

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

Interpretation and implementation of the Convention

Trade control and marking

INTRODUCTION FROM THE SEA

1. This document has been prepared by the Chair (Mr Fábio Hazin) and Vice-Chair (Mr Roddy Gabel) of the Standing Committee Working Group on Introduction from the Sea^{*}, on behalf of the Standing Committee and in consultation with the Secretariat.
2. At its 15th meeting (Doha, 2010), the Conference of the Parties adopted Resolution Conf. 14.6 (Rev. CoP15) on *Introduction from the sea*. The Conference also adopted Decisions 14.48 (Rev. CoP15) and 15.50, which provide as follows:

Directed to the Standing Committee

14.48 (Rev. CoP15)

The Standing Committee shall:

- a) *extend operation of the Working Group on Introduction from the Sea, established at SC57, with the understanding that it shall continue to work primarily through electronic means, to consider a definition for 'transportation into a State', clarification of the term 'State of introduction' and the process for issuing a certificate of introduction from the sea as well as other issues identified for further consideration in the final report of the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November – 2 December 2005) and the final report of the meeting of the working group held in Geneva from 14 to 16 September 2009;*
- b) *include in the working group representatives of CITES authorities and fishery authorities from each of the six CITES regions and request the participation of and input from the United Nations Division for Ocean Affairs and the Law of the Sea, the Food and Agriculture Organization of the United Nations, regional fishery bodies, the fishing industry, and intergovernmental organizations and non-governmental organizations with CITES and fishery expertise; and*
- c) *ask the working group to prepare a discussion paper and draft revised resolution for consideration by the Standing Committee at its 62nd meeting and for consideration at the 16th meeting of the Conference of the Parties.*

^{*} *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.*

Directed to the Secretariat

15.50 *The Secretariat shall, contingent on the availability of external funding, convene two meetings of the working group before the 62nd meeting of the Standing Committee.*

3. The Standing Committee Working Group on Introduction from the Sea reported on its progress in implementing Decision 14.48 (Rev. CoP15) at the 61st meeting (SC61, Geneva, August 2011) and 62nd meeting (SC62, Geneva, July 2012) of the Standing Committee. Its reports are contained in documents SC61 Doc. 32 and SC62 Doc. 31.
4. In accordance with Decision 15.50, and with external funds provided by Norway, the United States of America and the European Commission, the Secretariat convened two meetings of the Working Group before SC62. The Secretariat would like to thank these donors for their financial support, as well as the Governments of Norway and of the United States for the kind hospitality and logistical and substantive support that they provided to Working Group members at the meetings hosted in Bergen and Shepherdstown, respectively. These face-to-face meetings, and the guidance provided by the Chair and Vice-Chair of the Working Group, enabled the Group to make very good progress between CoP15 and the present meeting.
5. The Working Group met in the margins of SC61, at which point it agreed by consensus to a draft revision of Resolution Conf. 14.6 (Rev. CoP15). This text, provided as in-session document SC61 Com. 1, was endorsed by the Standing Committee.
6. During the intersessional period between SC61 and SC62, the Working Group developed additional text on the issue of chartering for inclusion in the draft revision of Resolution Conf. 14.6 (Rev. CoP15). It also developed a draft annex to that Resolution aimed at clarifying implementation issues related to introduction from the sea. It further developed a proposed amendment to Resolution Conf. 12.3 (Rev. CoP15) on *Permits and certificates* to include a new source code for specimens taken in the marine environment not under the jurisdiction of any State; and two draft decisions related to chartering arrangements and capacity building tools and materials, respectively. As reflected in executive summary SC62 Sum. 6 (Rev. 1), the Standing Committee “expressed appreciation for the progress made by the Working Group and agreed to transmit the results of its work to the [present meeting], recognizing the reservations expressed by certain Parties”. The nature of these reservations is reflected in paragraphs 7 and 8 of document SC62 Doc. 31.

Recommendation

7. It is recommended that the Conference of the Parties adopt the proposed amendments to Resolution Conf. 14.6 (Rev. CoP15) contained in Annex 1 to the present document, the proposed amendment to Resolution Conf. 12.3 (Rev. CoP15) contained in Annex 2 and the draft decisions contained in Annex 3.

COMMENTS FROM THE SECRETARIAT

The Secretariat believes that the proposed revisions to existing Resolutions and the draft decisions represent a compromise that has been developed in a consultative and open process and their adoption would result in a significant step forward for the Convention. The Secretariat recommends the adoption of the draft amendments to existing Resolutions and of the draft decisions contained in Annexes 1, 2 and 3 to the present document.

