

# LEGAL ACQUISITION FINDINGS

A Handbook by Forest Trends and  
Center for International Environmental Law (CIEL)





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## ABOUT FOREST TRENDS

Forest Trends works to conserve forests and other ecosystems through the creation and wide adoption of a broad range of environmental finance, markets and other payment and incentive mechanisms. This Handbook was developed under Forest Trends' Forest Policy, Trade, and Finance program, which seeks to create markets for legal forest products while supporting parallel transformations away from timber and other commodities sourced illegally and unsustainably from forest areas.

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## Abbreviations and Acronyms

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of Custody
CoP	Conference of the Parties
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law, Environment, Governance and Trade
IFS	Introduction from the Sea
Interpol	International Criminal Police Organization
IUCN	International Union for the Conservation of Nature
IUU	Illegal, Unreported and Unregulated Fishing
LAF	Legal Acquisition Finding
MA	Management Authority
NDF	Non detriment finding
NGO	Non-governmental Organization
RFMO	Regional Fishery Management Organization
SA	Scientific Authority
TLAS	Timber Legality Assurance System
UN	United Nations
UNEP	United Nations Environment Programme
UNODC	United Nations Office for Drugs and Crime
VMS	Vessel Monitoring System
VPA	Voluntary Partnership Agreement
WRI	World Resources Institute
WWF	World Wide Fund for Nature

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## Introduction

**A**lthough verifying legal acquisition is one of the key requirements for the issuance of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permit, the Convention leaves the decision on how to determine whether the specimen was acquired legally to the Parties. In 2019, recognizing that the absence of such guidance may seriously undermine the reliability of the CITES permit system as proof of legality and sustainability, the Conference of the Parties (CoP) developed guidance for the verification of legal acquisition of CITES specimens.

Resolution Conf. 18.7 was adopted at the 18<sup>th</sup> meeting of the Conference of the Parties in 2019 and contains guidance on assessing the legal acquisition of specimens of CITES-listed species. Determining that the acquisition of a specimen of a species is legal is a prerequisite for the issuance of an export permit. As such, it is key that Legal Acquisition Finding (LAF) guidelines are also adopted and applied by Parties at the national level. LAF guidelines can help to level the playing field by making public the information required from applicants seeking to export specimens of CITES-listed species, as well as the process the Management Authority (MA) will take in evaluating the information prior to making a LAF. Clear, publicly available guidelines can help to ensure that the same procedures are followed when assessing the legality of specimens prior to export. LAF national guidelines can also help facilitate the exchange of information between MAs in importing and exporting countries, help reduce the issuance of permits allegedly issued in contravention of the laws of countries involved in CITES authorized transactions, and reduce the use of CITES permits for fraudulent purposes. The LAF must be made by the MA and include an independent assessment by the MA of the legality of the specimen; permits issued by an MA as a result of a court order and without a LAF made by the MA are not valid.<sup>1</sup>

Depending on legal authorities and preferences, the national guidelines for making LAFs could be adopted as a regulation or in some other publicly available document, or it could be adopted as internal guidance, or both. Publication in a format that is officially endorsed and widely available can improve accountability, as well as a more consistent and transparent decision-making process. Public availability of the LAF Guidelines is especially crucial as the success of a permit application largely de-

pends on information and documentation submitted by the applicant. In the event that national guidelines will not be made public and instead will be internal guidance, the MA should make available, at a minimum, a fact sheet or other simple explanation of the LAF process, including the information required from the applicant. **Section II** provides an example of such a document. Publication on all relevant websites is critical, in addition to direct distribution to all recent permit applicants, to the extent practicable. If feasible, distribution to other relevant government bodies is also helpful, as copies may be included with relevant licenses for CITES-listed species.

This Handbook is designed to provide background into both establishing national LAF guidelines and the making of LAFs themselves, in **Sections I** and **II**, respectively. It should be noted that this Handbook is intended to be a comprehensive guide for all situations requiring LAFs or similar findings, but not all the guidance will be applicable in every country. The Handbook also contains information and recommendations regarding verification of legality that may go further than those required by CITES and draws from examples of different regulatory contexts, such as that for trade in timber developed by the EU. Illegalities in the extraction of natural resources have been widely investigated, documented, acknowledged, and quantified in a number of policy sectors outside the CITES process. Notably, many countries have passed laws, reached agreements, and drawn up programs to reduce illegal logging and the associated trade in illegally harvested timber.<sup>2</sup> In the forest sector, these laws are creating a new norm in the trade of wood products, requiring supply chain documentation and verification of legal harvest. Similar controls have been put in place in the commercial fishing sector to challenge Illegal, Unreported and Unregulated (IUU) fishing. Ideally, CITES legal provisions for trade and other legislative instruments can be mutually supportive as tools for relevant officials to collaborate in order to ensure global enforcement cooperation and the best possible protection for the most vulnerable species.

This handbook deals with the making of legal acquisition findings for the purpose of issuance of export permits and is based upon Resolution Conf. 18.7 on *Legal acquisition findings*. Due diligence for scrutiny of imports of CITES-listed species is addressed in Resolution Conf. 11.3 (Rev. CoP18) on *Compliance and Enforcement*, and is not detailed in this Handbook on legal acquisition findings.

## What is a Legal Acquisition Finding?

**T**he making of Legal Acquisition Findings is a critical element of implementing CITES. According to the Convention, an export permit may only be issued when “a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.”<sup>3</sup> In other circumstances, such as when certificates may be required for certain specimens, including captive-bred, artificially propagated, and other types of exports, other legal determinations may need to be made, which are described in Article VII, *Exemptions and other special provisions relating to trade* and outlined in **Annex B**. Therefore, upon receipt of an application for an export permit or certificate, the MA first needs to determine whether it must make a LAF or other legal finding.

According to Resolution Conf. 18.7 on *Legal acquisition findings*, it is recommended that the term “Legal Acquisition Finding” be used by Parties when referring to the **examination** conducted by an MA prior to issuing a CITES export permit to satisfy itself that the specimen was not obtained in contravention of the laws and regulations of that State for the protection of fauna and flora (in other words, it was legally acquired). In this handbook, a **positive LAF** is used to describe the conclusion of this examination when all conditions have been met to determine that the specimen has been legally obtained. A **negative LAF** is the conclusion of the examination when the conditions for verifying legal acquisition have not been met, and the MA either cannot determine whether the specimen has been legally obtained or believes that the specimen may have been illegally obtained.

The making of a LAF “should take into account the whole series of actions through which the specimen is brought from its source into the possession of an exporter.”<sup>4</sup> This series of actions is the “Chain of Custody,” which is defined by Resolution Conf. 18.7, paragraph 2, as the

*[c]hronological documentation, to the extent practicable and in accordance with applicable laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen.*

**Providing** the documentation is the responsibility of the permit applicant, and national guidelines should clearly articulate the type of documents necessary based on applicable national legislation. **Verifying** the documentation to the extent possible is the responsibility of the MA.

Making LAFs is a critical feature of national-level CITES implementation, and in order to make these findings with legitimacy and in compliance with CITES, nationally adopted, broadly vetted guidelines are important. The adoption of national guidelines ensures all affected stakeholders and decision makers have similar information regarding the LAF requirement and the importance of the findings for the legality of wildlife trade, including across relevant ministries and agencies. Public availability of the guidelines allows potential permit applicants and others to understand their respective responsibilities in demonstrating legal acquisition and the consequences of failing to prove legal acquisition.

The development of national guidelines ensures that MAs and the public have adequate information to perform their responsibilities as outlined in the decision tree in **Section II** below. **Section I** provides guidance for the preparation and development of national guidelines so that by following the guidelines, the MA will be equipped to undertake the steps in the decision tree in **Section II**.



## SECTION I

## Preparation and Development of National LAF Guidelines

**L**AF guidelines may be tailored with details that suit national circumstances and provide adequate guidance to Management Authorities, other relevant agencies, and the public. In the preparation of national guidelines for making LAFs, it is necessary to undertake a comprehensive assessment of relevant legislation that informs the legal acquisition finding. In this context, consideration of national and subnational legislation is paramount.

The development of a national approach for making LAFs itself requires a multi-stage process of assessment, coordination, and review prior to publication. These stages may include the following:

- A. Confirm the legal authority for making Legal Acquisition Findings.
- B. Determine the scope of relevant national legislation: review and assess national laws for the protection of flora and fauna to determine relevant rules governing activities along wildlife supply chains, including verification of Chain of Custody for fauna, flora, and fisheries.
- C. Consider the LAF decision tree diagramed in Section II and adapt to national circumstances.
- D. Develop instructions regarding the information required of an Applicant as outlined in Section II, adapted to national circumstances.
- E. Solicit input from relevant ministries and government officials, as well as the public
- F. Hold national workshops, as needed and appropriate.
- G. Prepare and officially adopt National Guidelines for Making Legal Acquisition Findings.
- H. Make Guidelines publicly available (through websites, official journals, gazettes, or similar).

These stages are adaptable to national circumstances — some stages may be crucial in some contexts, but in others, they may be unnecessary or duplicative of past efforts. Similarly, each national context will present a unique regulatory landscape on which to build LAF guidelines, so stakeholders, as well as scope and content, will vary from country to country. Undertaking a thorough and transparent process for the drafting and adopting of guidelines is an important first step in ensuring that LAFs can be made with legitimacy and in accordance with CITES.

This Handbook is designed to draw particular attention to the importance of stages **A** and **B** above in the development of national guidelines. These require taking preliminary steps, such as identifying the scope of legal authority and thoroughly assessing national legislation; providing insights as to the types of documentation that are important to the LAF process; highlighting the importance of MAs being satisfied with the documentation submitted by permit applicants; and outlining several additional foundational considerations for developing national LAF guidelines. More detailed information on these first two stages in the development of national guidelines is provided below.

### Confirm the Legal Authority for Making Legal Acquisition Findings

For the purposes of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, the “Legal Acquisition Finding” must be conducted by a Management Authority.

The legal authority to make legal acquisition findings, as required by the Convention, is an important precondition to making lawful LAFs. Identifying the requisite legal authority involves two related inquiries. First, the MA must be officially designated. Second, the designated MA must have the authority under national law to issue permits and certificates and make all necessary findings, including legal acquisition findings.

Article IX of the Convention requires that all Parties designate “one or more Management Authorities competent to grant permits or certificates on behalf of that Party.” At the 18th Confer-

ence of the Parties in 2019, a new Resolution on the Designation and Role of Management Authorities was adopted.<sup>5</sup> Both the text of the Convention and the new Resolution make clear that for a Party to implement and enforce CITES, the designation of at least one MA is essential. A Party may designate the MA by a legal instrument or administrative act, e.g., through the CITES implementing legislation, a decree or formal statement by the executive or relevant ministry, or another instrument with the force of law. Therefore, the MA should confirm their designation and authority prior to making a LAF and issuing export permits and certificates.

A Party's CITES implementing legislation might articulate the authority to make legal acquisition findings in one of several ways. Some national laws or regulations explicitly require the MA to make a LAF and include detailed provisions for doing so.<sup>6</sup> For example, the European Union's Implementing Regulation requires the MA of the EU Member State to determine that "the specimens were lawfully removed from the wild, captive-bred or artificially propagated based on documentary evidence presented by the applicant."<sup>7</sup> In these cases, it is important that any further guidelines reflect the requirements established in such law. Many national laws make clear that the MA as needed may query other national government agencies, sub-national government agencies, international authorities, or other applicable experts, with relevant information to use in making the required findings, and that the burden is on the applicant to provide sufficient information to satisfy that all criteria specific to the specimen and type of permit or certificate requested are met before the MA can issue a CITES document.<sup>8</sup>

In some cases, legislation grants the MA the authority to issue CITES permits but does not explicitly require the MA to make LAFs. As stated in the Convention, to issue a permit for the export of specimens under Articles III, IV, and V, the MA must make all of the required findings, so even if the law does not explicitly require the MA to make a LAF, the authority to issue a permit implies the authority to make a LAF. In these cases, further guidance is even more important.

Some national laws neither grant the MA the authority to issue permits nor explicitly require the MA to make a LAF. Where there has been parliamentary or national-level action to accede to or ratify CITES, this may have been done by incorporating the text of the treaty into an official action, such as a bill or resolution. In these cases, or in monist legal systems or where treaties are self-executing, significant legislative gaps regarding the CITES permit scheme may be overcome by relying on these official acts or the treaty itself. However, in situations where this is not the case, legislative action may be necessary to ensure the legality and credibility of all CITES permit findings, including

LAFs. In addition, the public and permit applicants should be informed of the MA's responsibilities and obligations to make a LAF, in addition to the documents and information the permit applicant must provide when seeking a CITES permit.

