

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

INTRODUCTION FROM THE SEA:
REPORT OF THE SECRETARIAT

1. This document has been prepared by the Secretariat.
2. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Decision 17.181 on *Introduction from the sea* which remains in effect. The Decision reads as follows:

Directed to the Secretariat

17.181 *The Secretariat shall report to the Standing Committee, as appropriate, on the results of the negotiations on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).*

At its 18th meeting (CoP18, Geneva, 2019), the Conference of the Parties adopted Decisions 18.157 and 18.158 on *Introduction from the sea* as follows:

Directed to the Secretariat

18.157 *The Secretariat shall continue to monitor the implementation of Resolution 14.6 (Rev. CoP16) on Introduction from the sea, including the provisions on chartering, and report as appropriate to the Standing Committee.*

Directed to the Standing Committee

18.158 *The Standing Committee shall, as appropriate, review the information provided by the Secretariat as requested in Decisions 18.157 and 17.181 and, if necessary, propose measures for consideration at the 19th meeting of the Conference of the Parties, which may include amendments to Resolution Conf. 14.6 (Rev. CoP16).*

Implementation of Decision 17.181

3. Pursuant to Decision 17.181, the Secretariat has continued to monitor the negotiations on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).
4. The first session of the Intergovernmental Conference on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national

jurisdiction, established by General Assembly resolution 72/249 of 24 December 2017, was convened from 4 to 17 September 2018, the second session from 25 March to 5 April 2019 and the third session from 19 to 30 August 2019.

5. Following the third session, the President of the Intergovernmental Conference issued a revised draft text of an agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (available as document [A/CONF.232/2020/3](#)).
6. The fourth session of the Conference, which was postponed twice by General Assembly decisions 74/543 and 75/570 owing to the COVID-19 pandemic, is now scheduled to take place from 7 to 18 March 2022. However, the President of the Conference will review the feasibility of holding that session on those dates, no later than 7 February 2022, in the light of the developments concerning the COVID-19 pandemic and their impact on holding in-person meetings at United Nations Headquarters.
7. Since September 2020, the President of the Conference has conducted intersessional work to keep the momentum going in spite of the postponement of the fourth session. The work assists delegations to enhance their understanding of the issues and the differing views on the four issues of the package under discussion (marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity-building and the transfer of marine technology); as well as cross-cutting issues. Such work is not intended to be a substitute for the negotiations, which will resume during the fourth session.

Implementation of Decision 18.157

8. The Conference of the Parties adopted Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea* to provide practical guidance regarding the correct and effective implementation of the Convention for the harvesting and landing into a State of specimens taken in marine areas beyond the areas subject to the sovereignty or sovereign rights of a State. With new marine species added to the Appendices at each meeting of the CoP since CoP14, applying that practical guidance is becoming increasingly important for the conservation of these species. However, in assisting some Parties to put in place the legal and regulatory measures required for the implementation of the new listings, the Secretariat has observed that CITES provisions regulating trade in recently listed marine species are not yet sufficiently understood and implemented by the Parties.
9. To support national authorities in meeting their commitments under the Convention, the Secretariat has developed training material and organized subregional training workshops, which were held online during the second half of 2021. Authorities were provided *inter alia* with an overview of CITES key principles and requirements and their applicability in the fisheries sector; discussion material on commercially exploited aquatic species listed in Appendix II; opportunities for collaboration between CITES Management Authorities and fisheries authorities; and knowledge-sharing on practical experiences of CITES implementation at national and regional levels. More details are provided in the document on SC74 Doc. 26 on *National laws for implementation of the Convention*.
10. Introduction from the sea (IFS) is one of the four types of trade regulated under CITES (the others are import, export, and re-export). IFS is defined in Article 1 of the Convention as *transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State*. Introduction from the sea of specimens of species included in Appendix I and II is regulated by the Convention, but not specimens of Appendix III-listed species. Appendix III only includes species that fall under the jurisdiction of the listing Party.
11. Resolution Conf. 14.6 (Rev. CoP16) states that the “marine environment not under the jurisdiction of any State” refers to the marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in UNCLOS. The Resolution explains how the CITES requirements apply in different scenarios involving the taking of CITES-listed species in areas beyond national jurisdiction (ABNJ) and their subsequent landing.
12. Only situations where species are harvested in ABNJ by a vessel and landed in that vessel’s own flag State are treated as IFS. In this case, the Management Authority of the vessel’s flag State needs to issue an IFS certificate, based on a determination by the Scientific Authority that the introduction will not be detrimental to the survival of the species. An IFS certificate is thus only required in a one-State transaction involving species listed in Appendices I and II and taken from the high seas. Other instances of transportation into a State of species taken from ABNJ, for example when a flagged vessel lands its catch in a foreign port, will be treated