PROPOSED AMENDMENTS TO RESOLUTION CONF. 14.6 (REV. COP15)

INTRODUCTION FROM THE SEA

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

TAKING INTO ACCOUNT the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November - 2 December 2005) held pursuant to Decision 13.18 of the Conference of the Parties, ~~and the meeting of the Standing Committee Working Group on Introduction from the Sea (Geneva, 14-16 September 2009) held pursuant to Decision 14.48 of the Conference of the Parties, and the meetings of the Standing Committee Working Group on Introduction from the sea (Bergen, 24-26 May 2011 and Shepherdstown, 24-26 April 2012)~~, held pursuant to Decision 14.48 (Rev. CoP15);

RECALLING that 'introduction from the sea' is defined in Article I, paragraph e), 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";

~~RECALLING ALSO that Article XIV, paragraph 6, of the convention provides that "Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea";~~

RECALLING FURTHER ALSO that Article III, paragraph 5, and Article IV, paragraphs 6 and 7, of the Convention, provide a framework to regulate the introduction from the sea of specimens of species included in Appendices I and II, respectively;

NOTING that 'State of introduction' is not defined in the Convention and that Article III, paragraph 5, and Article IV, paragraph 6, and Article XIV, paragraph 5, place certain obligations on the State of introduction;

DESIRING that ~~both flag States and port States~~ cooperate in a manner that supports and complies with the provisions of the Convention related to introduction from the sea with respect to specimens taken in the marine environment not under the jurisdiction of any State;

~~DESIRING ALSO that States consult and cooperate with relevant Regional Fisheries Management Organizations when issuing certificates of introduction from the sea;~~

RECOGNIZING the need for States to consult and cooperate with relevant Regional Fisheries Management Organizations and Arrangements (RFMO/A) when issuing certificates of introduction from the sea and export and import permits for specimens taken in the marine environment not under the jurisdiction of any State;

NOTING the progress made through the Food and Agriculture Organization of the United Nations on measures to promote responsible fisheries, ~~in particular~~ including through the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and the adoption of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

RECOGNIZING the need for a common understanding of the provisions of the Convention relating to introduction from the sea specimens taken in the marine environment not under the jurisdiction of any State in order to facilitate the standard implementation of trade controls for such specimens ~~introduced from the sea~~ and improve the accuracy of CITES trade data;

RECOGNIZING FURTHER that "introduction from the sea" is unique to the Convention and affirming that this Resolution applies only in relation to the implementation of the Convention for specimens taken in the marine environment not under the jurisdiction of any State and does not affect the rights or duties of Parties outside this context;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that 'the marine environment not under the jurisdiction of any State' means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea; ~~and~~

FURTHER AGREES that,

- a) 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 that same State, the provisions of Article III, paragraph 5, or Article IV, paragraphs 6 and 7, respectively, should be applied; with that State being the State of introduction; and
- 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;
- c) In the case of chartering operations, under the conditions that:
 - i) The operation is under a written arrangement between the State where the vessel is registered and the chartering State, consistent with the framework on chartering operations of a relevant RFMO/A;

and that

- ii) The CITES Secretariat has been informed of this arrangement in advance of its entry into effect and that the CITES Secretariat makes this arrangement available to all Parties and to any relevant RFMO/A,

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 chartered by another State and transported into that chartering State, the provisions of Article III, paragraph 5, or Article IV, paragraphs 6 and 7, or the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, may be applied. In such cases, the State in which the vessel is registered should be the State of export or the chartering State should be the State of Introduction, as mutually agreed in the written arrangement;

Whenever any specimen of a species included in Appendix II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and chartered by another State, and transported into a third State, the provisions of Article IV, paragraphs 2, 3 and 4 should be applied. In this case, the State in which the vessel is registered should be considered as the State of export and the issuance by this State of the export permit would be conditional upon prior consultation with and agreement by the chartering State. Subject to the authorization by the State in which the vessel is registered and provided that such an authorization is clearly specified in the written arrangement referred to above in paragraph (i), the chartering State may be the State of export.]

RECOMMENDS that, in the case of specimens of species included in Appendix I or II taken in the marine environment not under the jurisdiction of any State, in satisfying itself that the provisions of the Convention are met:

- a) the State of introduction, prior to issuing a certificate of introduction from the sea;
- b) the State of export, prior to issuing an export permit; and
- c) the State of import, prior to issuing an import permit, or when presented with an export permit;

take into account whether or not the specimen was or will be acquired and landed:

- a) 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

b) through any illegal, unreported or unregulated (IUU) fishing activity;

FURTHER RECOMMENDS that, in the case of an export of Appendix-II specimens, the Scientific Authority of the State of export, in making its non-detriment finding, consult with other national scientific authorities or, when appropriate, international scientific authorities; and

RECOMMENDS that Parties respond in a timely manner to a request for information necessary for issuing a certificate of introduction from the sea or an export permit for specimens of any species taken in the marine environment outside the jurisdiction of any State, or for verifying the authenticity and validity of such a certificate or permit.