Parties should have provisions in national law that allow for the rejection of an application for a CITES document if the conditions for issuance are not met. They should also have provisions that penalize not only trade in specimens in violation of the Convention but also possession of specimens traded in violation of the Convention, or both.<sup>9</sup> Further, Parties should have national legislation that grants the authority to seize and confiscate specimens that have been illegally traded or possessed.<sup>10</sup> The CITES Model Law notes that such provisions should take the following into consideration "which authorities may confiscate; the extent of their confiscation powers (e.g. specimens, containers, equipment and vehicles involved in an offence); the procedures that must be followed; and the final disposal of confiscated specimens."<sup>11</sup>

## Review and Assess National Laws for the Protection of Flora and Fauna to Determine Relevant Rules Governing Activities Along Wildlife Supply Chains, Including Certification of Chain of Custody for Fauna, Flora, and Fisheries

### Determining the Scope of Relevant National Legislation

To verify legal acquisition, the MA "must . . . be aware of and understand their relevant laws for the protection of fauna and flora."<sup>12</sup> Laws for the protection of fauna and flora encompass a range of national laws and regulations. In determining the relevant laws for the protection of flora and fauna, not only national laws must be considered, but also local, state/provincial, indigenous, customary, and other relevant laws and regulations should be taken into account. MA should also consult with other government entities with expertise in the relevant legal frameworks related to each species or specimen. There will likely be relevant provisions in the national CITES implementing law and related regulations. Other broad laws that may apply include those related to biodiversity, land use and management, protected areas, and international agreements and treaties.<sup>13</sup> Additional potentially relevant legislation should also be considered in this process, such as customs, criminal, sanitary and phytosanitary, fishery, forestry, and agricultural laws.

The applicable management framework may vary, depending on the type of species and the country-specific conservation legislation. Certain countries may also have multiple laws regulating animals, plants, or both animals and plants that are relevant to the specimen at issue. The MA should consider whether the species is an animal, plant, or marine species to determine which laws, regulations, and agency guidelines apply to the specimen.

Legal frameworks or applicable regulations for the protection of fauna and flora may include domestic measures, such as:

- authorizing harvest/offtake and quantities/volumes of harvest/offtake
- regulating conditions for taking or harvesting species from the wild, including protected area designations and hunting methods
- regulating the propagation or breeding of species
- regulating the processing of specimens (for example, licensing requirements for slaughtering facilities, fish processing plants, timber mills, etc.)
- governing transfers of the specimen (for example, permit and registration requirements)
- permitting or prohibiting the export of specific species or specimens of species (for example, log export bans; species at risk acts; endangered species acts)
- permitting or prohibiting the import of specific species or specimens of species (for example, compliance with CITES for the import of founder stock; endangered species acts; injurious wildlife acts)
- adhering to any pharmaceutical, medicinal and healthcare legislation pertaining to the species
- prohibiting or curtailing the possession of certain species

For lists and further descriptions of potentially relevant legislation depending on species, see **Annex A**.

## Exemptions and Special Procedures

According to Article VII of the Convention, there are specific cases when the standard provisions of Articles III, IV, and V of the Convention related to the regulation of trade in specimens of species included in Appendix I, II, and III, do not apply, such as personal and household effects, artificially propagated plants, animals bred in captivity, and pre-Convention specimens. These provisions can result in either exemptions to the normal procedures where no CITES document is required,<sup>14</sup> or in special procedures, where trade is regulated, but the specimens are subject to the provisions of a different Appendix to the one in which the species is listed.<sup>15</sup> Finally, in other cases, different

CITES documents are required in place of those mandated by Articles III, IV, and V.<sup>16</sup>

At this stage, it is important to determine which of the CITES exemptions found in Article VII of the Convention have been incorporated into national legislation. National legislation implementing CITES does not always recognize the exemptions or special circumstances identified under the terms of the Treaty or recommended in a Resolution,<sup>17</sup> but if it does, inclusion of the standards for documenting the chain of custody can be an important element in determining whether trade in a specimen meets the requirements.

Based on national law, the MA should assess the types of potential exports, to determine whether all potential exports require an export permit, or if some exports require an alternative certificate or if they are exempt from CITES rules, as outlined in Annex 2 of Resolution Conf. 18.7. Although not explicitly LAFs, other legal findings, including chain of custody assessments, are relevant in certain circumstances beyond the issuance of an export permit pursuant to Articles III, IV, or V. Clarity regarding permit applicant's obligations in each circumstance, based on national laws, should streamline the work of the MA and ultimately facilitate full implementation of CITES. Details on Article VII exemptions and other special circumstances that require findings similar to LAFs can be found in **Annex B**.

An additional consideration relates to annotations, as some species' listings include or exclude particular parts and derivatives. As a result, if the listing does not include a specific type of specimen, then the export does not require a CITES permit or certificate, but the MA should verify that the specimen is precisely what the annotation excludes. Annotations are most often applied to plants, and additional detail can be found in the Plant Annotations in the CITES Appendices – An Illustrated Manual.<sup>18</sup> To verify whether the species listing includes an annotation the species' name may be entered into the Species Plus database.<sup>19</sup> Additional annotations that are not preceded by a # may be found in the online version of the CITES Appendices.<sup>20</sup>

## Documentation Requirements Throughout the Chain of Custody

As mentioned above, according to paragraph 2 of Resolution Conf. 18.7, chain of custody is the “chronological documentation, to the extent practicable and in accordance with applicable laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen.” In order to make a LAF, the traceability of specimens through the chain of custody from the point of export back to the point of harvest or capture is very important. Assess-

ing compliance with the legal requirements pertinent to each stage in production, trade, and export of specimens of CITES-listed species assures that the chain of custody is traceable and legal and thus that a LAF can be made. Of course, the MA is not expected to be an expert in assessing evidence, nor is the MA expected to have knowledge of all the laws applicable to a CITES specimen through the course of its transaction history. When the MA is not able to assess whether chain of custody evidence presented by the applicant is sufficient, **the MA should consult with government entities with the relevant expertise.**

The chain of custody and relevant law varies from taxa to taxa. The sections below provide an overview of the elements to be considered for trees, plants, animals, and specimens of species introduced from the sea. Additionally, given that the LAF or other legal requirements might differ slightly when issuing permits or certificates, or depending on the nature of the specimen or type of trade, the following section also provides guidance for those scenarios.

It is critical to identify the types of acceptable documentation for different specimens in accordance with the requirements of applicable law, and to incorporate this information into national guidelines because it informs potential permit applicants about the types of documents that must be provided with their permit application. By making the required information publicly available, the MA will provide clarity to permit applicants and increase the likelihood of receiving all necessary supporting information with the initial permit application. When applicant fails to provide the supporting information required during initial permit application, consequences can include permit denial, or an extended permitting process to request the necessary information from the applicant or other relevant sources, or the applicant may be required to file a new permit application leading to additional permitting fees and permit processing time.

## Evidence of Chain of Custody for Fauna and Flora

To make a positive legal acquisition finding, the MA must assess whether the specimen has been acquired legally. The MA should consider all steps along the chain of custody, from harvest or production to any purchase, sale, or transfer of the specimen, to the extent practicable and in accordance with applicable laws and records. Additionally, a risk assessment approach may be used, as relevant. The type of documentation that might be necessary to prove legal acquisition along the chain of custody often depends on the type of specimen and can affect the evidence necessary to demonstrate that the specimen was legally obtained. Additionally, national laws may restrict or regulate how other supply-chain activities are undertaken, who may engage in certain activities, and what permissions may be necessary.

Table 1 on the following page provides an overview of some of the relevant activities and documents that may be requested as evidence of the legality of such activities. Each country will have a unique regulatory landscape and the table may not include all activities regulated in all jurisdictions. A comprehensive review of national legislation should aid the MA in the process of identifying all pertinent documentation for each regulated activity.

## Traceability Schemes for Fauna

Traceability schemes are gaining increasing traction in wildlife supply chains, and if in place, they could support the making of LAFs by helping to confirm the legal origin and chain of custody. The CITES Parties have adopted a working definition of traceability that draws attention to the link between traceability and the LAF:

Traceability is the ability to access information on specimens *and events in a CITES species supply chain*\*.

(\* This information should be carried, on a case-by-case basis, from as close to the point of harvest as practicable and needed to the point at which the information facilitates the verification of legal acquisition and non-detriment findings and helps prevent laundering of illegal products.)<sup>21</sup>

In specific supply chain contexts, the CITES Parties have agreed to the use of traceability tools, and these should be taken into account when making or confirming LAFs.<sup>22</sup> The two most well-developed tools combine registries with labeling systems.

**Caviar:** Resolution Conf. 12.7 (Rev. CoP17) *Conservation of and trade in sturgeons and paddlefish*<sup>23</sup> sets out a comprehensive plan for management of caviar trade, recommending to Parties that, through domestic legislation, production, processing, packaging plants, and re-packaging plants should be registered and that they should adhere to a labeling system that identifies the species, the source, the country of origin, the year of harvest, the registration code of the relevant facility, and the lot identification number. This system allows for tracking by both the exporting, re-exporting, and importing countries and thus supports the exporting country in making a LAF. However, not all countries implement this plan.

**Crocodile skins:** Resolution Conf. 11.12 (Rev. CoP15) on *Universal tagging system for the identification of crocodilian skins*<sup>24</sup> defines universal tagging standards for raw, tanned, and finished crocodile skins. The tags must identify the country of origin, a unique serial identification number, the species, and, in some cases, the year of production or harvest. The tags must also have the following characteristics: a tamper-resistant, self-locking mechanism, heat resistance, inertia to chemical and mechanical processing, and alphanumeric information, which may

**Table 1: Evidence of Chain of Custody for Fauna and Flora**

Type of Activity/Specimen		Type of Legal Finding	Examples of Documentation
<b>Sourcing</b>	Bred in captivity or Artificially Propagated Specimens	Captive-bred or Artificially Propagated	Records that identify the nursery, breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for fauna by sex, size, band number, or other mark.
	Confiscated specimens	LAF	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
	Previously imported specimens	Re-export	A copy of the previous CITES document that accompanied the shipment into the importing country. <sup>i</sup>
	Ranched specimens <sup>ii</sup>	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.
	Wild-sourced specimens	LAF	Records, such as permits, licenses, and tags, plus harvest locations and capture means, that demonstrate the specimen was legally removed from the wild under relevant laws or regulations; evidence of firearms license where restricted and relevant; invoices related to hiring of guides or professional hunters, where required; salvage permits.
<b>Ownership and transfers</b>		Certificates of ownership, documentation of legal transfers, such as sales bills, receipts, registrations. In the case of older specimens, in particular those of 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.	
<b>Transport</b>		Licenses, waybills, packing lists, inspection records.	
<b>Processing – taxidermy, meat processing, leather or fur processing; fish processing; wood, cosmetic, medicinal, and edible processing</b>		Facility registrations, facility licenses, receipts, invoices, other official transaction documents, sanitation and health code records.	

include barcoding, applied by permanent stamping. The Resolution recommends that each Party establish, where legally possible, a system of registration or licensing, or both, for producers, tanners, importers, and exporters of crocodilian skins.

CITES Parties have also identified snakes<sup>25</sup> and sharks as candidates for the development of traceability schemes. Resolution Conf. 17.12 on *Conservation, Sustainable Use and Trade of Snakes* outlines the requirements and recommendations for trade that have been discussed to date.<sup>26</sup>

## Evidence of Chain of Custody for Trees

An application for an export permit for trees would, under best practice, be accompanied by documents that show evidence of the chain of custody, covering the point of harvest in the forest, transport from the forest to storage or processing facilities, processing in the mills, and transport to destination prior to export. Many forest laws include obligations to adhere to rights related to forest ownership and management, environmental issues, employment, community benefits, import and export procedures,



and payments of fees and taxes. An application should provide evidence that includes, but is not limited to, the following:

- Evidence of land tenure and right to harvest
- Evidence of compliance of conditions of harvest
- Evidence of payment of taxes and fees
- Evidence of compliance with trade and export laws
- Evidence of compliance with third-party rights

**Table 2: Evidence of Chain of Custody for Trees**

Evidence of:	Examples of Relevant Documentation
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
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
Payment of Taxes and Fees	Proof/ receipts of payment of: Stumpage fees Concession fees Allowable cut fees Company profit taxes Sales taxes
Trade and Transport	Logs or log loads are clearly identified and documented prior to being transported When in transit, sufficient information to identify the origin and destination of the wood should accompany the logs Waybills, packing lists, loading records, transport dockets, weighbridge information Customs documents Certification system associated with legality and sustainable management Marking system Export quota and monitoring system in place Traceability system
Third Party Rights/ employment related documentation	Certificate of compliance with any relevant standards Stakeholder consultation report conducted prior to the approval of management plan Health and safety certificates Social and environmental impact assessment reports

## Compliance with Any Existing Timber Legality Assurance System (TLAS)

As one example of a comprehensive chain of custody legality verification system, several countries<sup>27</sup> have entered into voluntary partnership agreements (VPAs) with the European Union under the Forest Law, Enforcement, Governance and Trade Action Plan (FLEGT) which aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber. Under these Voluntary Partnership Agreements (VPAs), the partner countries have developed Timber Legality Assurance Systems (TLASs) used to demonstrate compliance with the full scope of relevant national laws.<sup>28</sup>

The TLASs are built on definitions of legality that have been developed through participatory processes involving stakeholders from government, the private sector, and civil society. Licenses for timber and timber products issued under FLEGT therefore indicate that such products comply with a broad range of laws and regulations in the partner country, such as those relating to forest management, environmental aspects, labor rights, community benefits, import and export procedures, and payments of fees and taxes.<sup>29</sup> A TLAS also includes procedures to trace and control timber throughout the supply chain, from the forest where the timber is harvested, to its transport, storage facilities and processing, and through to the point of export.