as an import, export or a re-export. If specimens remain in customs control, transit and transshipment will come into play.

13. As the four types of trade regulated under CITES can occur from the high sea, i.e. IFS, export, import, and re-export, it may be more appropriate to refer to **CITES trade from the high sea**, when referring to transactions involving specimens of CITES-listed species taken in the marine environment not under the jurisdiction of any State. CITES trade from the high sea in marine species listed in Appendices I and II is normally regulated by Articles III and IV. However, other provisions such as Article VII, paragraph 1 on transit or transshipment and Article XIV paragraphs 4 and 5 are also relevant depending on the species, the geographical area and the characteristics of the transaction.

Disentangling IFS

14. The Secretariat has identified several challenges faced by the Parties with regards to introduction from the sea that have arisen during workshops, regional capacity-building activities, implementation of the national legislation project and permit-related queries received via email from Management Authorities and customs officers.
15. These challenges include, *inter alia*:
 - a) the design of institutional arrangements to ensure cooperation between CITES authorities and fisheries agencies, when the division of labour is split among different institutions;
 - b) the drafting and adoption of national legislation required to put in place new controls that did not exist before the listings;
 - c) changes in fisheries management measures;
 - d) the making of the legal acquisition findings (LAFs);
 - e) the making of the non-detriment findings (NDFs);
 - f) the issuance of permits and certificates for specimens harvested in the marine environment not under their national jurisdiction;
 - g) exercising trade controls on vessels that operate near or across the borders between national and international waters;
 - h) the issue of the flag of convenience;
 - i) the control of transshipments;
 - j) the cooperation with customs authorities; and
 - k) the low reporting of trade from the high sea in the CITES annual reports that apparently does not match with the reported catches.
16. The Secretariat has assisted several Parties in the context of the national legislation project on the institutional and legislative aspects. It has also responded to some of the challenges described in paragraph 15 above in the context of direct correspondence, workshops and capacity-building activities. The issue of the alleged mismatch between catch data and trade data for sharks and rays is discussed in more detail in document SC74 Doc. 67.3 on *Sharks and rays (Elasmobranchii spp.)*.
17. In the next paragraphs, the Secretariat will present the 10 questions most frequently asked by Parties when consulting about the implementation of the new listings of marine species and will attempt to provide some responses on several of the challenges mentioned for the consideration of the Standing Committee.

Question 1: When to issue an IFS certificate – can it be issued after the specimens have been landed in the port of the State of introduction?

18. Noting that an IFS certificate shall be issued only when a specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State

and is transported into the same State, the IFS certificate needs to be issued **prior** to the transportation into a State. For Appendix-II species, see Article IV, paragraph 6: “the introduction from the sea of any specimen of a species included in Appendix shall require the prior grant of a certificate...”

19. The IFS certificate could be issued after the specimen has been caught as long as the specimen is not yet transported into the State. In those cases, the vessel would need to communicate the catch of specimens of CITES-listed species to the CITES Management Authority (MA) while still outside of national jurisdiction. The MA will then consult with the Scientific Authority (SA) on the NDF and if the conditions in Article IV are fulfilled, the MA may issue the IFS certificate before the catch is landed. Parties would need to anticipate what would happen in an instance where the specimens are obtained in the high seas and a certificate is sought before the vessel enters territorial waters, but the SA deems the catch unsustainable while the vessel is in transit between the high seas boundary and the port of landing. Presumably, the MA would not be able to issue a certificate and the specimen would be confiscated.
20. In the case of a species included in CITES Appendix I, there will most likely be binding fisheries measures in place prohibiting the capture of such species for commercial purposes. For introduction of biological samples of species in Appendix I for scientific purposes, the researcher/scientist should normally apply for the IFS certificate in advance of the take of the samples and the IFS certificate should be issued prior to the sampling operation. The Secretariat notes that there may be instances where benthic sampling was done on the high seas and CITES-listed specimens were obtained unexpectedly.