Annex

Explanatory Notes

Clarification of implementation issues related to introduction from the sea and export/import/re-export of specimens taken in the marine environment not under the jurisdiction of any State

I. Introduction from the sea [draft revision of Resolution Conf. 14.6 (Rev. CoP15), under “FURTHER AGREES that”, a)]

1. Conditions for issuing an introduction from the sea (IFS) certificate:

1.1. The Scientific Authority of the State of introduction makes a non-detriment finding (NDF) [Articles III, paragraph 5. (a), IV, paragraph 6 (a)] (in the case of Appendix II, also as provided for by Article IV, paragraph 7).

1.2. In the case of living specimens:

- a) Appendix I: the proposed recipient of a living specimen is suitably equipped to house and care for it [Article III, paragraph 5 (b)].
- b) Appendix II: the living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment [Article IV, paragraph 6 (b)].

1.3. In the case of Appendix I, the specimen is not to be used for primarily commercial purposes [Article III, paragraph 5 (c)].

2. The Management Authority of the State of introduction issues the IFS certificate.

3. The IFS certificate is issued prior to transportation into the State of introduction. (Articles III, paragraph 5, and IV, paragraph 6, require the prior granting of a certificate from a Management Authority of the State of introduction).

Note: Introduction from the sea does not apply to Appendix-III specimens.

II. Export / import / re-export, occurring after an IFS

This section applies when specimens are exported from the territory of the State of export and the export occurs after an IFS. Such an export should follow the same rules and procedures as any export, except in the case foreseen in Articles XIV, paragraph 4, and XIV, paragraph 5, concerning the export and import of Appendix-II specimens, where only the issuance of a certificate of accordance shall be required.

1. Export

1.1. Conditions for issuing an export permit:

- 1.1.1. A non-detriment finding is required. Since, in this case, the export would occur after an IFS certificate has been issued, the Scientific Authority of the State of export should take into consideration the NDF made for the IFS when making the NDF for the export.
- 1.1.2. To export a specimen that has been introduced from the sea, a legal acquisition finding (i.e. a finding that the specimen was not obtained in contravention of the laws of that State for the

protection of fauna and flora) is required as a condition for the issuance of the export permit [Articles III, paragraph 2 (b), and IV, paragraph 2 (b)].

1.1.3. Any living specimen of an Appendix-I or -II species will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment [Articles III, paragraph 2. (c), and IV, paragraph 2 (c)].

1.1.4. In the case of Appendix-I species, the Management Authority of the State of export is satisfied that an import permit has been granted for the specimen [Article III, paragraph 2. (d)].

1.2. The Management Authority of the State of export issues the export permit.

1.3. The export permit is issued before export takes place (Articles III, paragraph 2, and IV, paragraph 2, require the prior grant and presentation of an export permit).

1.4. An export permit is issued for every shipment, although the export permit may be valid for six months (Article VI, paragraph 2).

2. Import

2.1. Conditions for issuing an import permit, in the case of Appendix-I species only:

a) The Scientific Authority of the State of import makes an NDF [Article III, paragraph 3. (a)];

b) The proposed recipient of a living specimen is suitably equipped to house and care for it [Article III, paragraph 3. (b)]; and

c) The specimen is not to be used for primarily commercial purposes [Article III, paragraph 3. (c)].

2.2. The import permit is issued before import takes place (Article III, paragraph 3, requires the prior grant and presentation of an import permit and either an export permit or a re-export certificate).

2.3. In the case of specimens of Appendix-II species, the import requires the prior presentation of either an export permit or a re-export certificate (Article IV, paragraph 4).

3. Re-export

3.1. Conditions for issuing a re-export certificate, in the case of Appendix-I and Appendix-II species:

a) The specimen was imported in accordance with the Convention [Articles III, paragraph 4 (a), and IV, paragraph 5 (a)];

b) Any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment [Articles III, paragraph 4 (b), and IV, paragraph 5 (b)]; and

c) Only in the case of Appendix-I living specimens, an import permit has been granted [Article III, paragraph 4 (c)].

3.2. The re-export certificate is issued before re-export takes place (Articles III, paragraph 4, and IV, paragraph 5, require the prior grant and presentation of a re-export certificate).

