

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



Seventeenth meeting of the Conference of the Parties
Johannesburg (South Africa), 24 September -5 October 2016

Interpretation and implementation matters

General compliance and enforcement

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

1. This document has been submitted by the Standing Committee and prepared 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.
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.

* *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.*

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.
11. The WG then submitted the document to the Standing Committee 66 (SC66 Doc. 32.2).
12. The Standing Committee considered the consolidated Resolution and agreed that, after some minor edits, it should be submitted to CoP17 (see Annex 1).
14. The Standing Committee also agreed to submit the two draft decisions directed to the Secretariat to CoP17 (see Annex 2).
15. The Standing Committee further agreed to propose to the Conference of the Parties that the Working Group continues its work with the following mandate:
 - to decide how and to which extent to adapt the content of the new, merged Resolution
 - to decide how to incorporate the results of the decision directed to the Secretariat in Annex 2 of this document into the guidelines (Annexes of Res. 10.7).

Recommendations

16. The Conference of the Parties is invited to decide whether it wishes to accept the new consolidated version of the resolution contained in Annex 2.
17. The Secretariat is invited to consider the two decisions drafted in Annex 2 of this document.
18. Finally, the Conference of the Parties is invited to decide on the continuation and mandate of the working group as defined above.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat supports combining three existing resolutions dealing with the matter of disposal of confiscated illegally traded specimens of CITES listed species as well as the draft decisions.
- B. On the draft resolution, the Secretariat would like to make the following comments:
 - a. It would appear that there is no title on the proposed draft resolution. The Secretariat proposes the following title: *Disposal of illegally traded and confiscated specimens of CITES listed species.*
 - b. In the operative part of the draft resolution, in the section regarding the disposal of confiscated and accumulated dead specimens, the Secretariat notes that in paragraph b), the sentence "...and

*steps be taken to ensure that the **Party** responsible for the offence...*” has been changed from the original text of the Resolution Conf. 9.10 (Rev. CoP15) which reads “...*and steps be taken to ensure that the **person** responsible for the offence...*” as decided by the Standing Committee at 66th meeting. However, the Secretariat considers the original language to be more appropriate in this context. The Conference of the Parties may wish to consider keeping the original language.

- C. On the draft decisions, the Secretariat notes that the requested work would require the availability of external funding to develop the questionnaire and/or organize a workshop to review the usefulness of the annexes to the Resolution. The source of such funding has not yet been identified.
- a. Consultant to conduct a survey and analyse available data on disposal USD 20,000
 - b. Workshop (expert workshop 10-15 persons) USD 50,000

Therefore, the Secretariat suggests that the caveat referring to ‘the availability of external funding’ be inserted in the draft decisions.

- D. On the draft decisions, the Secretariat further notes that the Standing Committee agreed to invite the CoP to decide on the continuation of the mandate of the working group at its 17th meeting as reflected in paragraph 18 of the present document. The Secretariat proposes that this be reflected in the draft decisions submitted for the consideration of the CoP. Secondly, the Secretariat suggests that the Standing Committee should report on its work to the 18th meeting of the Conference of the Parties. The suggestions by the Secretariat are reflected below:

Directed to the Secretariat

The Secretariat is requested to:

- a. Subject to the availability of external funding, 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 guidelines contained in three annexes to the Resolution for Parties in disposal of confiscated live animals and plants as well as evaluate current practice;
- b. Subject to the availability of external funding, 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; and
- c. Submit this information to the Standing Committee for its consideration.

Directed to the Standing Committee

The Standing Committee should consider how and to which extent the content of the new, merged Resolution should be adapted. at its 69th meeting, It should also evaluate the results of the activities conducted by the Secretariat under decision 17.xx above and consider how to incorporate these results into the guidelines (included in the Annexes of the revised resolution). and consider The Standing Committee should propose amendments to revising Resolution 17.xx, including the annexes, accordingly, and report on its work to the 18th meeting of the Conference of the Parties.

TENTATIVE BUDGET AND SOURCE OF FUNDING
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

According to Resolution Conf. 4.6 (Rev. CoP16) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, the Conference of the Parties decided that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding. The authors of this document propose the following tentative budget and source of funding.

**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

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;

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";

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;

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);

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;

ALSO 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;

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;

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;

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

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

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;

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;

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;

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;

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) are 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;

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 Party responsible for the offence does not receive financial or other gain from the disposal and that such disposal does not stimulate further illegal trade

Regarding the disposal of confiscated live specimens

RECOMMENDS that:

- a) 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

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

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

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;

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

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 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;

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf.9.9. Confiscation of specimens exported or re-exported in violation of the Convention
- b) Resolution Conf.9.10 Disposal of confiscated and accumulated specimens
- c) 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.

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; and
- Submit this information to SC 69 for its consideration.

Decision 17.xxxx

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.