Question 2: Is a specimen caught as by-catch (i.e. sharks) covered by CITES provisions?

21. All parts and derivatives of CITES-listed marine species are covered by the provisions of the Convention unless otherwise indicated. This includes fins, meat, blubber, biological samples, etc. It makes no difference to CITES whether the specimen was caught intentionally or as by-catch. The CITES provisions on trade from the high sea apply, irrespectively. In other words, there is no by-catch exemption in CITES.

Question 3: Whose responsibility - Can a Regional Fisheries Management Organization (RFMO) issue a CITES document?

22. Only the CITES MAs designated by each Party to the Convention have the authority to issue CITES documents. RFMOs and similar organizations have a role to play in gathering information and data that can be used for NDFs. See paragraph 7 of Article IV.
23. Paragraphs 4 and 5 of Article XIV suggest that there may be another type of certificate for trade in Appendix-II specimens taken by ships registered by a Party to CITES that is also party to any other treaty, convention or international agreement which was in force before 1 July 1975 and under the provisions of which protection is afforded to marine species included in Appendix II. In those cases, a certificate is required from a MA of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

Question 4: If national fisheries legislation – or RFMO measures – include a “no-retention” obligation for a species in CITES Appendix II, can trade still be authorized?

24. If a Party has adopted stricter domestic measures or is a member of an RFMO that prohibit the take of a species, those measures would prevail and no trade in that species should be authorized by that same Party as it would not be legally acquired and the MA could not make a Legal Acquisition Finding. However, other Parties to CITES that are not bound by such stricter measures may authorize trade in the species concerned. The Secretariat understands that an RFMO requirement, just like CITES, will have national implementing legislation and requirements on its Parties/Members. For instance, if an RFMO is banning retention of shark species, then, if one of the members of that RFMO wished to retain and trade, they would not be able to do so as they also could not make a LAF. Management Authorities are invited to verify if “participating territories” and “co-operating non-members” are also bound by specific RFMO conservation and management measures.

Question 5: What is the relationship between illegal, unreported, unregulated (IUU) fishing and CITES – Can a CITES document be issued to authorize trade in specimens of CITES-listed species that have been caught as IUU?

25. Trade under CITES can be authorized only when four main conditions are met:

- a) Legal acquisition: the specimens have been obtained in conformity with applicable legislation;
- b) Sustainable harvesting: trade is not detrimental to the survival of the species in the wild; and
- c) Traceable: a valid CITES document has been issued by the relevant competent authority.
- d) For living specimens: the MA is satisfied that they will be prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment. For live Appendix-I specimens being imported, the SA has to be satisfied that the facility they are going to is suitably equipped to house and care for it.

26. If these conditions are met, it is not possible that the specimens are also IUU: by definition they cannot be illegal or unreported. If the species is included in the CITES appendices, it is by definition not unregulated either. In other words, a CITES document cannot authorize trade in IUU specimens.

Question 6: CITES trade from the sea under flags of convenience (FOC) – what is the flag State’s responsibility?

27. The Secretariat received some questions from States with large fleets about their obligations to issue CITES documents considering that they are not always aware of the CITES-related activities undertaken by vessels flying their flags. The responsibilities of the State of introduction, export, import or re-export for regulating trade in Appendix I and II marine species are well defined in Articles III and IV of the Convention. Flag States shall assume those responsibilities by monitoring, regulating and controlling the activities of vessels flying their flag.

28. The Standing Committee may consider instructing the Secretariat to explore the feasibility of having a register with the list of flag-of-convenience States and territories. The list could include the vessels which are authorized to take CITES-listed species in the respective zones. If such a list is created, it could be used to improve the matching between declared catches and reported trade involving vessels that are registered in the States and territories which appear on that list.

