

Annex 3

Rapid guide for the making of legal acquisition findings

Introduction

This 'Rapid guide for the verification of legal acquisition' is designed to provide an outline of key minimum steps that all Management Authorities should take into account when establishing and following processes to make legal acquisition findings. The guide is not prescriptive and is designed to be used to complement existing tools, adapted to different taxa, e.g., marine species, timber products, terrestrial fauna, non-timber forest products, etc., or adopted wholesale, as CITES authorities think appropriate. Parties are encouraged to adapt and incorporate the rapid guide into national processes as appropriate and are recommended to ensure that applicants for a permit are aware of what is needed in advance of applying to prevent delays in the processing of CITES documents (permits or certificates). It is the prerogative of each Party to decide how it incorporates CITES obligations into national procedures, considering its needs and legal practice.

The minimum steps identified in the rapid guide are intended to provide basic common ground for assessing legality under CITES. The rapid guide is intended to be practical, flexible, and user-friendly and can be used in conjunction with databases, legal toolkits, handbooks, digital tools, and additional guidance. In accordance with Article XIV of the Convention, Parties always have the right to adopt stricter domestic measures than provided for in the Convention, e.g., by requiring additional conditions, by further restricting or prohibiting the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or by restricting the application of certain exemptions provided in the Convention. Resolution Conf. 6.7 on *Interpretation of Article XIV, paragraph 1, of the Convention* recommends that "each Party intending to take stricter domestic measures pursuant to Article XIV, paragraph 1, of the Convention regarding trade in specimens of non-indigenous species included in the Appendices make every reasonable effort to notify the range States of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with those range States that express a wish to confer on the matter". Parties opting for stricter domestic measures should inform the Secretariat accordingly as recommended in Resolution Conf. 4.22 on *Proof of foreign law*. The desirability and feasibility of using a template or adopting a Standard Operating Procedure (SOP) are left to the consideration of the Parties.

Rapid guide

Whenever a Management Authority receives a request to authorize the export of a specimen of a CITES-listed species, the Management Authority may consider several points in verifying legal acquisition:

1. What is the difference between making a legal acquisition finding and verifying legality? Knowing what is required.

A legal acquisition finding is required when a specimen is exported under Article III paragraph 2 (b), Article IV paragraph 2 (b) or Article V paragraph 2 (a) of the Convention.

The verification of legal acquisition and other legal findings, such as verifying the date of acquisition, are to be made in several circumstances, which are outlined in Annex 2 of this Resolution. Note that, in particular, the exemptions and other special procedures listed under Article VII of the Convention may require verifications that are distinct from legal acquisition findings. It is equally important for Management Authorities to check which of these special scenarios have been incorporated into national legislation. Please refer to Annex 2 of this Resolution for further information on these specific scenarios.

For clarification purposes, Parties are reminded here that for 'Pre-Convention' specimens, the Management Authority may authorise export once it is satisfied that a specimen was acquired before the provisions of the Convention applied to it [Article VII(2) of the Convention (Resolution Conf. 13.6 (Rev. CoP18) on Implementation of Article VII, paragraph 2, concerning 'pre-Convention specimens')]. The Management Authority should therefore establish the date of acquisition or the earliest provable date on which it was first possessed by any person. If Pre-Convention status is so established, it will not be necessary to go through the steps to make a legal acquisition finding, as such a finding is not required by the Convention. Note that adequate stockpile management is key in relation to this.

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

According to Annex 1, para 1 c) of this Resolution, a risk assessment approach is essential to prevent fraud in the applications for permits while ensuring a smooth flow of legitimate wildlife trade (i.e. trade that is sustainable, legal and traceable). This approach allows for the balancing of several factors in order to gauge the risk that the specimen is the product of some illegal activity or that the documentation provided may be inaccurate or fraudulent. If the Management Authority chooses to follow a risk assessment approach, the following is a non-comprehensive list of factors and considerations which are likely to be relevant, noting that national circumstances might dictate additional factors:

Factors in Annex 1	Considerations
i) The Appendix in which the species is listed	Higher conservation risk if the species is included in Appendix I. Higher volumes of trade in species listed in Appendices II or III may increase the likelihood of laundering illegal specimens.
ii) The source of the specimen	Is there sufficient evidence to establish that the source of the specimen is as indicated by the applicant? Was the specimen wild-collected, or from outside its range and propagated in a controlled environment, bred in captivity, ranched, cultivated or artificially propagated, or of unknown origin?
iii) Occurrence of the species in a controlled environment	Is the species easy to propagate in a controlled environment or under captive-breeding conditions? For a cultivated or captive-bred specimen, was the parental stock legally acquired, according to Resolution Conf. 11.11 (Rev. CoP18) on <i>Regulation of trade in plants</i> or Resolution Conf. 10.16 (Rev. CoP19) on <i>Specimens of animal species bred in captivity</i> .
iv) Geographical factors	Are there reports of armed conflict and/or illegal natural resource extraction and/or illegal wildlife trade from the region? Are there other factors that may increase the likelihood of illegal acquisition? Examples may include cross-border smuggling, and lack of or lower levels of enforcement in some areas compared to national norms.
v) Documented illegal harvest or illegal trade in the species, within the range State or in the subregional area	Is there a higher-than-average probability or risk that the specimen was illegally acquired based on the similarity of the reported acquisition to documented cases of illegal harvest or trade?
vi) Purpose of trade	Is the trade commercial or non-commercial? The potential for high in-kind or monetary profit from a commercial transaction may increase the risk.
vii) History of applications from the applicant, including any history of non-compliance	Has the applicant been involved in prior illegal activities? Have others in the supply chain been involved in illegal practices?
viii) Monetary value of the specimens	Is the value of the specimen high enough that it is more likely to be the subject of theft/illegal harvest or capture?
ix) Existence of look-alike species	If there are look-alike species, are they CITES-listed? Is there a risk that a rarer, higher value, or CITES-listed species could be misdeclared as a more common, less valuable, or unlisted species?
Possible additional considerations beyond the Resolution	
i) Species: Is the species native or non-native? ii) Level of trade: Are there any significant exports? The Management Authority should consult national records of export, the CITES Trade Database, trade trends, and other available data sources. iii) Is there a quota for the species? Has this been set by an officially designated Scientific Authority and is it consistent with the requirements of a non-detriment finding for the species? Has the quota been adhered to? What are the start and end dates of the quota period? iv) Stricter domestic measures: Is the species subject to stricter domestic measures? v) Traceability scheme: Is the species subject to a well-established and widely accepted international traceability standard or scheme? vi) National or domestic register of persons allowed to trade: Is the applicant included in the national register of natural and legal persons allowed to trade in accordance with the provisions of the Convention? Has the applicant provided the Management Authority with the documentation required by national legislation to make commercial and non-commercial transactions involving specimens of CITES-listed species? Has this documentation been verified and declared in compliance with national	

legislation? Has the Management Authority attributed a number to the applicant in order to allow tracking of the applicant's activities?

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

Identify, review and assess national laws, regulations, policies, and management plans for the protection of flora and fauna to determine the relevant rules governing activities along wildlife supply chains. The Secretariat is collaborating with FAO to design a tool building upon existing legal databases managed by FAO to assist the CITES Management Authorities and the regulated community in responding to this question.

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

Questions the Management Authority might ask itself:

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

Assessing compliance with the legal requirements pertinent to each stage in production (e.g. harvesting, breeding, or cultivating), possession, transport, trade, and export of specimens of CITES-listed species assures that the chain of custody is traceable and legal and thus that a legal acquisition finding can be made. Traceability means the ability to follow the trail of specimens along the supply chain by monitoring and tracking the chain of custody. For example, by using the chain of custody system, authorities can trace raw material or parental stock to the site where they were obtained in the country of origin. However, the Management Authority is not expected to be an expert in assessing evidence and all laws applicable to a CITES specimen through the course of its transaction history. When the Management Authority is not able to assess whether the chain of custody evidence presented by the applicant is sufficient, the Management Authority should consult government entities with the relevant expertise.

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

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

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

The complexity and specific elements of the chain of custody will vary from taxa to taxa, and depend on the circumstances. The tables below provide an overview of elements that may be considered for (i) flora and fauna, (ii) timber, and (iii) marine species, and can be used to help identify relevant evidence.

Note that the columns containing “examples of possibly relevant documentation” are merely intended as illustrations of what documents an applicant could provide to demonstrate compliance with national laws. The applicability of these examples will depend on national legal frameworks. The lists of examples are not intended to be used as complete or exhaustive checklists. Rather, they are a set of options and examples of documentation which an applicant might provide to demonstrate compliance with applicable laws at each step of the chain of custody.

Table 1: Evidence of legality along the chain of custody for flora and fauna

This table also contains elements that may apply to timber and marine species, depending on applicable legal frameworks.