Therefore, a country with an agreed TLAS has an established and clear process to verify the legality of its timber products before export, which may go beyond that required for CITES species; however, there could be benefits for closer collaboration between the CITES MA and the authority responsible for issuing FLEGT licenses, namely that a LAF for a CITES-listed tree species be based on a transparent and coherent regulatory framework. If possible, MAs in countries that have a TLAS in place should consider using the TLAS system as part of the process of verification of legal acquisition for CITES-listed specimens even for export to non-EU Parties. In doing so, the MA would need to confirm that:

- the TLAS provides traceability for the whole chain of custody from the point of export back to the point of harvest; and
- all the elements of the TLAS have been complied with.

## Evidence of Chain of Custody for Marine Species and Specimens Introduced from the Sea

Trade in marine species may be subject to either the issuance of an export permit or an introduction from the sea certificate,

depending on where the harvest took place, the flag State of the vessel involved in the harvest and the place of landing of the catch. Further explanations on Introduction from the Sea (IFS) and the associated non detriment findings (NDFs) can be found in FAO's guide and sourcebook on CITES and Fisheries.<sup>30</sup>

Export permits may be required in at least three circumstances. First, export permits are required for trade in CITES-listed marine species harvested in waters under the jurisdiction of one CITES Party and landed in the jurisdiction of a different CITES Party. In the other two cases, export permits may be required when marine specimens are harvested in the marine environment not under the jurisdiction of any State, one with no IFS and one after IFS. In either case, the following guidance may be applicable.

Introduction from the sea (IFS) is defined in Article 1 of the Convention as *transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State*. Introduction from the sea of specimens of species included in Appendix I and II is regulated by the Convention, but IFS of Appendix III-listed species is not.

The CITES Parties have developed a specific approach to implementation of the introduction from the sea provisions of the Convention in Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea*.<sup>31</sup> According to the Resolution, MAs should treat specimens taken in the marine environment not under the jurisdiction of any State differently depending on the flag State of the vessel. When the transaction is a two-State transaction, it is treated as an import and export transaction, and not as "introduction from the sea": According to the Resolution, 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, it is a "two-State transaction" and the State in which the vessel that took the specimen is registered should issue an export permit. In these cases, the State of export must make a legal acquisition finding pursuant to Article III or IV, according to paragraph 2 b) of Resolution Conf. 14.6 (Rev CoP16).

In situations where a specimen is taken from the marine environment not under the jurisdiction of any State, and the vessel is registered in the same State as the one into which the specimen is introduced, the transaction is treated as an introduction from the sea, and an IFS certificate is necessary, according to Article III, paragraph 5 (App. I), and Article IV, paragraph 6 (App. II).<sup>32</sup> The treaty text does not require that the MA of the State of Introduction make a LAF; however, the Parties have agreed in Resolution Conf. 14.6 (Rev. CoP16) that the State of Introduction should consider whether the specimen was acquired and landed:

- i. *in a manner consistent with applicable measures under international law for the conservation and management of living ma-*

*rine 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.<sup>33</sup>*

Thus, although not explicitly a LAF, the Parties recommend that a similar inquiry occur prior to issuance of an IFS certificate (See more on IFS on the CITES website<sup>34</sup>).

The third scenario occurs 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 Article XIV,

**Table 3: Evidence of Chain of Custody for Marine Species and Specimens Introduced from the Sea**

Information	Example of documentation
Timing and location of the catch	<ul style="list-style-type: none"> <li>• Vessel Monitoring System (VMS) data,</li> <li>• observer data or logbooks,</li> <li>• physical and/or electronic catch report forms,</li> <li>• navigation system data (e.g., GPS data),</li> <li>• Automatic Identification System (AIS) data (usually available for larger vessels)</li> </ul>
Gear/technique employed	<ul style="list-style-type: none"> <li>• License,</li> <li>• fishing agreements,</li> <li>• observer data or logbooks,</li> <li>• physical and/or electronic catch report forms</li> </ul>
The name of the vessel that captured the specimen	Vessel registration <ul style="list-style-type: none"> <li>• License, authorization, permit</li> </ul>
Legal authority to capture specimen	<ul style="list-style-type: none"> <li>• Quotas,</li> <li>• licenses,</li> <li>• fishing agreements</li> </ul>
Identity of vessel captain/master	Captain's certificate/license
Transshipment <sup>iii</sup> occurrences	<ul style="list-style-type: none"> <li>• Regional Fishery Management Organization (RFMO) authorization to engage in transshipment,</li> <li>• observer data relating to transshipment,</li> <li>• transshipment entries in logbooks,</li> <li>• transshipment authorization by the competent national authority,</li> <li>• VMS, AIS, or GPS data showing transshipment activity (e.g., through pauses in navigation)</li> </ul>
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 RFMO Conservation and Management Measures, observer data, logbooks
Compliance with bycatch and discard measures	Records showing compliance with RFMO Conservation and Management Measures related to bycatch and discards, observer data or logbooks, catch report forms

paragraph 4 and paragraph 5, concerning the export and import of Appendix-II specimens, where only the issuance of a certificate of accordance shall be required.<sup>35</sup>

Prior to issuing either an IFS certificate or an export permit for specimens introduced from the sea, the MA may wish to require an applicant to provide the information and documentation listed in Table 3, as appropriate.

As mentioned in Table 3, the Resolution also recommends that MAs in the State of Introduction take into account whether the specimens may have been obtained through IUU fishing activities. Several resources exist for this inquiry:

- Regional Fisheries Management Organizations' (RFMOs) vessel registries can be found online.<sup>36</sup> These sites will help determine whether the vessel is registered to harvest species in the RFMO's convention area.
- The MA should check available RFMO "blacklists," Interpol's "Purple Notice" list, and any reports relating to the vessel under EU's IUU Regulation. The "Combined IUU Vessel List" is a particularly valuable tool, as it provides a comprehensive searchable database that includes information from twelve RFMOs and Interpol.<sup>37</sup>
- The port authority could provide such relevant information.<sup>38</sup>

## Verifying Chain of Custody Documentation

The development of national guidelines for making LAFs involves consideration of how the MA will assess the documentation submitted by a permit applicant. In other words, making a LAF requires two key steps: 1) check that all relevant documentation has been submitted and 2) make an assessment that such documentation is accurate and valid (see the steps outlined in **Section II**). Verification can include review of documents but also consultation with relevant government entities, including foreign MAs, local or provincial authorities, or other national ministries and agencies, such as fishery and port authorities, as well as the CITES Secretariat and other relevant experts. In order to verify legal acquisition, an MA may choose to employ a risk assessment approach.

## Using a Risk Assessment Approach

One of the guiding principles of the Resolution is that "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."<sup>39</sup> According to Annex 1, para 1 c) of Resolution Conf. 18.7 a risk assessment approach allows

**Table 4: Risk Assessment Approach – Considerations**

Factors in Resolution Conf. 18.7, Annex 1	Considerations
i) The Appendix in which the species is listed	Higher conservation risk if the species is included in App. I. Higher volumes of trade in species listed in Appendix II or III may increase likelihood of laundering illegal specimens.
ii) The source of the specimen (considering whether the specimen is wild-collected, ranched, bred in captivity or artificially propagated, or of unknown origin)	Is there enough evidence provided for the source 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?
iii) Occurrence of the species in a controlled environment	Is the species easy to breed in captivity or propagate in a controlled environment? For a cultivated specimen, was the parental stock legally acquired, according to Resolution Conf. 11.11 (Rev. CoP18) on Regulation of Trade in Plants? For an animal bred in captivity, was the breeding stock legally acquired, according to Resolution Conf. 10.16 (Rev.)* on Specimens of animal species bred in captivity?

*Table 4 continues on the next page.*

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)	Are there reports of armed conflict and/or illegal natural resource extraction and/or illegal wildlife trade from the region?
v) Documented illegal harvest or illegal trade in the species, within the range State or in the sub regional area	Is there a higher-than-average probability or significant risk that the specimen was illegally acquired?
vi) Purpose of trade (commercial or non-commercial)	Is the trade commercial or non-commercial? The potential to 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 listed on CITES? Is there a risk that a rarer, higher value, or CITES-listed species could be mis-declared as a more common, less valuable, or unlisted species?

Possible additional considerations beyond the Resolution	
	<p><b>Species:</b> Is the species native or non-native?</p> <p><b>Level of trade:</b> Are there any significant exports? The MA should consult national records of export, the CITES Trade database, and other available data sources</p> <p><b>Is there a quota for the species?</b> Has this been set by an officially designated Scientific Authority (SA) and does it meet the non-detriment requirements for the species? Has the quota been adhered to? What are the start and end dates of the 12-month quota period?</p> <p><b>Is the species subject to a well-established and widely accepted traceability scheme?</b></p>

for the balancing of several factors in order to gauge the risk that the specimen is the product of some illegal activity or that documentation provided may be inaccurate or fraudulent. If the MA chooses to follow a risk assessment approach, Table 4 includes a non-comprehensive list of factors and considerations, noting that national circumstances might dictate additional factors.

When using a risk assessment approach to verification, certain factors might weigh in favor of the MA seeking additional information or undertaking further scrutiny of the chain of custody.

As noted in Resolution Conf. 18.7, if after weighing the range of 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.”<sup>40</sup>

Table 5 on the following page includes a list of available resources to support MAs in a risk assessment approach. These



**Table 5: Available Resources to Support MAs in a Risk Assessment Approach**

Risk	Resource
The conservation status of the species	IUCN Red List: <a href="https://www.iucnredlist.org">https://www.iucnredlist.org</a> Country-specific Red Lists FAO's database of measures on conservation and management of sharks: <a href="http://www.fao.org/ipoa-sharks/database-of-measures/en/">http://www.fao.org/ipoa-sharks/database-of-measures/en/</a> Species+: <a href="https://www.speciesplus.net/">https://www.speciesplus.net/</a> Checklist of CITES Species: <a href="https://checklist.cites.org/#/en">https://checklist.cites.org/#/en</a>
The potential for species substitution	Species Identification Materials: <a href="https://cites.org/eng/imp/identification_materials/index.php">https://cites.org/eng/imp/identification_materials/index.php</a> Shark Identification Guides: <a href="https://cites.org/eng/prog/shark/resources.php">https://cites.org/eng/prog/shark/resources.php</a> WWF/GTFN, A Guide to Lesser Known Tropical Timber Species, <a href="https://www.fsc-uk.org/preview.guide-to-lesser-known-tropical-species-wwf.a-902.pdf">https://www.fsc-uk.org/preview.guide-to-lesser-known-tropical-species-wwf.a-902.pdf</a> Forensic identification tests: macroscopic, DNA and isotopic analysis <a href="https://globaltimbertrackingnetwork.org">https://globaltimbertrackingnetwork.org</a>
Prevalence of illegal harvesting	Reports by international organizations and Secretariats (e.g. CITES, INTERPOL, UNODC, FAO, UNEP, etc.); Government sources; Scientific and technical reports from academia and research institutions; Civil society and/or private sector (e.g. NGOs, Monitoring Organizations, etc.); Log Export Bans: <a href="https://www.forest-trends.org/known-log-export-bans/">https://www.forest-trends.org/known-log-export-bans/</a> Export Quotas: <a href="https://www.cites.org/eng/resources/quotas/index.php">https://www.cites.org/eng/resources/quotas/index.php</a> Preferred by Nature's Sourcing Hub: <a href="https://preferredbynature.org/sourcinghub/timber">https://preferredbynature.org/sourcinghub/timber</a> The Global Illegal Logging and Associated Trade Risk Assessment Tool (ILAT Risk) <a href="https://www.forest-trends.org/fptf-ilat-home/">https://www.forest-trends.org/fptf-ilat-home/</a> Country Guides – BV Rio <a href="https://www.bvrio.com/plataforma/plataforma/manuais.do">https://www.bvrio.com/plataforma/plataforma/manuais.do</a> EU-TWIX (Trade in Wildlife Information eXchange) Africa-TWIX SADC-TWIX Eastern Africa TWIX
CITES trade suspensions; quotas; sanctions or restrictions imposed on imports or exports	CITES Trade Suspensions: <a href="https://www.cites.org/eng/resources/ref/suspend.php">https://www.cites.org/eng/resources/ref/suspend.php</a> CITES quotas: <a href="https://www.cites.org/eng/resources/quotas/index.php">https://www.cites.org/eng/resources/quotas/index.php</a> UN Sanctions: <a href="https://www.un.org/securitycouncil/sanctions/information">https://www.un.org/securitycouncil/sanctions/information</a> EU Sanctions: <a href="https://ec.europa.eu/fpi/what-we-do/sanctions_en">https://ec.europa.eu/fpi/what-we-do/sanctions_en</a>
Potentially forged or inconsistent documents	Preferred by Nature's Sourcing Hub: <a href="https://preferredbynature.org/sourcinghub/timber">https://preferredbynature.org/sourcinghub/timber</a> WRI Open Timber Portal <a href="https://www.opentimberportal.org">https://www.opentimberportal.org</a>
Checks on applicant to ascertain if engaged in past illegal activities	WRI Open Timber Portal <a href="https://www.opentimberportal.org">https://www.opentimberportal.org</a> ENVIRONET - <a href="http://www.wcoomd.org/en/media/newsroom/2009/june/environet-fight-against-environmental-crime.aspx">http://www.wcoomd.org/en/media/newsroom/2009/june/environet-fight-against-environmental-crime.aspx</a> Interpol Red Notice List: <a href="https://www.interpol.int/en/How-we-work/Notices/View-Red-Notices#">https://www.interpol.int/en/How-we-work/Notices/View-Red-Notices#</a> Preferred by Nature's Sourcing Hub: <a href="https://preferredbynature.org/sourcinghub/timber">https://preferredbynature.org/sourcinghub/timber</a> Country Guides – BV Rio <a href="https://www.bvrio.com/plataforma/plataforma/manuais.do">https://www.bvrio.com/plataforma/plataforma/manuais.do</a> ICCAT Record of Vessels: <a href="https://www.iccat.int/en/VesselsRecord.asp">https://www.iccat.int/en/VesselsRecord.asp</a> Combined IUU Vessel List: <a href="https://iuu-vessels.org/">https://iuu-vessels.org/</a>

resources can assist in evaluating the risk in the context of the factors listed in Table 4.