29. In this regard, the Standing Committee may also wish to consider instructing the Secretariat to approach and work with the States and territories in question with a view to encouraging them to fulfil their CITES responsibilities as a flag State.

Question 7: Transit and transshipment – can customs authorities seize specimens that are in transit or being transhipped and were declared as harvested in international waters but are not accompanied by a CITES document?

30. The Secretariat received some questions from customs officers about seizing CITES shark specimens that were in transit without CITES documents. For the purpose of Article VII, paragraph 1 of the Convention, the paragraph a) of Resolution Conf. 9.7 (Rev. CoP15) on *Transit and transshipment* states that ‘transit or transshipment of specimens’ be interpreted to refer only to: i) specimens that remain in customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic’.

31. For sharks in particular, paragraph c) of Decision 18.218 encourages the Parties to ‘inspect, to the extent possible under their national legislation, shipments of shark parts and derivatives in transit or being transhipped, to verify presence of CITES-listed species and verify the presence of a valid CITES permit or certificate as required under the Convention or to obtain satisfactory proof of its existence’.

32. The Secretariat advised customs officers that contacted the Secretariat with specific questions on how to deal with cases where CITES-listed specimens are declared to customs or detected during an inspection. In those cases, the customs officers should verify the presence of valid CITES documents. Depending on the State of introduction or the State of import of those specimens, they need to verify if that country had entered reservations.

33. If the shipment does not have CITES documentation and the State has not entered a reservation, the specimens should be seized in accordance with procedures established in national legislation, and the Secretariat and the country of destination should be informed. As explained in question 1 above, the documents should be issued prior to the transit of the specimens and the argument that the documents are being requested upon arrival to the port is not admissible.

Question 8: Can a Party that has entered a reservation with respect to a marine species included in CITES Appendix I request an authorization to transit or tranship specimens of such species harvested in the high seas through ports of other CITES Parties without any CITES document?

34. The Convention stipulates that Parties that have entered a reservation shall be treated as a State not a Party to the Convention with respect to trade in the species concerned (Article XV, paragraph 3). Trade with States not a Party to the Convention is regulated by Article X of the Convention. This stipulates that for Parties to trade with non-Parties, Parties should demand comparable documentation to the CITES documents.
35. Secondly, CITES Parties have adopted Resolution Conf. 4.25 (Rev. CoP18) on *Reservations* that recommends that Parties that have entered a reservation with regard to a species in Appendix I treat that species as if they were included in Appendix II for all purposes, including documentation and control. This means that a Party that has entered a reservation with respect to a species included in Appendix I can export this to another Party that has made a reservation with respect to the same species (including subspecies and population) using the provisions of Article IV of the Convention. The list of Parties that have entered reservations can be found here: <https://cites.org/eng/app/reserve.php>

Question 9: Are scientific biological samples taken from CITES-listed species in the high seas covered by CITES?

36. Yes. CITES covers any specimen taken from a species included in the Appendices, even for non-lethal or non-destructive sampling, such as the collection of DNA samples from skin biopsies.

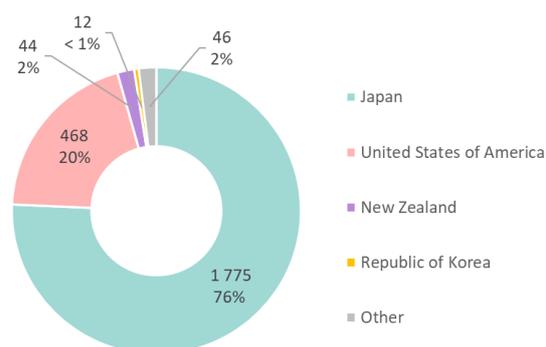
Question 10: Can CITES Simplified procedures be applied to biological samples taken in the high seas?

37. Yes. The simplified procedures contained in Resolution Conf. 12.3 (Rev. CoP18) on *Permits and certificates*, section XIII, applies to any species and specimen where trade is considered to have none or negligible impact on the conservation status of the species. See the CITES webpage on the CITES permit system at https://cites.org/eng/prog/Permit_system.