The applicant could be asked to provide evidence on:	Type of Activity/Specimen	Type of Legal Finding	Examples of possibly relevant documentation
1. Sourcing	Wild-sourced Specimens	LAF	Records, such as permits, licenses, and tags, records of quotas, harvest locations, and capture means, that demonstrate the specimen was legally removed from the wild under relevant wildlife or forestry laws or regulations; evidence of firearms license where restricted and relevant; invoices related to the hiring of guides or professional hunters, where required; salvage permits.
	Ranched specimens	LAF	Records, such as permits, licenses, and tags, that demonstrate that the specimen was legally removed from the wild under relevant wildlife conservation laws or regulations. Records that document the rearing of specimens at the facility, including signed and dated statement by the owner or manager of the facility that the specimens were reared at the facility in a controlled environment; marking system, if applicable; and photographs or video of the facility.
	Confiscated specimens	LAF	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
	Bred in captivity	In accordance with Resolution Conf. 10.16 (Rev. CoP19) on <i>Specimens of animal species bred in captivity</i>	Records that identify the breeder or propagator of the specimens that have been identified by birth or hatch date, sex, size, band number, or other marks.
	Artificially propagated	In accordance with Resolution Conf. 11.11 (Rev. CoP18) on <i>Regulation of trade in plants</i>	Records that identify the nursery or propagator of the specimens that have been identified by the propagation date.
	Captive-born (F)	LAF	Records that identify the breeder or propagator of the specimens that have been identified by birth or hatch date, sex, size, band number, or other marks.

	Assisted production plant (Y)	LAF	Records that identify the propagator of the specimens that have been identified by propagation date.
	Previously imported specimens	Re-export	Copy of the previous CITES document that accompanied the shipment into the importing country.
2. Ownership and transfers			Certificates of ownership, and documentation of legal transfers, such as sales bills, receipts, and registrations. In the case of older specimens, in particular, those benefiting from pre-Convention status, this documentation may not exist. If the level of risk is low, an affidavit of ownership that explains the circumstances might be permissible. Additionally, for ivory and rhinoceros horn benefiting from pre-Convention status, the use of reliable methods to verify the date of acquisition, such as carbon-14 dating, may be possible in cases where documentation does not exist.
3. Transport			Licenses, waybills relating to transport of specimens of fauna and flora from place of capture or harvest to place of provisional storage prior to export, packing lists established by the applicant which clearly describe the specimens to be dispatched and inspection records.
4. Processing – taxidermy, meat processing, leather or fur processing, cosmetic, medicinal and food processing			Facility registrations, facility licenses, receipts, invoices, other official transaction documents, sanitation and health code records.
5. Payment of taxes, duties and fees			Proof/receipt of payment of taxes, duties and fees applicable to trade in fauna and flora within the specific national context.

Table 2: Evidence of legality along the chain of custody for timber

The applicant could be asked to provide evidence on:	Examples of possibly relevant documentation
1. Land tenure and harvest rights	Official proof of government-issued tenure, Forest Management Unit/ Concession of Harvest license, Forest Management Unit/ Concession of Harvest location and map.
2. Conditions of harvest	Proof of harvesting permit validated by relevant forestry authority Pre-harvest inventory of all trees and species Identification of each tree, including species, diameter and location marked on map List of all trees that will be harvested Cutting block records Annual allowable cut Log markings Prohibitions or quotas on harvest of rare or endangered species Post-harvest inventory

	Post-harvest monitoring Detailed records of numbers and volumes of logs removed cross checked against authorization to harvest, including the approved cut
3. Export, import and domestic trade and transport	Export quota and monitoring system in place, Marking system, Traceability system.
4. Payment of taxes, duties and fees applicable to timber trade	Proof or receipts of payment of taxes, duties and fees applicable to timber trade within the specific national context, e.g., stumpage fees, concession fees, allowable cut fees, etc.

Table 3: Evidence of legality along the chain of custody for marine species

The Convention regulates trade in specimens taken from areas beyond national jurisdiction (ABNJ). When a specimen is taken from ABNJ by a vessel flagged in one State, and landed in a different State, this qualifies as export and import under the Convention. The flag State of the vessel is the exporting State and the State where the specimen is landed is the importing State, and the provisions of Articles III, IV and V concerning legal acquisition findings apply.

When a specimen is taken from ABNJ by a vessel flagged in one State, and landed in the same State, this is known as an introduction from the sea. Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea* states that Parties involved in such a transaction should satisfy themselves that the specimen was acquired and landed in accordance with applicable measures under international law for the conservation and management of living marine resources. For further details, see Resolution Conf. 14.6 (Rev. CoP16).