## Verification Techniques

Beyond ensuring that the permit applicant has presented all necessary documentation, the MA should assess whether the documentation is valid and conduct any further verification considered necessary. This could include the following actions:

- Checking for signatures, stamps, seals, and other official markings
- Checking expiry dates
- Checking quotas<sup>41</sup> and tag numbers against official records
- Checking identification materials of the permit applicant, as well as, the individuals named in any documentation submitted
- Consultations with other government entities involved in issuing any of the documentation<sup>42</sup>
- Consultations with relevant National Park, or other protected area, officials or rangers
- Conducting background checks or inquiring about criminal history with local, national police
- Cross-checking with veterinary/ phytosanitary or fiscal authorities in cases of higher risk

## Specific to Bred in Captivity and Ranched Specimens

A substantial volume of the trade in fauna are identified as either bred in captivity or ranched. This is especially true for live reptiles, reptile skins, amphibians, birds<sup>43</sup> and butterflies.<sup>44</sup> CITES Parties have recognized that in many of these cases, questions arise as to the legitimacy of sources of specimens or whether the specimens meet the criteria of the definition “bred in captivity.”<sup>45</sup> If the specimens meet the requirements then a LAF would still be required when issuing export permits under Art. VII, para. 4 for qualifying Appendix-I specimens bred in captivity for commercial purposes (source code “D”). Qualifying Appendix-I specimens bred in captivity for non-commercial purposes, and qualifying Appendix-II or -III specimens bred in captivity, and exported under certificates issued under Art. VII, para. 5 (source code “C”) do not require a LAF. The MA, however, must first determine whether the specimens meet the criteria for “bred in captivity.”

At CoP17, the Parties adopted a new mechanism for review of trade in animal specimens reported as produced in captivity, set out in Resolution Conf. 17.7 (Rev. CoP18). The criteria of para. 2 a) of the Resolution for selection of species and country combinations for review may also warrant due diligence and verification of the source of the specimen by the MA, prior to authorizing export:

- a sudden increase in the number of specimens being declared as captive-produced (source codes C, D, F and R);
- high volume of trade in specimens that are declared as produced in captivity;
- trade in captive-produced specimens from non-range states, where there is no documentary evidence to demonstrate that the parental breeding stock was legally acquired, either through the examination of trade records or confirmation from the range states concerned;
- source code issues, including shifts between different captive-production codes, inconsistencies between those reported by exporting and importing countries, or incorrect application.<sup>46</sup>

In a document outlining concerns with captive breeding and ranching, the EU and the United States identified several additional indicators that warrant due diligence and verification of the source of the specimen, which the applicant claims is either captive-bred or ranched:

- “trade in specimens declared as captive-bred or ranched coming from facilities only recently established and producing species that are slow to mature and have low reproductive potential;
- specimens that, from their declared age, make the claims of captive-breeding or ranching unlikely due to the high costs associated with maintaining that species in captivity over the given period;
- specimens declared ranched although their natural history does not allow the release of a certain number of juvenile[s] in the wild (low number in offspring produced, long maternal dependence) and where other conditions set up in Resolution Conf. 11.16 (Rev. CoP 15) are not complied with (notably on mechanisms to monitor population and an overall program that must be primarily beneficial to conservation);
- specimens declared as captive-bred from facilities whose annual production levels exceed that which you would expect based on the size of the parental stock and the reproductive potential of the species concerned;

- specimens whose size and condition are not consistent with either the breeding details provided or having been reared in a controlled environment, e.g. heavy parasitic load, damage from predators, large variation in size of specimens sharing the same hatch or birth date;
- shipments where captive bred specimens and wild specimens were mixed in order to deceive enforcement officials.”<sup>47</sup>

When questions arise as to the veracity of the source of the specimen, such as in the cases above, it is imperative to consult with relevant officials and other experts and investigate facilities, where feasible.

## Specific to Plants and Artificial Propagation

Much of the global trade in CITES-listed plant species consists of live, artificially propagated specimens of orchids and cacti and the MA should ensure that such specimens meet the definition and requirements of artificial propagation outlined in Resolution Conf. 11.11 (Rev. CoP18) on *Regulation on Trade in Plants*<sup>48</sup> detailed in Annex B below. If the specimen does meet the strict requirements of artificial propagation, an LAF would not be required except when issuing export permits under Art. VII, para. 4 for Appendix I specimens artificially propagated for commercial purposes (source code “D”). Qualifying Appendix-I specimens artificially propagated for non-commercial purposes, and qualifying Appendix-II or -III specimens artificially propagated, and exported under certificates issued under Art. VII, para. 5 (source code “A”) do not require a LAF. As with “bred in captivity,” the MA, however, must first determine whether the specimens meet the criteria for “artificially propagated.”

Unsustainable and illegal trade in live specimens of species, such as Appendix I-listed species of cacti, cycads and orchids could threaten the species’ survival in the wild and are candidate taxa for MAs to require documents outlining the full chain of custody.

Trade in Appendix II-listed species includes cut flowers, seeds, bulbs, roots and tubers, chips, extract, oil, and powder; herbarium or other scientific specimens; and cosmetic, personal care, medicinal, and food products containing parts and derivatives of plant species, all of which should have their own specific chain of custody documentation or should meet the definition of artificial propagation. Products that contain processed parts and derivatives of many species, particularly those used in the medicinal and cosmetic industries, can have long and complex supply chains and it may be difficult to track the trade back to the raw ingredient. In these cases, for specimens considered low risk from a conservation, enforcement, or compliance perspective, the MA should make an assessment of the level of documentation required.

Other issues to consider include:

- Is the species found in a protected area or national park? Are there restrictions/bans on harvesting any species within the area? Is it possible to carry out an independent inspection of the harvest area and has this been done by a government or independent observer?
- For specimens that the applicant states are Artificially Propagated, has the species been recently discovered and/or recently included in CITES? Small populations of rare specimens of plants are particularly vulnerable to illegal and unsustainable harvest and trade. An application for an export permit, submitted for a newly described species that is entering trade in a time frame that is unlikely to be adequate to cultivate the specimen artificially, should be subject to a greater degree of scrutiny. The checklist of CITES species<sup>49</sup> is available on the CITES website, species names should be checked against these and other similar taxonomic resources.<sup>50</sup>

## Specific to Trees

The MA or the relevant government entities responsible for implementation and enforcement of forest laws may choose to conduct:

- On-site inspections to:
  - » Confirm accuracy of concession location and boundaries
  - » Confirm accuracy of tree and species maps
  - » Confirm environmental requirements are adhered to
  - » Confirm employment conditions are observed in practice
- Reconciliation of quantities
  - » Use annual allowable cut/minimum cutting diameter to calculate the harvestable volume of timber, allowing for damage during harvest and waste during processing
  - » Identify conversion rates to ensure the quantity of timber produced does not exceed the amount which can be reasonably expected to be produced from the quantity of raw material used
- Consultation with relevant government agencies to ensure payments of all fees and taxes

## ANNEX A

## Potentially Relevant Legal Instruments

## Generally Applicable Laws

**Protected Areas Laws:** might restrict or regulate harvest in an area, or entirely prohibit it

**CITES Laws or Regulations:** CITES legislation and regulations are relevant as they will identify authorities and permit conditions

**Other Protected Plants and Wildlife Laws:** might restrict or regulate specific activities with protected species (e.g., harvest, possession, commercial use, sale, purchase, transport, import, export), or entirely prohibit it

**Forest Laws:** in some cases, forest laws restrict, regulate, or prohibit the harvest of fauna and flora, in addition to any restrictions on forestry activities

**Firearms Laws:** relevant if it requires licensing or restricts the use of certain weapons

**Customs Laws:** will describe the stamps, documents, and other official indications of legal trade; may specify ports of exit and ports of entry where export and/or import of animals may take place (may also be included in CITES Laws or Regulations, or Other Protected Wildlife Laws)

**Criminal Laws:** may include relevant prohibitions or restrictions

**Invasive/Injurious Species Laws:** these laws might restrict or prohibit the use, transfer, or trade in certain species for the protection of public health, other wildlife species, habitats, biodiversity, agriculture, horticulture, forestry, including to prevent the transmission of disease, pests, etc.

**Subnational or local laws protecting plants and animals:** some threatened species may not be protected at the national level, but may be protected or restricted from harvest or other activities under local or state laws

**Pharmaceutical, medicinal, and healthcare laws:** could contain additional standards concerning approval of the use of species in these products

## Examples of Specific Laws Relevant for Fauna

**Hunting and Fishing Laws:** these laws will specify the necessary licenses and the conditions for sourcing specimens from the wild, including seasons, gear or weapon restrictions, quotas, etc.

**Animal Welfare, Sanitary, and/or Veterinary Laws:** welfare related laws could contain requirements for various certifications or other veterinary, sanitary, and/or welfare standards that must be met during captivity or transport

**Agricultural Laws and Laws related to the Processing of Animal Products:** could restrict or require licensing for processing of animal products or contain other prohibitions or restrictions regarding the use or confinement of animals

**Captive Breeding Laws:** any specific legislation relating to captive breeding requirements should be taken into account

**Fisheries Laws and regulations:** these could have relevant provisions related to CITES requirements such as establishing the fisheries authority as a CITES MA, coordination between the relevant authorities, fisheries management, or establishing the conditions for legal fishing by certain vessels and trade controls in CITES-listed fishery species.<sup>51</sup>

**International Treaties and Agreements, such as Regional Fishery Management Agreements:** could contain additional standards for compliance with such regimes or the conditions of legal fishing

## Examples of Specific Laws Relevant for Flora

**Sanitary Laws:** ensuring specimens are free from pests and diseases

## Examples of Specific Laws Relevant for Tree Species

Domestic laws governing the commercial exploitation and use of timber are not generally limited to those laws explicitly and solely for the protection and conservation of other wild flora or fauna. The scope of the legislative and regulatory frameworks that are relevant to a CITES LAF for specimens of tree species may additionally include:

### Laws governing the allocation of the “right to harvest”

These may include:

- Laws regulating the allocation of logging concessions or other timber harvesting permits;
- Laws regulating land use planning, forest zoning, land tenure rights, in addition to consultation with and compensation for indigenous or local people;
- Laws prohibiting crime or corruption in the allocation of timber harvesting rights and permits;
- Laws establishing national, subnational, or Forest Management Unit-level prohibitions on the harvest of rare, endangered, or threatened species;
- Laws governing the payment of taxes and fees by forestry operators (often designed to pay for enforcement, monitoring, and other laws designed to maintain the forest resource-base).

### Laws governing the conditions on timber harvesting

These may include:

- Laws establishing national, subnational, or Forest Management Unit-level volume quotas or annual allowable cuts (AACs), at general and/or species levels, as relevant;

- Laws establishing requirements for pre-harvest inventories, the establishment of and compliance with authorized Forest Management Plans, pre-harvest tree selection, post-harvest inventories, and harvesting monitoring;
- Laws requiring the observance of harvest cycles (such as observance of annual coupes or compartments) and minimum harvesting girths by species (e.g., minimum Diameter at Breast Height (DBHs));
- Laws governing the establishment and observation of conservation set-asides, prohibitions on harvesting on steep slopes or within a certain distance to watercourses, or stipulations requiring selective or reduced impact logging, such as directional felling, log skidding, road planning, development and maintenance, and other silvicultural practices required by law;
- Laws governing reporting obligations, environmental monitoring, and resource-protection obligations of forestry operators (anti-illegal logging patrolling, avoidance of fire, etc.);
- Laws governing rules around the marking of the timber (barcodes, log tags, etc.);
- Particular timber species may domestically be included on national red lists of endangered species and thus may have separate rules governing their harvesting, e.g. the requirement to maintain a set number of mature reproductively active trees in the remaining stand.

### Laws governing the domestic timber trade

These may include:

- Laws governing the domestic transportation of timber, including required permits and reporting obligations – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws prohibiting domestic trade in illegal timber or in endangered or rare timber species – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the legal registration and operation of timber trade enterprises and facilities – usually established as an enforcement function designed to monitor pressure on the forest resource base;



- Laws governing the environmental and social practices of timber businesses, including those regulating the use of chemicals, the management of waste, the employment of labor, etc.;
- Laws establishing the monitoring and reporting of input and output volumes of sawmills and wood products factories – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the payment of taxes and fees by timber traders and manufacturers – often levied to pay for forest-sector resource monitoring and enforcement for environmental purposes;
- Laws requiring traceability of timber, such as chain of custody (CoC), to enable monitoring of pressures on the forest resource-base, and enforcement of non-compliant trade in violation of sustainable-forestry prescriptions.