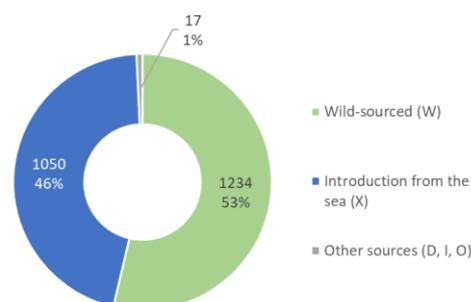
Monitoring the implementation of Resolution Conf. 14.6 (Rev. CoP16)

38. Since the update of the *Guidelines for the preparation and submission of CITES annual reports* introduced in 2017 via the [Annex to Notification 2017/006](#) which was subsequently replaced by Notifications No. 2021/044 and No. 2019/072, introductions from the sea are reflected in the CITES Trade Database with 'country of export or re-export' recorded as "HS" and 'source code' recorded as "X". The non-ISO country code "ZZ" for 'introduction from the sea' is no longer used and no records of "ZZ" are in the CITES Trade Database. As a result, introductions from the sea are currently reflected in one of two ways in the CITES Trade Database:
- a) The exporter is specified as "HS – Introduction from the Sea", reflecting a one-state transaction (paragraph 2 a) of Resolution Conf.14.6 (Rev. CoP16).
 - b) The source code "X – Specimens taken in the marine environment not under the jurisdiction of any State" is used. This would be a way to distinguish introductions from the Sea that fall under paragraph 2 b) of Resolution Conf.14.6 (Rev. CoP16) from "normal" import-export transactions.
39. At the time of writing, there were 2,301 trade transactions with exporter "HS – Introduction from the Sea" and 1,094 trade transactions with source code "X – Specimens taken in the marine environment not under the jurisdiction of any State" recorded in the database over the period 2010-2019. These data were reported by 17 Parties (Canada, France, Germany, Ireland, Italy, Japan, Monaco, Netherlands, New Zealand, Portugal, Republic of Korea, South Africa, Spain, Switzerland, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, and United States of America).
40. The trade transactions with source code "X – Specimens taken in the marine environment not under the jurisdiction of any State" largely overlap with those reported with Exporter "HS – Introduction from the Sea", with only 44 of the source 'X' transactions having an exporter reported that is different from 'HS'.
41. Of the 2,345 overall unique trade transactions, only 31 (1%) were reported for commercial purposes (purpose code "T"), while 2,307 (98%) were reported for scientific purposes (purpose code "S"). The fact that only 1% of the reported transactions are for commercial purpose certainly indicates a discrepancy between the reported trade and what reality of the situation on the high seas. The two graphics below illustrate the number of Parties reporting IFS between 2010-2019 and the reported sources of trade.

Parties reporting introductions from the sea 2010-2019 (with exporter 'HS' and/or source code 'X'), by the number of transactions



Reported sources of trade with exporter 'HS' - Introduction from the sea' by number of transactions (2010-2019)



42. By combining the list of Parties reporting the 2,301 transactions with exporter 'HS' and the lists of Parties reporting those 44 unique source 'X' transactions, the following is the list of all Parties reporting introductions from the sea. See table below.

Table 1. List of all Parties reporting introductions from the sea

Party	No. of transactions
Canada	3
Switzerland	2
Germany	5
Spain	5
United Kingdom of Great Britain and Northern Ireland	2
Japan	1775
Republic of Korea	12
Monaco	7
New Zealand	44
Portugal	2
United States of America	468
South Africa	2
France	7
Italy	2
Trinidad and Tobago	3
Netherlands	5
Ireland	1
Total unique trade transactions	2345

Records for Introductions from the sea of sharks and rays reported by Parties

43. The Secretariat examined the aggregate records in the CITES Trade Database for records for introduction from the sea (IFS) of sharks and rays between the years 2000 to 2021. The database was filtered for records with source code X to indicate 'Specimens taken in the marine environment not under the jurisdiction of any State' or export/origin from HS to indicate 'high seas' to retain as many potential IFS records as possible.
44. This resulted 44 records and selecting for commercial trade and excluding source code O transactions, 24 records were retained. Of the 24, 11 records presumed to be two-state transactions by the exporter/importer information were excluded to retain IFS records.

