

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



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Committee II

Legal Acquisition Findings

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

This document has been prepared by the Secretariat on the basis of document CoP18 Doc. 39 after discussion in the seventh session of Committee II (see document CoP18 Com. II Rec.7).

DRAFT RESOLUTION

Legal acquisition findings

RECALLING the provisions of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, which require a Management Authority of the State of export to ~~establish~~ to be satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

RECALLING the provisions of Article III, paragraph 4 (a), and Article IV, paragraph 5 (a) which require a Management Authority of the State of re-export to ~~be satisfied~~ establish that the specimen was imported into that State in accordance with the provisions of the Convention;

RECALLING the provisions of Article II, paragraph 4, which states that Parties shall not allow trade in specimens of species included in Appendices I, II, and III except in accordance with the provisions of the Convention;

RECALLING ALSO the provisions of Article VIII, paragraph 1, of the Convention, which requires the Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof and Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention*, paragraph 2, which urges all Parties to adopt appropriate measures for effective implementation of the Convention;

RECALLING FURTHER Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 5 j) and i), which recommend that “Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin” and that “no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation unless the specimen has previously been confiscated”;

CONSIDERING Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*, paragraph 2 e),¹ which recommends that “if an importing country has reason to believe that specimens of an Appendix -II or -III species are traded in contravention of the laws of any country involved in the transaction, it i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with

¹ Note of the Secretariat: This paragraph number may change depending on the outcomes of the discussion on agenda item 40.

copies of all documentation relating to the transaction; and ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention”;

RECOGNIZING FURTHER that the Convention places considerable responsibility upon the CITES Management Authorities to ensure that specimens of listed species entering international trade are of legal origin; and

EMPHASIZING that this Resolution is aimed at supporting Management Authorities in verifying the legal acquisition of specimens of CITES-listed species prior to the issuance of CITES documents authorizing their export;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

1. RECOMMENDS that:

- a) for the purposes of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, the term “Legal Acquisition Finding” be used by Parties when referring to the examination conducted by a Management Authority prior to issuing a CITES export permit to satisfy itself that the specimen was not obtained in contravention ~~with~~ of the laws and regulations of that State for the protection of fauna and flora (in other words, it was legally acquired);
- b) to the extent possible, the determination of whether a specimen was not obtained in contravention with the laws and regulations of that State for the protection of fauna and flora should take into account the whole series of actions through which the specimen is brought from its source into the possession of an exporter; and
- c) depending on the context, the term defined above should also be used when considering exemptions and other special provisions mentioned in Annex II, on a case-by-case basis;

2. AGREES that:

- a) “Applicant” means a person or an entity who applies for a CITES document required to export, import, re-export or introduce from the sea a specimen of a CITES-listed species;
- b) “Chain of custody” means chronological documentation, to the extent practicable and in accordance with ~~national~~ applicable laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen; and
- c) “Risk assessment” means the evaluation of the likelihood that a specimen of a CITES-listed species was not legally acquired;

Guiding principles

3. RECOMMENDS that the following general principles be used by Parties for verifying the legal acquisition of specimens to be exported:

- a) procedures to conduct the verification of legal acquisition should be sufficiently flexible to allow for a risk assessment approach;
- b) to the extent possible, procedures used by a Management Authority for verifying the legal acquisition of specimens to be exported should be publicly available to facilitate the collection of required information and provide clarity to applicants requesting export permits;
- c) 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;
- d) the information that the Management Authority requires of an applicant for verifying the legality of acquisition should be proportionate with the likelihood that a specimen of a CITES-listed species was not legally acquired; and

- e) Management Authorities are encouraged to maintain records of permits issued, including the information provided by the applicant regarding the legality of acquisition;
4. RECOMMENDS that Management Authorities be guided by the recommendations in Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*, paragraph 2 e),¹ including with respect to specimens of Appendix-I species, and Resolution 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 5 j) and paragraph 22 k) to m);
 5. RECOMMENDS that Parties use the guidance contained in Annex 1 of this Resolution, when verifying the legal acquisition of CITES specimens traded under Article III, paragraph 2 (b), Article IV paragraph 2 (b) and Article V, paragraph 2 (a) and the legal acquisition of founder stock of specimens traded under Article VII paragraph 4 and 5;
 6. RECOMMENDS FURTHER that Parties take note of the additional circumstances listed in Annex 2 of this Resolution where verification of legal acquisition and other legal findings are required and utilize the guidance in Annex 1 of this Resolution to the extent that is applicable; and
 7. INVITES all Parties, governmental, intergovernmental and non-governmental organizations and other sources to provide financial and/or technical assistance for the development of training material on the verification of legal acquisition, maintaining a dedicated up-to-date webpage on the CITES website, and the organization of workshops and other capacity-building activities related to the implementation of this Resolution.