## Laws governing export of timber and wood products

These may include:

- Laws governing the products permitted for or prohibited from export. Many countries have log export bans, sawn-timber export bans, or species-specific export bans, usually to reduce timber smuggling by facilitating simplified monitoring and enforcement designed to maintain the forest resource-base;
- Laws governing the payment of taxes and fees by timber exporters – often levied to pay for forest-sector resource monitoring and enforcement for environmental purposes;
- Laws governing the registration and operation of timber exporters – usually established as an enforcement function designed to monitor pressure on the forest resource base;
- Laws governing the declaration of timber exports to customs and compliance with customs procedures;
- Laws establishing requirements for traceability along the chain of custody from the point of harvest to export.<sup>52</sup>

## ANNEX B

## Exemptions, Special Provisions, and Other Special Trade Circumstances

Article VII of the Convention contains certain limited cross-border movements that require a CITES certificate under special provisions and those that do not require issuance of a CITES document at all. However, the Parties have advised that Management Authorities should take the necessary steps to assure that specimens that are subject to such exemptions or special provisions have been legally acquired.<sup>53</sup> In addition, the Parties have identified other special trade circumstances for certain specimens and have provided recommendations regarding trade in these specimens through the Resolutions noted below, including the fact that the specimens must be legally acquired. This Annex identifies the exemptions and special provisions, the inclusion of which into national legal frameworks should be verified by the MA, while also providing guidance to ensure that the specimens have been legally acquired.

### Trade in Certain Bred in Captivity and Artificially Propagated Specimens

Specimens of Appendix I species bred in captivity for commercial purposes or artificially propagated for commercial purposes may qualify under paragraph 4 of Art. VII to be treated as species included in Appendix II. Trade in such qualifying specimens requires an export permit under Article IV; thus LAFs are necessary prior to the issuance of export permits. However, export of Appendix I specimens bred in captivity or artificially propagated for non-commercial purposes or of Appendix II or III specimens bred in captivity or artificially propagated does not require an export permit but a certificate of captive breeding or artificial propagation under paragraph 5 of Art. VII. Under these circumstances, the specimens should meet the requirements established in either Resolution Conf. 10.16 (Rev.) on *Specimens of animal species bred in captivity* or Resolution Conf. 11.11 (Rev. CoP18) on *Regulation of trade in plants*. Both of these Resolutions specify that “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.” The founder/parental stock should be established in accordance with the provisions of CITES and relevant national laws in a manner not detrimental to the survival of the species in the wild. In order to make these findings, an MA should consider records that identify the breeder or propagator and the specimens by birth, hatch, or propagation date and for wildlife by sex, size, band number, or other mark, and the SA should advise as to non-detriment and other relevant issues within the competence of the SA.<sup>54</sup>

Given the risk of fraudulent use of the bred in captivity and artificially propagated exemptions, MAs should incorporate risk factors, outlined in sections above into national guidelines: Specific to Bred in Captivity and Ranches Specimens; Specific to Plants and Artificial Propagation; and Specific to Trees, that warrant heightened scrutiny of the applicant’s documentation.

It should also be noted that some Parties use phytosanitary certificates issued by a designated MA as certificates of artificial propagation.<sup>55</sup> Samples of certificates that have been provided to the Secretariat can be viewed by CITES Management Authorities and Enforcement Authorities in the Forum section of the CITES website.<sup>56</sup>

### Pre-Convention Specimens

Under paragraph 2 of Art. VII and Resolution Conf. 13.6 (Rev. CoP18) on *Implementation of Article VII, paragraph 2, concerning “pre-Convention” specimens* “where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the Convention applied to that specimen and issues a certificate to that effect” the specimens are exempt from standard CITES permitting requirements of Articles III, IV, and V. However, an application for pre-Convention certificate should be accompanied by documentation regarding historical provenance or include additional information, such as photographs, that should prove the specimen was acquired before the date on which species concerned was first listed under the Convention.

The two dates that must be verified are the date of acquisition (the date the specimen was removed from the wild, born in captivity, or artificially propagated in a controlled environment; or if this is unknown, the earliest provable date on which it was first possessed by any person),<sup>57</sup> which should be specified on the pre-Convention certificate (Box 5) as recommended in para. 12 b) of Resolution Conf. 12.3 (Rev. CoP18), and the date on which the species concerned was first included in the Appendices.<sup>58</sup> The date from which the provisions of the Convention apply to a specimen is the date on which the species concerned was first included in the Appendices.<sup>59</sup> Only specimens acquired before the date on which the species concerned was first included in *any* Appendix qualify for the pre-Convention exemption.<sup>60</sup>

The following are some examples that could be considered evidence of such acquisition:

- Receipt or invoice related to acquisition or processing
- Catalogue, inventory list, photograph, or art book
- Statement from a qualified appraiser attesting to the age of a manufactured product
- Import documents
- Veterinary documents
- Sanitary or Phytosanitary certificates
- Propagation or breeding logs
- If from a stockpile, legal documentation on status
- Salvage permit<sup>61</sup>

## Stockpiles

The recent listings of certain high value tree species, for example species of *Dalbergia*, *Guibourtia*, and *Pterocarpus*, and animal species, such as sharks, have meant that range States or traders may have large stocks of specimens of such species obtained before the species were first included in the Appendices of the Convention. Specimens acquired prior to the first inclusion of the species in the Appendices could be identified as pre-Convention specimens. However, there has been much discussion on how to manage stockpiles, as these stocks can be subject to fraud and corruption.

As TRAFFIC advised the 18<sup>th</sup> meeting of the Conference of the Parties, the MA should ensure that there is a clear and transparent system in place to ensure the legal origin and date of acquisition of stockpiled CITES specimens; stockpiles should be legally supported through legislation and it should be possible to track

each specimen from harvest through secure storage to export, safe disposal, or destruction. Each stockpile should have an independently audited inventory, each specimen should be individually marked, and all relevant documentation related to such specimens should accompany the application for an export permit.<sup>62</sup> At CoP18, the Parties clarified that specimens are regulated according to the status of the taxon at the time of import, export, or re-export. As such, in cases when a species is transferred from Appendix II or III to Appendix I, the specimens concerned are subject to the provisions applicable to them at the time of trade, even if they were acquired and stockpiled when the species was listed in a different Appendix.<sup>63</sup>

There is no provision under the Convention for the different treatment of specimens acquired when the species was listed in a different Appendix. The date from which the provisions of the Convention apply to a specimen is the date on which the species concerned was first included in the Appendices.<sup>64</sup> Only specimens acquired before the date on which the species concerned was first included in the Appendices qualify for the pre-Convention exemption.<sup>65</sup>

## Personal and Household Effects

CITES allows for cross border movement of certain personal and household effects under Article VII (3) without meeting the requirements outlined in Articles III, IV, and V. However, the Conference of the Parties has decided that “personal and household effects” includes only specimens that were legally acquired, among other requirements.<sup>66</sup> As such, Parties that recognize the personal and household effects exemptions should consider how to verify the legal acquisition of specimens exported as personal and household effects.<sup>67</sup> Some Parties have established more stringent domestic measures and do not recognize the personal and household effects exemption, therefore requiring CITES documents for trade in specimens that would otherwise qualify for the exemption.<sup>68</sup>

## Personally Owned Live Animals

The Parties have identified that in certain circumstances personally owned live animals may undergo frequent movements across international borders, potentially as companion animals, for competitions, as personal and household effects, or for falconry, for example. In these cases, the Parties agreed that certificates of ownership might facilitate such trade when certain conditions are met by operating as a type of passport that allows the international movement of a live animal accompanied by its owner. In order to issue a certificate of ownership, Resolution Conf. 10.20\* on *Frequent cross-border movements of personally owned live animals* recommends that the MA is assured that the animal is legally possessed and has not been acquired in

contravention of the Convention.<sup>69</sup> Thus, prior to issuing a certificate of ownership for a personally owned live animal that is subject to frequent trade, a MA must make what is essentially the equivalent of a LAF.

## Hunting Trophies

According to Resolution Conf. 17.9, trade in hunting trophies should only occur when the MA has verified that legal acquisition has occurred. In many cases, trade in hunting trophies is subject to the provisions of Articles III or IV, so in these cases, the LAF provisions relevant to issuance of an export permit apply. For those cases when a hunting trophy qualifies as a personal and household effect and is exempt from the permit regime, Parties should consider protocols for ensuring that the trophy was legally acquired.

Also included in the definition of “personal and household effects” are hunting trophies, if hunted by the hunter for their own personal use and legally acquired, among other requirements.<sup>70</sup>

## Non-commercial Loan, Donation or Exchange of Museum, Herbarium, Diagnostic, and Forensic Research Specimen

The exemption in Article VII(6) of CITES allows for shipments of specimens for non-commercial loan, donation, or exchange between registered scientific and forensic research institutions for research and analysis without meeting the ordinary requirements for international trade under Articles III, IV, and V if they carry a label issued or approved by a MA. Under Resolution Conf. 11.15 (Rev. CoP18), this exemption is limited to facilities that have registered with the MA and conform to the standards outlined in paragraph 3g) vi) and viii) of the Resolution. Additionally, this exemption is limited to specimens that have been legally acquired.<sup>71</sup> In order to qualify for this exemption, scientific institutions should establish protocols for determining whether specimens shipped using the Article VII (6) exemption are legally acquired. Documentation could include prior CITES permits; any records of provenance, such as inventories, invoices, or donation records; and any history of prior transfers between institutions, whether involving international trade or not.

## Travelling Exhibition

A travelling exhibition certificate is required in order to take advantage of the travelling exhibit exemption in Article VII (7). According to Resolution Conf. 12.3 (Rev. CoP18) section VII travelling exhibit certificates may only be issued on the condition that the specimens were legally acquired. If this exemption is recognized in domestic law, considerations should be given to assessing legal acquisition. For the travelling exhibition provisions, only specimens meeting the pre-Convention requirements of Article VII(2) and specimens meeting the bred in captivity or artificially propagated requirements of Article VII(5) qualify for trade pursuant to Article VII (2) and (4), therefore verification of the date of acquisition through legal documentation is a related step. This step relies, most likely, on similar documentation for pre-Convention and the assessments provided above for specimens from captive breeding or artificial propagation.

## Frequent Cross-Border Movement of Musical Instruments

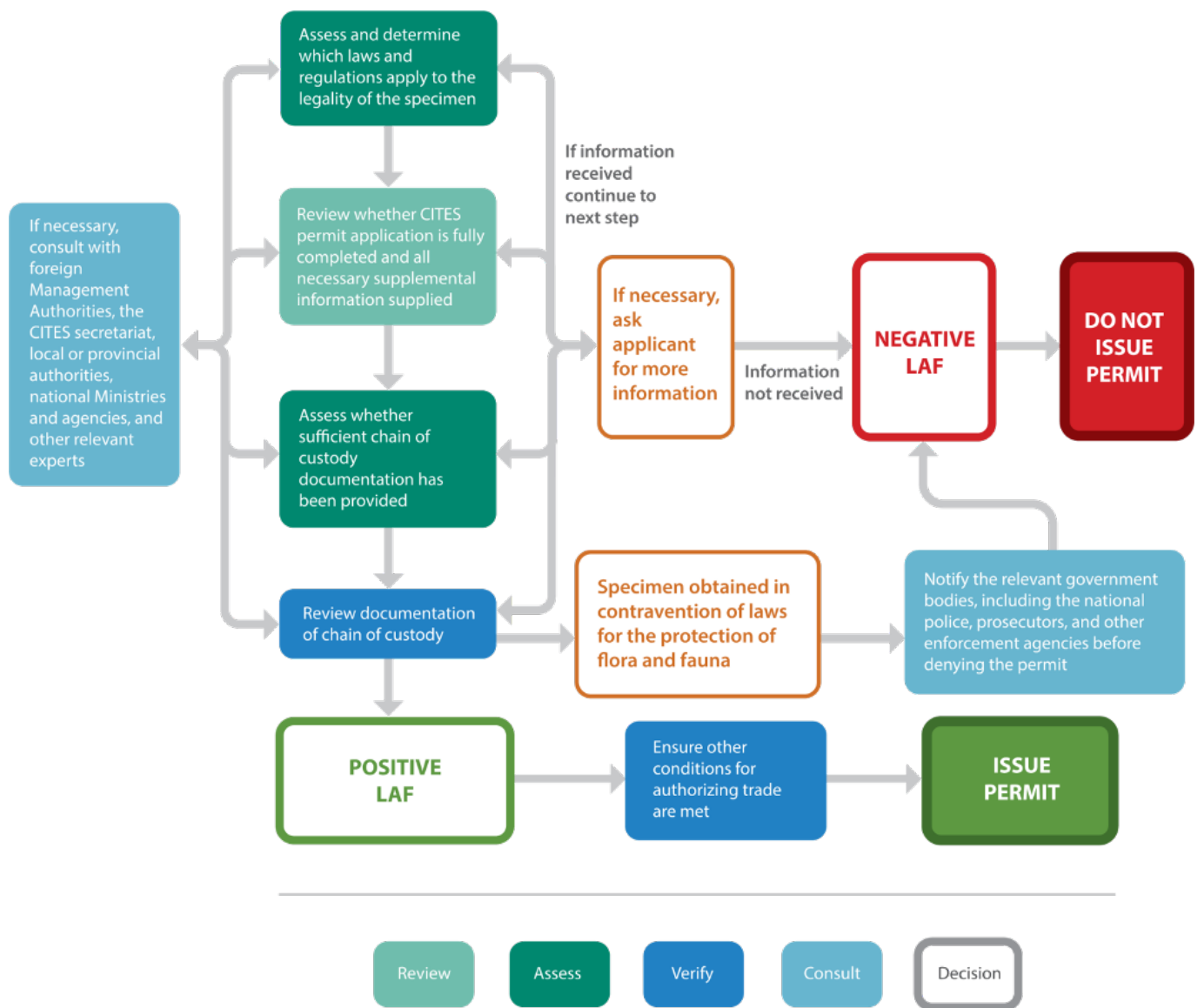
For musical instruments that cross borders frequently for non-commercial use and return to the country in which the certificate-holder is based, a musical instrument certificate may be issued, but only if the specimens were legally acquired.<sup>72</sup> It is incumbent on the MA to assess legality prior to issuing the certificate, which may require consultations with the range state of initial export.

