source indicated by the applicant? Was the specimen wild-collected, or from outside its range and propagated in a controlled environment, bred in captivity, ranched, cultivated or artificially propagated, or of unknown origin?
iii) Occurrence of the species in a controlled environment	Is the species easy to propagate in a controlled environment? For a cultivated specimen, was the parental stock legally acquired, according to Resolution Conf. 11.11 (Rev. CoP18) on <i>Regulation on trade in plants</i> ?
iv) Geographical factors	Are there reports of armed conflict and/or illegal natural resource extraction and/or illegal wildlife trade from the region? Are there other factors that may increase the likelihood of illegal acquisition?

v) Documented illegal harvest or illegal trade in the species, within the range State or in the subregional area	Is there a higher than average probability or significant risk that the specimen was illegally acquired?
vi) Purpose of trade	Is the trade commercial or non-commercial? The potential to profit from a commercial transaction may increase the risk.
vii) History of applications from the applicant, including any history of non-compliance	Has the applicant been involved in prior illegal activities? Have others in the supply chain been involved in illegal practices?
viii) Monetary value of the specimens	Is the value of the specimen high enough that it is more likely to be the subject of theft/illegal harvest or capture?
ix) Existence of look-alike species	If there are look-alike species, are they CITES-listed? Is there a risk that a rarer, higher value, or CITES-listed species could be misdeclared as a more common, less valuable, or unlisted species?
<b>Possible additional considerations beyond the Resolution</b>	
i) <b>Species:</b> Is the species native or non-native? ii) <b>Level of trade:</b> Are there any significant exports? The MA should consult national records of export, the CITES Trade database, and other available data sources. iii) <b>Is there a quota for the species?</b> Has this been set by an officially designated Scientific Authority and does it meet the non-detriment requirements for the species? Has the quota been adhered to? What are the start and end dates of the 12-month quota period? iv) <b>Is the species subject to a well-established and widely accepted traceability scheme?</b>	

### 3. What laws and regulations apply to the legality of the specimen?

Review and assess national laws for the protection of flora and fauna to determine relevant rules governing activities along wildlife supply chains.

### 4. Review whether CITES permit application is fully completed and whether sufficient chain of custody documentation has been provided

Questions the MA might ask itself:

- Depending on the risk assessment and circumstances, is it necessary and practicable for the applicant to provide documentation of the entire chain of custody?

Assessing compliance with the legal requirements pertinent to each stage in production, trade, and export of specimens of CITES-listed species assures that the chain of custody is traceable and legal and thus that an LAF can be made. The Management Authority is not expected to be an expert in assessing evidence and all laws applicable to a CITES specimens through the course of its transaction history. When the Management Authority is not able to assess whether chain of custody evidence presented by the applicant is sufficient, the Management Authority should consult government entities with the relevant expertise.

- Is the information submitted by the applicant sufficient to demonstrate legal acquisition? If not, what additional information should be required?

The applicant is responsible for providing sufficient information for the Management Authority to determine that the specimen was legally acquired, such as statements or affidavits made under oath and carrying a penalty of perjury, relevant licenses or permits, invoices and receipts, forestry concession numbers, hunting permits or tags, or other documentary evidence.

### 5. Review validity, accuracy, and completeness of documentation of chain of custody

The chain of custody and relevant law varies from taxa to taxa. The tables below provide an overview of the elements to be considered for (i) flora and fauna, (ii) timber, and (iii) specimens introduced from the sea.

Table 1: Evidence of chain of custody for flora and fauna

Applicant must provide evidence on:	Type of Activity/Specimen	Type of Legal Finding	Examples of relevant documentation
1. Sourcing	Bred in captivity or artificially propagated Specimens	Captive-bred or CAPP	Records that identify the nursery, breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for fauna by sex, size, band number, or other mark.
	Confiscated specimens	LAF	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
	Previously imported specimens	Re-export	A copy of the previous CITES document that accompanied the shipment into the importing country.
	Ranched specimens	LAF	Records, such as permits, licenses, and tags, that demonstrate that the specimen was legally removed from the wild under relevant wildlife conservation laws or regulations.  Records that document the rearing of specimens at the facility, including signed and dated statement by the owner or manager of the facility that the specimens were reared at the facility in a controlled environment; marking system, if applicable; and photographs or video of the facility.
2. Ownership and transfers			Certificates of ownership, documentation of legal transfers, such as sales bills, receipts, registrations. In the case of older specimens, in particular those benefiting from pre-Convention status, this documentation may not exist. If the level of risk is low, an affidavit of ownership that explains the circumstances might be permissible.
3. Transport			Licenses, waybills, packing lists, inspection records.
4. Processing – taxidermy, meat processing, leather or fur processing, cosmetic, medicinal and food processing			Facility registrations, facility licenses, receipts, invoices, other official transaction documents, sanitation and health code records.