¹ *Note of the Secretariat: This paragraph number may change depending on the outcomes of the discussion on agenda item 40.*

Annex 1 [to the Resolution]

Guidance for making legal acquisition findings

1. General recommendations for the making of legal acquisition findings by the State of export for specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2 b), Article IV, paragraph 2 b), and Article V, paragraph 2 a) of the Convention

- a) Parties are recommended to include in their national regulatory framework the obligation of a Management Authority to verify, prior to issuing any CITES export permit, whether a specimen of CITES-listed species to be exported was legally acquired.
- b) To ensure due process and assist applicants in providing information demonstrating legal acquisition, each Party may, where appropriate and possible, prepare general written instructions regarding the information required of an applicant and make that information publicly available. The instructions may specify that a Management Authority may require additional information depending on the nature of a specific transaction.
- c) Management Authorities may choose to verify legal acquisition based on a risk assessment approach, which may include the consideration and balancing of the following factors to the extent that they may be relevant to a particular CITES document request (the order of listing of the factors does not indicate any priority):
 - i) the Appendix in which the species is listed;
 - ii) the source of the specimen (considering whether the specimen is wild-collected, ranched, bred in captivity or artificially propagated, or of unknown origin);
 - iii) occurrence of the species in a controlled environment in the Party dealing with the application;
 - iv) geographical factors (e.g. whether the territory from which the specimen originated is affected by armed conflicts or other factors that may increase the likelihood of illegal acquisition);
 - v) documented illegal harvest or illegal trade;
 - vi) purpose of trade (commercial or non-commercial);
 - vii) history of applications from the applicant, including any history of non-compliance;
 - viii) monetary value of the specimens; and
 - ix) existence of look-alike species.
- d) Where, after considering and balancing the above factors, a Management Authority concludes that there is a high risk that the specimen to be exported was not legally acquired, it may choose to require additional information and engage in further scrutiny of the chain of custody. Where a Management Authority concludes that the risk of illegal acquisition is low, it may choose to engage in less scrutiny and require less information of the applicant.

2. Practical steps for the verification of legal acquisition by the State of export

- a) To verify legal acquisition, a Management Authority must first be aware of and understand their relevant laws for the protection of fauna and flora.
- b) To verify legal acquisition, the Management Authority should review all the documentary and other information presented by the applicant. The documentation should, to the extent practicable, provide information on the entire chain of custody back to the source of the specimen. Such information may include records demonstrating that the specimen or parental stock was removed from the wild in accordance with relevant laws (licenses, collections permits, etc.), records identifying the specific specimen (band numbers or other marks, etc.) and documenting the history of transfers of ownership (sales, receipts, invoices, etc.), and records showing that the specimen was reared at a particular facility,

for example. Where a Management Authority considers that the evidence is incomplete, it should provide the applicant with an opportunity to produce additional information.

- c) If upon the review of the documentation and taking into account all other relevant elements, a Management Authority is satisfied that the specimen was legally acquired, the requirement of verification of legal acquisition is fulfilled.
- d) Where a Management Authority is not satisfied that the specimen was legally acquired, it should not issue the requested CITES document.
- e) 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.

3. Cooperation between relevant agencies and CITES Management Authorities

- a) To ensure effective cooperation between domestic authorities (national, provincial, local, tribal) involved in the process of regulating the acquisition of specimens of CITES-listed species, the Parties may consider establishing mechanisms of inter-agency cooperation.
- b) Where necessary, CITES Management Authorities ~~should~~ may consult competent intergovernmental bodies regarding the verification of legal acquisition and the fulfilment of due diligence requirements.
- c) When an exporting or re-exporting State receives a request from an importing State to verify the authenticity and validity of a CITES permit or certificate, it should make every effort to respond as indicated in Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates* in paragraph 22 l) and m).

4. Practical tools

- a) For the purpose of establishing the chain of custody, the Parties may make use of information systems and traceability tools.
- b) In verifying legal acquisition, Parties may wish to consult existing international legal databases such as ECOLEX, FAOLEX, and the World Legal Information Institute.
- c) Where Parties consider that more certainty is required to establish that a specimen was legally acquired, Parties may have recourse to request verification by the applicant using forensic tools such as DNA testing, stable isotope analysis, and radiocarbon dating.
- d) Management Authorities may use for their convenience the rapid guide for verifying legal acquisition below.

5. Rapid guide for the verification of legal acquisition

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 the present resolution.