## SECTION II

## Process of Making a Legal Acquisition Finding

## Steps to follow when making a LAF

The MA should incorporate the following steps into their national guidelines for making LAFs:





## 1. Assess and determine which laws and regulations apply to the legality of the specimen

The National LAF Guidelines should provide an overview of the scope of relevant national legislation. At this stage, the Management Authority should review and assess national laws for the protection of flora and fauna to determine relevant rules governing activities along wildlife supply chains.

In determining the relevant laws for the protection of flora and fauna applicable to the specimen in question, all relevant laws should be considered, including national, local, state/provincial, indigenous, customary, and other relevant laws and regulations. **Annex A** outlines potentially relevant laws and regulations that should be considered. The MA should also consult with other government entities with expertise in the relevant legal frameworks related to the species or specimen<sup>73</sup> (see step 5: *As necessary, consult with foreign management authorities, the CITES Secretariat, local or provincial authorities, or other national ministries and agencies, and other relevant experts*).

## 2. Review whether the CITES permit application is fully completed and all necessary supplemental information supplied

The permit application form should be fully completed by the applicant. Application forms will vary by national requirements.

Any supplemental information required, for example documentation demonstrating legal harvest, chain of custody, artificial propagation, or captive breeding, or details supporting applicant's claimed source code should be attached to the permit application. More information can be found in **Section I** on pages 12-19.

## 3. Assess whether sufficient chain of custody documentation has been provided.

In order to make a LAF, the traceability of specimens through the chain of custody from the point of export back to the point of harvest or capture is very important. Assessing compliance as far as possible with the legal requirements pertinent to each stage in production, trade, and export of specimens of CITES-listed species assures that the chain of custody is traceable and

legal and thus that a LAF can be made. Of course, the MA is not expected to be an expert in assessing evidence, plus having knowledge of all the laws required for CITES-listed species to be exported and should, where necessary, consult with government entities with the relevant expertise (see step 5: *As necessary, consult with foreign management authorities, the CITES Secretariat, local or provincial authorities, or other national ministries and agencies, and other relevant experts*).

The chain of custody and relevant law varies from taxa to taxa and **Annex A** outlines potentially relevant legislation that should be considered. An applicant should be able to demonstrate that the acquisition of the specimen to be exported complies with all pertinent laws and regulations.

### Permit Requests Significantly in Advance of Export

Although a CITES export permit is valid for up to six months, if the application request has been made months in advance of export, the tree or plant specimen may not yet have been harvested. In cases such as these, a harvest permit is not sufficient evidence with which to determine legality because evidence listed on pages 17 and 18 may not yet exist, including the chain of custody documents obtained from the sawmills for sawn wood that should accompany the timber from the place of harvest. The same applies for permit applications for wild animals submitted before the specimen has been obtained or animal captured from the wild. If the chain of custody documents are not available, the MA should assess whether it is possible to make a positive legal acquisition finding, and, if not, the permit should not be issued.

## 4. Review documentation of the chain of custody to assess legal acquisition

To make a positive legal acquisition finding, the MA must ensure that the specimen has been acquired legally at all steps along the chain of custody, from harvest or production to any purchase, sale, or transfer of the specimen, to the extent possible. The type of documentation that might be necessary to prove legal acquisition along the chain of custody depends often on the type of the wildlife specimen—the type of specimen can affect the evidence necessary to demonstrate that it was legally sourced. Additionally, national laws may restrict or regulate how other supply-chain activities are undertaken, who may engage in certain activities, and what permissions may be necessary.

The information on pages 14-23 provides an overview of the elements to be considered for animals, plants, trees, and specimens of species introduced from the sea.

## 5. As necessary, consult with foreign management authorities, the CITES Secretariat, local or provincial authorities, or other national ministries and agencies, and other relevant experts

An MA may need to consult with national and international authorities and experts for a number of different reasons.

At the national level, MAs should consult with other government entities with expertise in the relevant legal frameworks related to each species or specimen,<sup>74</sup> particularly where the legal framework governing the specimen is administered by or under the jurisdiction of a Ministry or agency different from the MA.

The MA should assess document validity. This could include the following actions related to consultations:

- Consultation with the Scientific Authority to verify identity in cases where lookalike issues pose a high risk
- Consultations with other government entities involved in issuing any of the documentation
- Consultations with relevant National Park, or other protected area, officials or rangers
- Consultations with relevant government agencies to ensure payments of all fees and taxes

The MA may choose to consult with international authorities or experts, including Management and Scientific Authorities in other countries,<sup>75</sup> in particular for cases where there are concerns about the legality of the specimen.

## 6. Positive or Negative LAF

When all stages outlined above have been evaluated, supplementary information has been received, reviewed, and verified, and all relevant authorities have been consulted, the MA can then make a determination as to whether the specimen has been legally acquired. If at any stage information is lacking, efforts to obtain further information are not satisfactory, or doubts exist as to a specimen's legal acquisition, the MA should make a negative LAF; when the examination concludes that the conditions for verifying legal acquisition have been met, a positive LAF can be made.

## 7. If Specimen was Obtained in Contravention of Laws for the Protection of Flora and Fauna, Notify the Relevant Government Bodies, Including the National Police, Prosecutors, and Other Enforcement Agencies before Refusing the Permit

CITES requires that trade in specimens of CITES-listed species only occur in compliance with the terms set forth in the Convention,<sup>76</sup> and requires Parties to enforce the provisions of the Convention, including prohibiting trade in violation thereof.<sup>77</sup> If the MA believes that a specimen for which a CITES export permit or certificate is sought has been illegally obtained, then trade in the specimen should not be authorized by the MA and the permit or certificate should not be issued.

Parties should have provisions in national law that penalize trade in specimens in violation of the Convention or possession of specimens traded in violation of the Convention, or both.<sup>78</sup> Parties should also have national legislation or regulations that grant the authority to confiscate illegally traded or possessed specimens.<sup>79</sup> The CITES Model Law notes that such provisions should take the following into consideration “which authorities may confiscate; the extent of their confiscation powers (e.g. specimens, containers, equipment and vehicles involved in an offence); the procedures that must be followed; and the final disposal of confiscated specimens.”<sup>80</sup> The selection and designation of such authorities should be sufficient to ensure that illegally obtained specimens can be seized and confiscated.

The Resolutions on Management Authorities, Compliance and Enforcement, and Legal Acquisition Findings all encourage coordination between national authorities for the implementation and enforcement of the Convention, such as “customs, police and inspection services.”<sup>81</sup>

If the MA determines that the specimen is possessed by the applicant in violation of the Convention, the MA should contact relevant authorities and follow national laws for seizure/confiscation of the specimen and penalization of the applicant.

## 8. Ensure other Conditions for Authorizing Trade are Met

Articles III-VI of the Convention and Resolution Conf. 12.3 (Rev. CoP18) on Permits and Certificates<sup>82</sup> contain additional requirements that should be reviewed by MAs. This section

highlights the topics that are most relevant in the context of LAFs:

1. *Other conditions for authorizing trade:* The positive LAF is a precondition for issuance of an export permit, but other conditions are also required and if these are not met, the permit should not be issued.

These conditions include, but are not limited to, the following:

- a) The Scientific Authority must make a non-detriment finding<sup>83</sup> for Appendix I and II species, advising that trade in a specimen would not be detrimental to the species' survival in the wild, in accordance with CITES Articles III(2)(a) and IV(2)(a) and Resolution Conf. 16.7 (Rev. CoP17).
- b) According to CITES Art. III, IV, and V, it is a condition for issuance of CITES documents under those provisions that "any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment." Further recommendations on transport of live specimens are included in Resolution Conf. 10.21 (Rev. CoP16).
- c) Any quota in place must not have been exceeded, in accordance with Resolution Conf. 14.7 (Rev. CoP15), Annex, paragraph 22 which states that "every Party that has established an export quota is responsible for monitoring its use and must ensure that it is not exceeded. For that purpose, it should maintain data on the number or quantity of specimens actually exported, to be used as a reference when reviewing applications to authorize further exports."
- d) Import of Appendix I species must be for primarily non-commercial purposes (e.g. for private use, scientific purposes, education or training, or captive breeding with the aim of long-term recovery of the species).

## 9. Issue Permit

Once the MA has reviewed all supplementary information, assessed legal acquisition, made a positive LAF, and confirmed that all other conditions for authorizing trade have been met, trade can be approved and a permit can be issued to the applicant. The LAF must be made by the MA and include an independent assessment of the legality of the specimen; permits issued by an MA as a result of a court order and without a LAF made by the MA are not valid.<sup>84</sup> Additional considerations related to the permit issuance include:

1. *Use of source code U:* When evaluating the source code<sup>85</sup> on the application, caution should be exercised when

considering the use of source code U (Unknown). An application for a permit indicating that the source is unknown for the purposes of export should be considered high risk and evaluated thoroughly, and a specimen exported for a commercial purpose should not generally be of an unknown source, as making a positive LAF would not be possible.

2. *Information in Box 5:* On the CITES export permit, include information practicable to share in Box 5 (or another location) of the standard CITES export permit, including, but not limited to, import or export permit numbers, forestry concession numbers, hunting permit, or tax number.<sup>86</sup>
3. *Record keeping:* The guiding principles that underpin the verification of legal acquisition state that the MA should keep records of CITES export permits issued and of the documents related to the LAF determination (CITES, Article VIII (6), Resolution Conf. 18.7, paragraph 3 e). In addition, an MA of an importing State may request the basis of a determination of a LAF if it has reason to believe the specimen was not traded in accordance with the Convention (Res Conf. 11.3 (Rev. CoP18) paragraph 2) and documents that support the determination may be requested by that State.

Resolution Conf. 12.3 (Rev. CoP18), contains a section on simplified procedures that allows Parties to issue partially completed permits and certificates (sometimes called "multiple use") to bona fide (or trustworthy) applicants.<sup>87</sup> Partially completed permits and certificates are used to facilitate trade that will have a negligible conservation impact on the species concerned<sup>88</sup> and are often used by companies that export multiple shipments of the same type of specimen that are sourced and acquired under the same conditions. If the MA has legal authority to issue partially completed permits and certificates, the MA should vet the applicant thoroughly in advance to ensure legal adherence and carry out checks to verify use of these permits continues to comply with national and CITES obligations. Holders of partially completed permits are required to enter specific information on the CITES document to complete the document prior to trade.

As outlined in Resolution Conf. 12.3 (Rev. CoP18) it is important to fully complete the CITES permit. The CITES website includes a sample permit with explanations as to how to complete the information; the permit will vary to some degree based on national CITES permit requirements but all information in Annex 2 of Resolution Conf. 12.3 (Rev. CoP18)<sup>89</sup> should be included. Where information is lacking, the reasons for this should be stated and evaluated. Ideally, completed permits should be printed rather than handwritten and guilloche paper should be used, stamped with security stamps, as required by national regulations, and when e-permitting systems do not exist.

## Instructions regarding the information required of an Applicant

MAAs may wish to consider the following elements for inclusion in any materials designed to inform potential applicants about Legal Acquisition Findings (LAFs). The document should clearly communicate the following elements, adapted to national circumstances. All obligations of the applicant should be as specific as possible with as much detail as necessary to inform potential applicants of expectations. Similarly, the potential applicants should be made aware of the steps that the Management Authority will take upon receipt of an application for a CITES permit or certificate. Importantly, potential applicants should also be aware of the circumstances in which applications are likely to be rejected and whether any appeals process exists.<sup>90</sup>

The text below provides an example of how a document may be framed to communicate details regarding legal acquisition findings to potential applicants. It should be adapted to national circumstances and reflect any internal guidelines adopted by the MA, relevant ministry, or other appropriate body. If guidance on CITES procedures exists, Parties could consider integrating this text into this guidance.<sup>91</sup>

## What is a Legal Acquisition Finding?

[Sample answer] Legal acquisition refers to whether the specimen, and its parental stock, were obtained, transported, transferred, bought, sold, or imported in accordance with all laws relevant to the protection of fauna and flora, including CITES and all national, provincial, and local laws.