Table 2. Number of records and total weight of introduction from the sea records in the CITES Trade Database between 2000 and 2021.

Taxon	Number of records reported in kg	Total weight (kg)
<i>Alopias pelagicus</i>	1 (KR)	870
<i>Alopias vulpinus</i>	1 (KR)	685
<i>Carcharhinus falciformis</i>	1 (KR)	2261
<i>Isurus oxyrinchus</i>	2 (ES, PT)	2445720
<i>Isurus paucus</i>	2 (ES, PT)	8593
<i>Sphyrna lewini</i>	1 (KR)	14301

45. The remaining IFS records were reported by Spain (3 records), Republic of Korea (4 records) and Portugal (6 records) as importers. These records were from 2018 (4 records) and 2020 (9 records) and consisted only of bodies records. Eight records were reported in kg and the species composition and reported weights are shown in Table 2. Two records by Portugal, 4,545 and 21, were reported as number of specimens and three records, 20,373 by Spain and 13,765 and 83 by Portugal were reported with no units.
46. A detailed explanation of the records and total weight of introduction from the sea records of shark and ray species in the CITES Trade Database between 2000 and 2021 is provided in SC74 Doc. 67.2 on *Sharks and rays (Elasmobranchii spp.)*.

Recommendations

47. The Standing Committee is invited to:
- a) take note of the progress made on the negotiations on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) and propose to the 19th meeting of the Conference of the Parties the renewal of Decision 17.181 if the negotiations continue.
 - b) review intersessionally the 10 questions more frequently asked on 'CITES trade from the sea' and the Secretariat's responses and suggest additional questions, if needed.
 - c) instruct the Secretariat, following the intersessional review by the Standing Committee, to publish the 10 questions more frequently asked on 'CITES trade from the sea' together with the Secretariat's responses on the webpage dedicated to introduction from the sea and to submit a proposal to the CoP to include some of them in the Annex (explanatory note) to Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea*; and
 - c) recommend a decision to the Conference of the Parties instructing the Secretariat to continue to monitor the implementation of Resolution 14.6 (Rev. CoP16), and report as appropriate to the Standing Committee. This may include exploring the feasibility of establishing a register with the list of flag-of-convenience States and territories. The list could include the vessels which are authorized to harvest CITES-listed species and the respective fisheries areas. A separate decision could also instruct the Secretariat to approach and work with the States that are most active in the trade in CITES species from the sea, including flag-of-convenience States and territories, with a view to encouraging them to fulfil their CITES responsibilities.
48. If the Standing Committee agrees with the recommendations suggested in paragraph 47 above, the Secretariat offers draft text for those decisions in the Annex to the present document.

Interpretation and implementation matters

Regulation of trade

CITES TRADE FROM THE HIGH SEAS

Directed to the Secretariat

- 19.AA The Secretariat shall monitor the negotiations on the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) and report to the Standing Committee the results, as appropriate.
- 19.BB The Secretariat shall continue to monitor the implementation of Resolution 14.6 (Rev. CoP16) on *Introduction from the sea* and report as appropriate to the Standing Committee. In doing so, the Secretariat shall explore the feasibility of establishing a register with the list of flag-of-convenience States and territories. The list could include the vessels which are authorized to harvest CITES-listed species and the respective zones.
- 19.CC The Secretariat shall approach and work with the States that are most active in the trade in CITES species from the sea, including flag-of-convenience States and territories, with a view to encouraging them to fulfil their CITES responsibilities.

Directed to the Standing Committee

- 19.DD The Standing Committee shall, as appropriate, review intersessionally the 10 questions most frequently asked on 'CITES trade from the high seas' and the responses prepared by the Secretariat and provide recommendations to the Secretariat regarding the possible amendment of the Annex to Resolution Conf 14.6 (Rev. CoP16) on *Introduction from the sea*.