III. Export / import / re-export, not occurring after an IFS [draft revision of Resolution Conf. 14.6 (Rev. CoP15), under “FURTHER AGREES that”, paragraph b)]

1. Export

1.1. Conditions for issuing an export permit:

1.1.1. The Scientific Authority of the State of export makes an NDF [Articles III, paragraph 2 (a), and IV, paragraph 2 (a)]. It is recommended that, in the case of an export of Appendix-II specimens, the Scientific Authority of the State of export, in making its non-detriment finding, consult with other national scientific authorities or, when appropriate, international scientific authorities.

1.1.2. The Management Authority makes a legal acquisition finding (i.e. a finding that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora) before issuing an export permit [Articles III, paragraph 2. (b), and IV, paragraph 2 (b)].

1.1.3. In the case of living specimens of Appendix-I or -II species: the living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment [Articles III, paragraph 2 (c), and IV, paragraph 2 (c)].

1.1.4. In the case of Appendix-I species, the Management Authority of the State of export is satisfied that an import permit has been granted for the specimen [Article III, paragraph 2. (d)].

1.2. The Management Authority of the State of export issues the export permit.

1.3. The export permit is issued before export takes place (Articles III, paragraph 2, and IV, paragraph 2, require the prior grant and presentation of an export permit).

1.4. An export permit is issued for every shipment, although the export permit may be valid for six months (Article VI, paragraph 2).

2. Import

2.1. Conditions for issuing an import permit, in the case of Appendix-I species only:

a) The Scientific Authority of the State of import makes an NDF (for the purposes of import) [Article III, paragraph 3 (a)];

b) The proposed recipient of a living specimen is suitably equipped to house and care for it [Article III, paragraph 3 (b)]; and

c) The specimen is not to be used for primarily commercial purposes [Article III, paragraph 3 (c)].

2.2. The import permit is issued before import takes place (Article III, paragraph 3, requires the prior grant and presentation of an import permit and either an export permit or a re-export certificate).

2.3. In the case of specimens of Appendix-II species, the import requires only the prior presentation of either an export permit or a re-export certificate (Article IV, paragraph 4), except in the case foreseen in Articles XIV, paragraph 4, and XIV, paragraph 5, concerning the export and import of Appendix-II specimens, where only the issuance of a certificate of accordance shall be required.

3. Re-export

3.1. Conditions for issuing a re-export certificate, in the case of Appendix-I and Appendix-II species:

a) The specimen was imported in accordance with the Convention [Articles III, paragraph 4. (a), and IV, paragraph 5. (a)];

b) Any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment [Article III, paragraph 4. (b), and IV, paragraph 5. (b)]; and

c) Only in the case of Appendix-I living specimens, an import permit has been granted [Article III, paragraph 4. (c)].

3.2. The re-export certificate is issued before re-export takes place (Articles III, paragraph 4, and IV, paragraph 5, require the prior grant and presentation of a re-export certificate).

IV. Transshipment

1. In the case of an IFS, the transshipment would only serve as a means of transportation and the same considerations for IFS should apply. In this case, the IFS certificate should be issued prior to transshipment, or the Master of the vessel receiving the transshipped specimens should obtain satisfactory proof that the IFS certificate already exists or will be issued before the IFS occurs.

2. In the case of export, the export permit should be issued prior to transshipment, or the Master of the vessel receiving the transshipped specimens should obtain satisfactory proof that the export permit already exists or will be issued before the import occurs.

PROPOSED AMENDMENT TO RESOLUTION CONF. 12.3 (REV. COP15)

PERMITS AND CERTIFICATES

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

...

THE CONFERENCE OF THE PARTIES

...

I. Regarding standardization of CITES permits and certificates...

RECOMMENDS that: ...

i) the following codes be used to indicate the source of the specimens: ...

X Specimens taken in “the marine environment not under the jurisdiction of any State”.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Introduction from the sea: chartering

Directed to the Secretariat

Decision 16.xx

The Secretariat shall report at the 65th and 66th meetings of the Standing Committee on the implementation of the Convention by the Parties concerned in relation to the provision on chartering arrangements provided for in Resolution Conf. 14.6 (Rev. CoP16). The report should focus in particular on the conditions under which non-detriment findings are made and permits and certificates are issued, as well as on the relationship between chartering States and States in which the vessel is registered, in performing those tasks. The report shall also include any cases where Parties have been unable to take advantage of this provision, including in situations where at least one of the States involved is not party to a relevant Regional Fishery Management Organization/Arrangement.

Introduction from the sea: capacity building and special requirements of developing States

Directed to the Secretariat

Decision 16.xx

The Secretariat should develop capacity-building tools and materials for use by Parties (e.g. a module in the CITES Virtual College) related to the implementation of the Convention for specimens taken from the marine environment not under the jurisdiction of any State.