## When is a Legal Acquisition Finding Necessary?

[Sample answer] When applying to export a specimen of a CITES-listed species, the MA will need to make a LAF for Appendix I specimens, Appendix II specimens, and Appendix III specimens when the State of export is a State that has included that species in Appendix III listing.<sup>92</sup> A LAF or other legal finding is often also needed for exports of specimens under special provisions in Article VII, such as bred in captivity or artificially propagated and other specimens detailed below.

## What Information Do I Need to Submit with My Application?

[Sample answer] Each application should provide sufficient information for the MA to be able to make a positive LAF for the specimen to be exported. Additional information must also be provided to the MA to be included on the permit or certificate. The information needed for the permit or certificate to be completed can be determined by reviewing the standard CITES form in Annex 2 of Resolution Conf. 12.3 (Rev. CoP18)<sup>93</sup> or the national version of the relevant permit or certificate.

## What Supporting Documentation should be included with the permit application?

[Sample answer] Information and documents to be submitted with an application for a CITES export permit or certificate to demonstrate legality may vary depending on the type of species for which the permit or certificate is sought. Examples of documents that can be provided are listed below for different types of species.

**Table 6: Supporting Documentation from Applicant**

Type of Activity/Specimen		Examples of Relevant Records
Fauna and Flora		
Sourcing	Bred in captivity Specimens	Records that identify the breeder of the specimens that have been identified by birth or hatch date and by sex, size, band number, or other mark.
	Artificially Propagated Specimens	Records that include the propagator of the specimens that have been identified by propagation date. Records from one of the nurseries that artificially propagate Appendix I species, if applicable. <sup>iv</sup>
	Confiscated specimens	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant’s legal possession.
	Previously imported specimens	A copy of the cancelled CITES document that accompanied the shipment into your country.
	Ranched specimens	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.
	Wild-sourced specimens	Records, such as permits, licenses, and tags, plus harvest locations and harvest/capture means, that demonstrate the specimen or the parental stock was legally removed from the wild under relevant wildlife laws or regulations; evidence of firearms license where restricted and relevant; invoices related to hiring of guides or professional hunters, where required; salvage permits
Ownership and transfers	Certificates of ownership, documentation of legal transfers, such as sales bills, receipts, registrations	
Transport	Licenses, waybills, packing lists, inspection records	
Processing – taxidermy, meat, leather or fur, fish cosmetic, medicinal, wood, and food processing	Facility registrations, facility licenses, receipts, invoices, other official transaction documents, sanitation and health code records	
Introduction from the Sea		
Timing and location of the catch	Vessel Monitoring System (VMS) data, observer data or logbooks, physical and/or electronic catch report forms, navigation system data (e.g., GPS data), Automatic Identification System (AIS) data (usually available for larger vessels)	
Gear/technique employed	License, fishing agreements, observer data or logbooks, physical and/or electronic catch report forms	

*Table 6 continues on the next page.*



<b>The name of the vessel that captured the specimen</b>	Vessel registration License, authorization, permit
<b>Legal authority to capture specimen</b>	Quotas, licenses, fishing agreements
<b>Identity of vessel captain/master</b>	Captain's certificate/license
<b>Transshipment occurrences</b>	RFMO authorization to engage in transshipment, observer data relating to transshipment, transshipment entries in logbooks, transshipment authorization by the competent national authority  VMS, AIS, or GPS data showing transshipment activity (e.g., through pauses in navigation)
<b>Compliance with measures relating to processing and handling of catch</b>	Records or other information showing compliance with fin-to-carass ratios and/or fins-attached rules (in case of shark fishing) established under RFMO Conservation and Management Measures, observer data, logbooks

## What does the Management Authority Do After Receiving my Application?

[Sample answer] Upon receiving an application for a CITES permit or certificate, the MA first determines whether a LAF or other similar legal finding must be made. If so, the following steps are taken:

1. The permit application is reviewed for completeness and all necessary supplemental information.
2. The MA assesses whether chain of custody, leading back to sourcing of the specimen, is sufficiently documented and verified according to relevant laws and standards.
3. As necessary, the MA may consult with the domestic Scientific Authority, foreign Management and Scientific Authorities, the CITES Secretariat, local or provincial authorities, other relevant Ministries and agencies, and other appropriate experts.
4. If legal acquisition cannot be determined, the MA may request additional information from the applicant.
5. If further information is not forthcoming or is insufficient, the MA will not make a legal acquisition finding and will not issue the permit or certificate.
6. If a legal acquisition finding can be made and all other conditions for authorizing trade have been met, the MA can issue the permit or certificate.

## In What Circumstances Could My Application Be Rejected?

[Sample answer] If the MA cannot make a LAF based on the information provided, the MA may request additional information from the applicant. If further information is not forthcoming or is insufficient, the MA will not issue the permit or certificate. If the MA has concerns that the specimen is illegal, the MA may contact other relevant government bodies and/or initiate an investigation, as provided for under national law. Additionally, if the MA determines that the specimen was not legally acquired based on the information provided by the applicant or available to the MA, then it cannot issue the permit or certificate.

## What can I do if my Application is Rejected?

[Sample answer] In some countries a denial of an application for a CITES export permit or certificate may be considered an administrative decision. As such, there may be provisions in national law that permit an applicant to appeal a rejected application.<sup>94</sup> Other countries may not provide for appeal but may allow the applicant to submit a new application for a permit or certificate, with additional information.

## Endnotes

1. CITES, Resolution Conf. 12.3 (Rev. CoP18), Permits and certificates, paragraph 29, <https://cites.org/sites/default/files/document/E-Res-12-03-R18.pdf>.
2. These include the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements (VPAs), the EU Timber Regulation (EUTR), the Plant Amendments to the US Lacey Act, Canada's WAPPRITTA Act, the Australian Illegal Logging Prohibition Act (ILPA), and the newly revised Korean Act on the Sustainable Use of Timbers, among others.
3. Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention
4. CITES, Resolution Conf. 18.7, Legal acquisition findings, paragraph 1 (b), <https://cites.org/sites/default/files/document/E-Res-18-07.pdf>.
5. CITES, Resolution Conf. 18.6, Designation and Role of Management Authorities, <https://cites.org/sites/default/files/document/E-Res-18-06.pdf>.
6. For example, see US 16 U.S.C. 1537a(a)-(b); US 50 C.F.R. 23.60, US 50 C.F.R. 23.34, US 50 C.F.R. 23.33.
7. European Commission, Permits, Certificates and Notifications, [https://ec.europa.eu/environment/cites/info\\_permits\\_en.htm](https://ec.europa.eu/environment/cites/info_permits_en.htm); Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R0865-20190227> Articles 26, 54.
8. US 50 C.F.R. 23.33.
9. CITES, Article VIII(1).
10. CITES, Article VIII(1)(b), CITES, Resolution Conf. 8.4(1) (Rev. CoP15), National laws for the implementation of the Convention, [https://cites.org/sites/default/files/document/E-Res-08-04-R15\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-08-04-R15_0.pdf).
11. CITES, Model Law on International Trade in Wild Fauna and Flora, p. 4, <https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf>.
12. CITES, Resolution Conf. 18.7, Annex 1(2)(a).
13. Korwin, S. Denier, L., Lieberman, S & Reeve, R. (2019) Verification of Legal Acquisition under the CITES Convention: The Need for Guidance on the Scope of Legality, *Journal of International Wildlife Law & Policy*, <https://www.tandfonline.com/doi/abs/10.1080/13880292.2019.1695718?journalCode=uwlp20>.
14. For example, in some countries no documents are required for personal and household effects. Article VII(3)
15. For example, the use of Source Code D for qualifying Appendix I-listed animals bred in captivity for commercial purposes and Appendix I-listed plants artificially propagated for commercial purposes. Article VII(4).
16. For example, qualifying pre-Convention specimens, Article VII(2); and qualifying Appendix I-listed animals bred in captivity for non-commercial purposes, Appendix I-listed plants artificially propagated for non-commercial purposes, Appendix II or III-listed animals bred in captivity and artificially propagated plants, Article VII(5).
17. For example, a Party may have stricter domestic measures, in accordance with Article XIV(1).
18. CITES, Plant Annotations in the CITES Appendices, An Illustrated Manual, 2018, <https://cites.org/sites/default/files/eng/com/pc/24/Inf/E-PC24-Inf-02.pdf>.
19. Species+ website developed by UNEP-WCMC and the CITES Secretariat, <https://speciesplus.net/>.
20. CITES Appendices, <https://cites.org/eng/app/appendices.php>.
21. CITES, Decisions 18.144 - 18.145 Traceability, <https://cites.org/eng/taxonomy/term/42060>.
22. For additional CITES resources and guidance on traceability, see CITES, Traceability, [https://www.cites.org/eng/prog/Cross-cutting\\_issues/traceability](https://www.cites.org/eng/prog/Cross-cutting_issues/traceability).
23. CITES, Resolution Conf. 12.7 (Rev. CoP17), Conservation of and trade in sturgeons and paddlefish, <https://www.cites.org/sites/default/files/document/E-Res-12-07-R17.pdf>.
24. CITES, Resolution Conf. 11.12 (Rev. CoP15), Universal tagging system for the identification of crocodilian skins, <https://www.cites.org/sites/default/files/document/E-Res-11-12-R15.pdf>.
25. United Nations Conference on Trade and Development, Traceability Systems for a Sustainable International Trade in South-East Asian Python Skins, UNCTAD/DITC/TED/2013/6, 2014, [https://unctad.org/en/PublicationsLibrary/ditcted2013d6\\_en.pdf](https://unctad.org/en/PublicationsLibrary/ditcted2013d6_en.pdf).
26. CITES, Resolution Conf. 17.12, Conservation, sustainable use of and trade in snakes, [https://cites.org/sites/default/files/document/E-Res-17-12\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-17-12_0.pdf).
27. The countries involved are at various stages of the process (as of 2021): **Licensing:** Indonesia; **Implementing:** Cameroon, Central African Republic, Ghana, Guyana, Honduras, Indonesia, Liberia, Republic of the Congo, Vietnam; **Negotiating:** Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Laos, Malaysia, Thailand.
28. EU FLEGT Facility, What does a VPA contain?, <https://www.euflegt.efi.int/vpa-elements>; FLEGT Briefing Notes, A timber legality assurance system, European Commission, 2007, <http://www.euflegt.efi.int/documents/10180/28299/FLEGT+Briefing+Notes+3+-+A+timber+legality+assurance+system/e9ce3bcd-6243-4bb6-b702-d48e8843079c>.
29. In addition, in order to issue a FLEGT license on the basis of a TLAS, a VPA partner country should appoint an independent monitor who reports regularly to stakeholders on the integrity of the legality assurance scheme, including non-compliance, and provides an assessment of corrective actions taken to address them.
30. Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) through national fisheries legal frameworks: a study and a guide, FAO 2020, pp. 15-18, <http://www.fao.org/3/cb1906en/cb1906en.pdf>.
31. CITES, Resolution Conf. 14.6 (Rev. CoP16), Introduction from the sea, <https://cites.org/sites/default/files/document/E-Res-14-06-R16.pdf>.
32. Note that the normal IFS rules are modified in the case of chartering operations that take specimens from marine areas not under the jurisdiction of any State, *i.e.*, where a vessel is chartered by one state (the Chartering State) but registered in another state (the State of Registry). If the chartering operation (1) occurs under a written agreement between the Chartering State and the State of Registry, consistent with the relevant RFMO rules, and (2) the "CITES Secretariat has been informed of this arrangement in advance of its entry into effect and . . . makes this arrangement available to all Parties and to any relevant RFMO," then the chartering regime set forth in Resolution Conf. 14.6 (Rev. CoP16) applies. Under Resolution Conf. 14.6 (Rev. CoP16), if the specimen is transported to the Chartering State, the transaction may be treated as either an IFS situation or as an import-export situation, as mutually agreed in writing by the States in question. This applies regardless of whether the specimen is of an Appendix I or Appendix II species. However, where (a) the specimen is of an Appendix II species, and (b) the specimen is transported to a third State, the transaction must be treated as an export-import situation.
33. CITES, Resolution Conf. 14.6 (Rev. CoP 16), paragraph 3 and CITES, Resolution Conf. 18.7, Annex 2.
34. CITES, Introduction from the Sea, <https://cites.org/eng/prog/ifs.php>.
35. Further details at CITES, Res. Conf. 14.6 (Rev. CoP16), Annex, Section II.
36. For example, the ICCAT Record of Vessels may be found by going to the ICCAT website and looking under the "Monitoring, Control, and Surveillance" tab. ICCAT, Record of Vessels, <https://www.iccat.int/en/VesselsRecord.asp>.
37. Trygg Mat Tracking, Combined IUU Vessel List, <https://iuu-vessels.org/>.
38. Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) through national fisheries legal frameworks: a study and a guide, FAO, 2020, p.19, <http://www.fao.org/3/cb1906en/cb1906en.pdf>.