If a specimen is taken from ABNJ by a chartered vessel and transported to the chartering State, the transaction may be treated as either an introduction from the sea, or as an import-export, as mutually agreed in writing by the States in question (i.e. the State where the vessel is registered and the chartering State). This applies regardless of whether the specimen is of an Appendix-I or Appendix-II species. However, when the specimen is of an Appendix-II species, and the specimen is transported to a third State, the trade should be treated as export-import. For further details, see Resolution Conf. 14.6 (Rev. CoP16).

It is therefore important, as a preliminary step, to identify all States involved in the trade transaction, including if the vessel is chartered, and it is useful to identify whether the State is a port State and Party to the Agreement on Port State Measures (PSMA).

It is also important to note that for the authorization of trade in marine species under the Convention, it is irrelevant whether the caught specimen was targeted or bycatch. Both targeted catch and bycatch should be documented and reported. The provisions of the Convention fully apply to bycatch.

The applicant could be asked to provide evidence on:	Examples of possibly relevant documentation
1. Legal authority to capture a specimen	Quotas, Licenses, Fishing agreements, Fishing permit, Ministerial agreement or regulation, or fishing record.
2. Timing and location of the catch	Digital positioning data, including Vessel Monitoring System (VMS) data, Navigation system data (e.g., GPS data), or Automatic Identification System (AIS) data (for larger vessels). Observer data or logbooks; physical and/or electronic catch report forms.
3. Gear/technique employed	License, Fishing agreements, Observer data or logbooks, when available, Physical and/or electronic catch report forms, when available.
4. The name of the vessel that captured the specimen	Vessel registration, flag State, License, authorization, permit.
5. Identification of vessel captain/master	Captain's certificate/license.
6. Transshipment occurrences	Authorisation issued by the national competent authority to engage in transshipment, Observer data relating to transshipment, when available, Transshipment entries in logbooks, Transshipment authorization by the competent national authority, VMS, AIS, or GPS data showing transshipment activity.

7. Compliance with measures relating to processing and handling of catch	Records or other information showing compliance with fin-to-carass ratios and/or fins-attached rules (in case of shark fishing) established under domestic measures or RFMO Conservation and Management Measures, Observer data, Logbooks, Records showing compliance with individual National Action Plans for the conservation and management of sharks adopted by the country, Records showing compliance with regulations on prohibition to take and land certain species, Records showing compliance with regulations for temporary bans to fish certain species.
8. Compliance with bycatch ¹ and discard measures	Records showing compliance with domestic measures or RFMO Conservation and Management Measures related to bycatch and discards, Observer data or logbooks, Catch report forms.
9. Payment of taxes, duties and fees	Proof or receipt of payment of taxes, duties and fees applicable to marine species within the specific national context.
10. Landing at a port or beach	Fishing permit or fishing records, Certificate of monitoring and control and landing (identification and quantification of species; inspection of fishing methods, Authorization and distribution of permits for movement of fishing products, Documents/regulations on fins attached or finning. For artisanal fisheries: a review of authorized ports for landing; review of formats which include a certificate of the landing of marine species; the information gathered is registered in the country database (Fisheries Ministries or Agencies).

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?

The 'onus of proof' is on the applicant and the degree of satisfaction of the evidence is the level of satisfaction of the CITES Management Authority. The standard of proof or the quality of the evidence is to be determined by the authorities based on legal practice, national legislation and principles of international law, such as *in dubio pro natura*. When in doubt, the authorities are expected to check behind the documentary evidence by checking databases, conducting inspections and consulting with other relevant authorities. See paragraph 2 e) of Annex 1 to this Resolution. 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 for example include import or export permit numbers, forestry concession numbers, hunting permit or tag numbers.

Management Authorities are recommended to keep, as far as practicable, relevant documentation relating to legal acquisition findings in order to be able to communicate with other Management Authorities and provide them with supporting documentation beyond the export permit. Parties are also recommended to provide clear information on the process they use to make legal acquisition findings and documentation required from applicants.

¹ Bycatch is understood by the FAO as being a 'component of the catch which represents non-targeted fish associated with the catch of the target species or group towards which fishing effort is directed, or other aquatic organisms taken incidentally during the course of fishing (e.g. birds, mammals, reptiles, invertebrates).

7. Framework for making a Legal Acquisition Finding

The Rapid Guide sections are integrated below into a flowchart outlining the decision-making process in making a legal acquisition finding.