Table 2: Evidence of chain of custody for timber

<b>Applicant must provide evidence on:</b>	<b>Examples of relevant documentation</b>
1. Land tenure and harvest rights	<ul style="list-style-type: none"> <li>- Official proof of government issued tenure</li> <li>- Forest Management Unit/ Concession of Harvest license</li> <li>- Forest Management Unit/ Concession of Harvest location and map</li> </ul>
2. Conditions of harvest	<ul style="list-style-type: none"> <li>- Proof of harvesting permit validated by relevant forestry authority</li> <li>- Pre-harvest inventory of all trees and species</li> <li>- Identification of each tree, including species, diameter and location marked on map</li> <li>- List of all trees that will be harvested</li> <li>- Cutting block records</li> <li>- Annual allowable cut</li> <li>- Log markings</li> <li>- Prohibitions or quotas on harvest of rare or endangered species</li> <li>- Post-harvest inventory</li> <li>- Post-harvest monitoring</li> <li>- Detailed records of numbers and volumes of logs removed cross checked against authorization to harvest, including the approved cut</li> </ul>
3. Payment of taxes and fees	<p>Proof/ receipts of payment of:</p> <ul style="list-style-type: none"> <li>- Stumpage fees</li> <li>- Concession fees</li> <li>- Allowable cut fees</li> <li>- Company profit taxes</li> <li>- Sales taxes</li> </ul>
4. Trade and transport	<ul style="list-style-type: none"> <li>- Logs or log loads are clearly identified and documented prior to being transported</li> <li>- When in transit, sufficient information to identify the origin and destination of the wood should accompany the logs</li> <li>- Waybills, packing lists, loading records, transport dockets, weighbridge information</li> <li>- Customs documents</li> <li>- Certification system associated with legality and sustainable management</li> <li>- Export quota and monitoring system in place</li> <li>- Marking system</li> <li>- Traceability system</li> </ul>
5. Third party rights/ Employment-related documentation	<ul style="list-style-type: none"> <li>- Certificate of compliance with any relevant standards</li> <li>- Stakeholder consultation report conducted prior to the approval of management plan</li> <li>- Health and safety certificates</li> <li>- Social and environmental impact assessment reports</li> </ul>

**Table 3: Evidence of chain of custody for marine species and specimens introduced from the sea**

Prior to issuing either an introduction from the sea certificate or an export permit for specimens introduced from the sea, the Management Authority may wish to require an applicant to provide the following information and documentation, as appropriate:

<b>Applicant must provide evidence on:</b>	<b>Examples of relevant documentation</b>
1. Timing and location of the catch	<ul style="list-style-type: none"> <li>- Vessel Monitoring System (VMS) data</li> <li>- Observer data or logbooks</li> <li>- Physical and/or electronic catch report forms</li> <li>- Navigation system data (e.g., GPS data)</li> <li>- Automatic Identification System (AIS) data (for larger vessels)</li> </ul>
2. Gear/technique employed	<ul style="list-style-type: none"> <li>- License</li> <li>- Fishing agreements</li> <li>- Observer data or logbooks</li> <li>- Physical and/or electronic catch report forms</li> </ul>
3. The name of the vessel that captured the specimen	<ul style="list-style-type: none"> <li>- Vessel registration</li> <li>- License, authorization, permit</li> </ul>
4. Legal authority to capture specimen	<ul style="list-style-type: none"> <li>- Quotas</li> <li>- Licenses</li> <li>- Fishing agreements</li> </ul>
5. Identify of vessel captain/master	Captain's certificate/license
6. Trans-shipment occurrences	<ul style="list-style-type: none"> <li>- Regional Fishery Management Organization (RFMO) authorization to engage in trans-shipment,</li> <li>- Observer data relating to trans-shipment,</li> <li>- Trans-shipment entries in logbooks,</li> <li>- Trans-shipment authorization by the competent national authority</li> <li>- VMS, AIS, or GPS data showing trans-shipment activity (e.g. through pauses in navigation)</li> </ul>
7. Compliance with measures relating to processing and handling of catch	<ul style="list-style-type: none"> <li>- Records or other information showing compliance with fin-to-carcass ratios and/or fins-attached rules (in case of shark fishing) established under RFMO Conservation and Management Measures</li> <li>- Observer data</li> <li>- Logbooks</li> </ul>
8. Compliance with bycatch and discard measures	<ul style="list-style-type: none"> <li>- Records showing compliance with RFMO Conservation and Management Measures related to bycatch and discards</li> <li>- Observer data or logbooks</li> <li>- Catch report forms</li> </ul>

**6. If the Management Authority is satisfied that the specimen has been legally acquired, what documents / other information is it practicable to keep for the record?**

See paragraph 3 e) of Resolution Conf. 18.7. A Management Authority may choose to share relevant information about the legal acquisition of the specimen on the CITES document. Such information may be included in Box 5 (or another location) of the standard CITES document and may include import or export permit numbers, forestry concession numbers, hunting permit or tag numbers, for example.

## 7. Decision tree for making a Legal Acquisition Finding