39. CITES, Resolution Conf. 18.7, para. 3(d).
40. CITES, Resolution Conf. 18.7, Annex I, para. 1(d).
41. CITES export quotas, <https://www.cites.org/eng/resources/quotas/index.php>.
42. National CITES Authorities, <https://www.cites.org/eng/cms/index.php/component/cp>.
43. Proposal by the European Union (EU) and its Member States for the 61<sup>st</sup> meeting of the CITES Standing Committee On the implementation of CITES provisions relating to captive-bred and ranched specimens, 2011, <https://www.cites.org/sites/default/files/eng/com/sc/61/E61-27.pdf>.
44. Review of butterflies from Asia and Oceania subject to long-standing positive opinions, UNEP-WCMC, 2012 <https://ec.europa.eu/environment/cites/pdf/reports/SRG%2060%20Review.pdf>; Review of Trade in Ranched Birdwing Butterflies, UNEP-WCMC, 2007, [https://ec.europa.eu/environment/cites/pdf/review\\_butterflies.pdf](https://ec.europa.eu/environment/cites/pdf/review_butterflies.pdf); Review of Birdwing Butterflies from Indonesia, UNEP-WCMC, 2014, [https://ec.europa.eu/environment/cites/pdf/reports/Review%20of%20birdwing%20butterflies%20from%20Indonesia%20\(public\).pdf](https://ec.europa.eu/environment/cites/pdf/reports/Review%20of%20birdwing%20butterflies%20from%20Indonesia%20(public).pdf).
45. CITES, Resolution Conf. 10.16 (Rev.)\*, Specimens of animal species bred in captivity, [https://cites.org/sites/default/files/document/E-Res-10-16-R11\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-10-16-R11_0.pdf).
46. An example of incorrect application of source codes would be: “‘A’ for animal species or ‘D’ for Appendix-I species that have not been registered in compliance with the provisions of Resolution Conf. 12.10 (Rev. CoP15) on Registration of operations that breed Appendix-I animal species in captivity for commercial purposes.” Resolution Conf. 17.7 (Rev. CoP18) Review of trade in animal specimens reported as produced in captivity.
47. Proposal by the European Union (EU) and its Member States for the 61<sup>st</sup> meeting of the CITES Standing Committee On the implementation of CITES provisions relating to captive-bred and ranched specimens, 2011, <https://www.cites.org/sites/default/files/eng/com/sc/61/E61-27.pdf>.
48. CITES, Resolution Conf. 11.11 (Rev. CoP18), Regulation on trade in plants, [https://cites.org/sites/default/files/document/E-Res-11-11-R18\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-11-11-R18_0.pdf).
49. The Checklist of CITES Species allows the exploration of more than 36,000 species of animals and plants and their degree of protection. Checklist of CITES Species, <https://checklist.cites.org/#/en>.
50. For example, Species+ at <https://speciesplus.net>.
51. For many other examples see, FAO, Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) through national fisheries legal frameworks: a study and a guide, pp. 103-122, <http://www.fao.org/3/cb1906en/cb1906en.pdf>.
52. Center for Biological Diversity, et al., Non-Governmental Organization Legal Acquisition Finding Recommendations Prepared in Advance of the June 13-15, 2018 International Workshop on CITES Legal Acquisition Findings, Brussels, Belgium, <https://defenders.org/sites/default/files/publications/ngo-legal-acquisition-finding-recommendations-in-advance-of-cites-2018.pdf>.
53. CITES, Resolution Conf. 18.7, Annex 2.
54. Some Parties have provisions to reject a permit application unless certain information is supplied, for example the EU.
55. Countries include Austria, Belgium, Czech Republic, Denmark, Canada, Germany, Hong Kong, SAR (China), Italy, Netherlands, Republic of Korea, and Singapore, [https://cites.org/eng/imp/Exemptions\\_and\\_special\\_procedures#phyto](https://cites.org/eng/imp/Exemptions_and_special_procedures#phyto).
56. Forum section of the CITES website, <https://cites.org/user/login?destination=forum>.
57. CITES, Resolution Conf. 13.6 (Rev. CoP18), Implementation of Article VII, paragraph 2, concerning ‘pre-Convention specimens,’ <https://cites.org/sites/default/files/document/E-Res-13-06-R18.pdf>.
58. Ibid.
59. Ibid.
60. Ibid.
61. A salvaged plant is defined in the US Federal Register (<https://www.federalregister.gov/documents/2006/04/19/06-3444/revision-of-regulations-for-the-convention-on-international-trade-in-endangered-species-of-wild>) as “a plant taken from the wild as a result of some environmental modification ...” And a permit for trade is granted as long as “such trade would clearly benefit the survival of the species in the wild or in captivity; (ii) Import is for the purposes of care and propagation; (iii) Import is by a *bona fide* botanic garden or scientific institution; (iv) Any salvaged Appendix-I plant will not be sold or used to establish a commercial operation for artificial propagation after import.” Although salvage permits exist for wildlife, they are much more limited, for example in the US they generally only apply to certain roadkill or already dead migratory birds. Oregon, Department of Fish and Wildlife Regulations, Chapter 635, Division 43, <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2935>; U.S. Fish and Wildlife Service, Salvage, <https://www.fws.gov/pacific/migratorybirds/permits/salvage.html>.
62. Ensuring Effective Stockpile Management: A Guidance Document, <https://cites.org/sites/default/files/eng/cop/18/inf/E-CoP18-Inf-072.pdf>.
63. CITES, Com. II Rec. 10, Rev.1, pg. 3, [https://cites.org/sites/default/files/eng/cop/18/Com\\_II/SR/E-CoP18-Com-II-Rec-10-R1.pdf](https://cites.org/sites/default/files/eng/cop/18/Com_II/SR/E-CoP18-Com-II-Rec-10-R1.pdf).
64. CITES, Resolution Conf. 13.6 (Rev. CoP18), paragraph 2.
65. Ibid.
66. CITES, Resolution Conf. 13.7 (Rev. CoP17), Control of trade in personal and household effects, [https://cites.org/sites/default/files/document/E-Res-13-07-R17\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-13-07-R17_0.pdf).
67. For example, the United States makes clear in its implementing regulations that the burden is on the person trading in the CITES specimen, and that they may be required to demonstrate that their specimen qualifies as exempt. US 50 CFR 23.92(b).
68. CITES, Country Profiles, <https://cites.org/eng/parties/country-profiles>; CITES, Personal and household effects, [https://www.cites.org/eng/imp/Exemptions\\_and\\_special\\_procedures#personal](https://www.cites.org/eng/imp/Exemptions_and_special_procedures#personal).
69. CITES, Resolution Conf. 10.20\*, Frequent cross-border movements of personally owned live animals, [https://cites.org/sites/default/files/document/E-Res-10-20\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-10-20_0.pdf).
70. CITES, Resolution Conf. 17.9, Trade in hunting trophies of species listed in Appendix I or II, paragraph 2 b), [https://cites.org/sites/default/files/document/E-Res-17-09\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-17-09_0.pdf).
71. CITES, Resolution Conf. 11.15 (Rev. CoP18)\*, Non-commercial loan, donation or exchange of museum, herbarium, diagnostic and forensic research specimens, paragraph 3 g) iv), <https://cites.org/sites/default/files/document/E-Res-11-15-R18.pdf>.
72. CITES, Resolution Conf. 16.8 (Rev. CoP17)\*, Frequent cross-border non-commercial movements of musical instruments, paragraph 1 b), [https://cites.org/sites/default/files/document/E-Res-16-08-R17\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-16-08-R17_0.pdf).
73. CITES, Resolution Conf. 18.7, Annex 1(3)(a).
74. CITES, Resolution Conf. 18.7, Annex 1(3)(a).
75. CITES, National CITES Authorities, <https://www.cites.org/eng/cms/index.php/component/cp>.
76. CITES, Articles II-V, VII.
77. CITES, Article VIII(1).
78. CITES, Article VIII(1).
79. CITES, Article VIII(1)(b), Resolution Conf. 8.4(1) (Rev. CoP15).
80. CITES, Model Law on International Trade in Wild Fauna and Flora, p. 4, <https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf>.
81. CITES, Resolution Conf. 18.6(11), Resolution Conf. 11.3 (Rev. CoP18), Resolution Conf. 18.7, Annex 1(3)(a).
82. CITES, Resolution Conf. 12.3 (Rev. CoP18).
83. **Non-detriment finding:** A conclusion by a Scientific Authority that the export of specimens of a particular species will not impact negatively on the survival of that species in the wild. CITES Glossary.
84. CITES, Resolution Conf. 12.3 (Rev. CoP18), paragraph 29.
85. See Guide to the Application of CITES Source Codes, available at: [https://cites.org/sites/default/files/eng/prog/captive\\_breeding/E-Souce%20codes%20booklet%20-%20April%202017.pdf](https://cites.org/sites/default/files/eng/prog/captive_breeding/E-Souce%20codes%20booklet%20-%20April%202017.pdf)
86. CITES, Resolution Conf. 18.7, paragraph 2 e).

87. CITES, Resolution Conf. 12.3 (Rev. CoP18), Section XIII. These countries include Australia, France, Thailand and the US, amongst others.
88. Responses to Notification to Parties No. 2017/071 on “Simplified procedure for permits and certificates,” <https://cites.org/sites/default/files/eng/com/sc/70/Inf/E-SC70-Inf-04.pdf> provides outlines of procedures in place in certain CITES Parties.
89. CITES, Resolution Conf. 12.3 (Rev. CoP18).
90. See, e.g., 50 CFR 13.29.
91. For example, UK, Guidance, Apply for CITES permits and certificates to move or trade endangered species, <https://www.gov.uk/guidance/apply-for-cites-permits-and-certificates-to-trade-endangered-species>.
92. CITES, Art. III(2)(b), IV(2)(b), V(2)(a).
93. CITES, Resolution Conf. 12.3 (Rev. CoP18), Annex 2, <https://www.cites.org/sites/default/files/document/E-Res-12-03-R18.pdf>. If reviewing a national version of the relevant permit or certificate, please also check Annex 1 of Resolution Conf. 12.3 (Rev. CoP18) to ensure that all relevant details listed in Information that should be included in CITES permits and certificates, are provided.
94. For example, in the United States after a permit denial, the applicant may pursue administrative reconsideration and appeal remedies at Fish and Wildlife Service. Once these administrative remedies are exhausted, if the applicant’s permit has been denied, the applicant may be able to allege an Administrative Procedures Act claim to sue in Federal Court based on the denial. 50 CFR 13.3, 50 CFR 13.29. Applicants must exhaust the FWS administrative remedies before filing a law suit. *Marcum v. Salazar*, 694 F.3d 123 (D.C. Cir. 2012).

## Table Endnotes

- i. 50 C.F.R. 23.34.
- ii. Rancher specimens are “specimens of animals reared in a controlled environment, taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving to adulthood.” Res. Conf. 12.3 (Rev. CoP18), ¶ 3.(j). Such specimens are traded under the same Convention requirements as wild source specimens, though in making the required findings rancher specimens may be assessed by a Party differently under a risk assessment approach. Res. Conf. 18.7, Annex 1, ¶ 1. C) ii).
- iii. Transshipment in this context refers to the “act of transferring the catch from one fishing vessel to either another fishing vessel or to a vessel used solely for the carriage of cargo.” FAO Technical Guidelines for Responsible Fisheries No.1 -- Fishing Operations (1996), <http://www.fao.org/3/a-w3591e.pdf>.
- iv. CITES, Register of operations that artificially propagate specimens of Appendix-I species, [https://www.cites.org/eng/common/reg/e\\_nu.html](https://www.cites.org/eng/common/reg/e_nu.html)

## Resolutions

- Resolution Conf. 10.16 (Rev.)\* *Specimens of animal species bred in captivity*
- Resolution Conf. 11.3 (Rev. CoP18) on *Compliance and Enforcement*
- Resolution Conf. 11.11 (Rev. CoP18) on *Regulation on Trade in Plants*
- Resolution Conf. 11.15 (Rev. CoP18) on *Non-commercial loan, donation or exchange of museum, herbarium, diagnostic and forensic research specimens*
- Resolution Conf. 12.3 (Rev. CoP18) on *Permits and Certificates*
- Resolution Conf. 12.7 (Rev. CoP17) *Conservation of and trade in sturgeons and paddlefish*
- Resolution Conf. 12.10 (Rev. CoP15) on *Registration of operations that breed Appendix-I animal species in captivity for commercial purposes*
- Resolution Conf. 13.6 (Rev. CoP18) on *Implementation of Article VII, paragraph 2, concerning “pre-Convention” specimens*
- Resolution Conf. 13.7 on *Control of Trade in Personal and Household Effects*
- Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea*
- Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*
- Resolution Conf. 17.7 (Rev. CoP18) on *Review of trade in animal specimens reported as produced in captivity*
- Resolution Conf. 17.9 on *Trade in hunting trophies of species listed in Appendix I or II*
- Resolution Conf. 17.12 on *Conservation, Sustainable Use and Trade of Snakes*
- Resolution Conf. 18.6 on *Designation and Role of Management Authorities*
- Resolution Conf. 18.7 on *Legal acquisition findings*

# LEGAL ACQUISITION FINDINGS

A Handbook by Forest Trends and  
Center for International Environmental Law (CIEL)