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

See paragraphs 1 c) and d) to the present Annex.

3. Depending on the risk assessment and circumstances, is it necessary and practicable for the applicant to provide documentation of the entire chain of custody?
4. Is the information submitted by the applicant sufficient to demonstrate legal acquisition? If not, what additional information should be required?

See the present resolution, paragraph 3 c).

5. If the Management Authority is satisfied that the specimen has been legally acquired, what kind of information if any, is it practicable to share in Box 5 (or another location) of the standard CITES document?

See paragraph 2 e) in the present Annex.

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 the present resolution, paragraph 3 e)

Annex 2 [to the Resolution]

Additional circumstances requiring the verification of legal acquisition or other legal findings

The Conference of the Parties has recommended that verification of legal acquisition and other legal findings, such as verifying the date of acquisition, be made in the following circumstances.

Breeding/parental stock of specimens bred in captivity or artificially propagated

1. Pursuant to Resolution Conf. 10.16 (Rev.) on *Specimens of animal species bred in captivity*, paragraph 2 b ii), and Resolution Conf. 11.11 (Rev. CoP17) on *Regulation of trade in plants*, paragraph 1 b) i), a Management Authority of the State of export should verify legal acquisition of the breeding/parental stock of specimens bred in captivity or artificially propagated to be exported under Article VII, paragraphs 4 and 5 of the Convention.

'Pre-Convention' specimens

2. In accordance with Article VII, paragraph 2 of the Convention and pursuant to Resolution Conf. 13.6 (Rev. CoP16) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens*, to authorize the export of a 'pre-Convention specimen', a Management Authority shall be satisfied that a specimen was acquired before the provisions of the Convention applied to it and should therefore establish the date of acquisition or the earliest provable date on which it was first possessed by any person.

Specimens of Appendix I and II species taken in the marine environment not under the jurisdiction of any State

3. Pursuant to Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea*, paragraph 2 b), "whenever any 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 a different State, the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, should be applied, with the State in which the vessel that took the specimen is registered being the State of export and the State into which the specimen is transported being the State of import". Under those circumstances, the State of export shall verify the legal acquisition of the specimen.
4. In the case of chartering operations, where the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4 apply pursuant to Resolution Conf. 14.6 (Rev. CoP16), paragraph 2 c), the State of export shall verify the legal acquisition of the specimen taken in the marine environment not under the jurisdiction of any State.
5. Pursuant to Resolution Conf. 14.6 (Rev. CoP16), paragraph 3, the State of introduction, the State of export and the State of import should "take into account whether or not the specimen was or will be acquired and landed:
 - i) in a manner consistent with applicable measures under international law for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and
 - ii) through any illegal, unreported or unregulated (IUU) fishing activity".

Other exemptions and special provisions

6. Pursuant to Resolution Conf. 13.7 (Rev. CoP17) on *Control of trade in personal and household effects*, paragraph 1 b), 'personal or household effects' within the meaning of Article VII, paragraph 3 of the Convention, means specimens that are legally acquired (among other requirements).
7. Pursuant to Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, paragraph 1 b) c), a certificate of ownership for a live animal of a species listed in the Appendices may be issued if the animal is legally possessed by the applicant and that the animal has not been acquired in contravention of the provisions of the Convention to the personal owner of a legally acquired live animal (among other requirements).

8. Pursuant to Resolution Conf. 11.15 (Rev. CoP12) on *Non-commercial loan, donation or exchange of museum and herbarium specimens*, paragraph 3 e) iv), specimens ~~exported-trade should be limited to shipments of legally obtained specimens between registered scientific institutions~~ exported under Article VII, paragraph 6 of the Convention ~~as part of non-commercial loan, donation or exchange between scientists or scientific institutions should be legally obtained specimens~~ (among other requirements).
9. Pursuant to Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 12 b), a Party should only issue a Travelling Exhibition Certificate for CITES specimens belonging to a travelling exhibition based in its State, registered with the Management Authority, and wishing to transport specimens of CITES species to other States for exhibition purpose only, on the condition that they were legally acquired and will be returned to the State in which the exhibition is based (among other requirements).
10. Pursuant to Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*, paragraph 1 b), a musical instrument certificate should only be issued when a competent CITES ~~competent~~ Authority is satisfied that the CITES specimens used in the manufacture of the musical instrument have not been acquired in contravention of the provisions of the Convention (among other requirements).
- ~~11. Pursuant to Resolution Conf. 17.9 on *Trade in hunting trophies of species listed in Appendix I or II*, paragraph 2 a), the export of hunting trophies of species listed in Appendix I or II should only be authorized when a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that country for the protection of fauna (among other requirements).~~