



# Implementing CITES in National Legislation



# CITES COMPLIANCE



## NLP - Analysis (1)

- Under Resolution Conf. 8.4 (Rev. CoP15), the Secretariat is directed to identify those Parties whose domestic measures do not provide them with the authority to
  1. Designate at least one Management Authority and one Scientific Authority
  2. Prohibit trade in specimens in violation of the Convention
  3. Penalize such trade; or
  4. Confiscate specimens illegally traded or possessed



## NLP - Analysis (2)

Based on analysis, legislation is placed in one of three categories:

- **Category 1:** legislation that is believed generally to meet the requirements for implementation of CITES
- **Category 2:** legislation that is believed generally not to meet all requirements for the implementation of CITES
- **Category 3:** legislation that is believed generally not to meet the requirements for implementation of CITES



## Key Convention provisions

- The Parties have some guidance on what is essential to include in their legislation
  - **Articles III to VII** of the Convention set forth the conditions under which trade is allowed to take place
  - **Article IX** requires that Parties designate a Management Authority and a Scientific Authority
  - **Article VIII** requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed



## Res. 8.4 and related guidance

- The four minimum requirements for adequate CITES-implementing legislation are stated in a general way in Resolution Conf. 8.4 (Rev. CoP15), but the practical application of each requirement has involved considering and addressing several components.
- These components have helped to clarify what is meant by each requirement and to provide criteria for determining whether a requirement is met by particular legislation. In response to requests from Parties, an attempt has been made in this presentation to indicate which components might be considered as essential (e.g. required under the National Legislation Project), recommended (e.g. in a Resolution) or desirable (e.g. good practice derived from Category 1 legislation or other sources).



# Designation of authorities

## Essential (Art. IX)

- Is there a legal instrument (law, regulation, decree) that authorizes the designation of, or expressly designates, one or more Management Authorities and one or more Scientific Authorities?
- Does legislation clearly and precisely give CITES authorities the necessary powers to carry out their responsibilities (power to grant permits and certificates, power to establish export quotas, etc.)?



## Designation of authorities (2)

### Recommended (Res.10.3, Res.11.3)

- Does legislation designate one or more Scientific Authorities that are independent of the Management Authority(ies)? Are the functions of the Management and Scientific Authorities separate?
- Does legislation require and provide mechanisms for coordination and communication between the Management and Scientific Authorities as well as with other government agencies with relevant competence (e.g. Customs, police, ministry responsible for foreign trade, etc.)?



## Designation of authorities (3)

### Desirable

- Does the legislation provide for lead and subsidiary MA's and SA's with relevant expertise (e.g. regarding international treaties and relations, policy setting, terrestrial or aquatic animal and plant species covered by CITES)?



# Prohibition of trade violating CITES

## Essential (Articles III, IV, V, VI and VII)

- Does legislation regulate trade in all species included in the three Appendices of the Convention, taking into account any reservations entered by the Party for specific species? Is there provision for the timely amendment of any legislative annexes or schedules to reflect periodic changes made to the Appendices?
- Does legislation cover all types of CITES specimens (live or dead animals and plants, as well as their parts and derivatives), taking into account any relevant annotations used in the Appendices?
- Does legislation cover all types of trade transactions under the Convention? (*export, import, re-export, and introduction from the sea*)



## Prohibition of trade violating CITES (2)

### Essential (cont'd)

- Does legislation provide conditions and procedures for the granting of permits and certificates required for trading in CITES specimens (in order to ensure that such trade is legal, sustainable and traceable)?
- Does legislation provide for the care of living specimens in trade?
- Does legislation include the exemptions and other special provisions in the Convention relating to trade?



## Prohibition of trade violating CITES (3)

Recommended (Res. 12.3, Res. 10.21, Res. 9.6, Res. 9.7)

- Is there a general clause prohibiting any trade in CITES specimens in violation of the Convention (e.g. without a valid permit or certificate), as a sort of catch-all provision?
- Does the legislation include a standardized permit/certificate form?
- Does legislation incorporate relevant IATA Live Animals and Perishable Cargo Regulations and the *CITES guidelines for the non-air transport of live wild animals and plants*?



## Prohibition of trade violating CITES (4)

### Recommended (cont'd)

- Does legislation cover any specimen which appears from an accompanying document, the packaging or a mark or label or from any other circumstances, to be a part or derivative of an animal or plant species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention?
- Does legislation provide for the inspection of specimens in transit, or being transshipped, to verify the presence of a valid CITES permit or certificate as required under the Convention or to obtain satisfactory proof of its existence?



# Prohibition of trade violating CITES (5)

## Desirable

- Is legislation aligned as closely as possible with the provisions, language and spirit of the Convention?
- Does legislation explain the distinction between Appendices I, II and III of the Convention?



# Penalization of illegal trade

## Essential (Art. VIII)

- Does legislation clearly list the activities that are prohibited (e.g. trade without a valid permit/certificate or possession of specimens that were illegally acquired/introduced) and specify that the breach of any prohibition constitutes an offence which is punishable by imprisonment, fine, confiscation, suspension of activity, etc.?



## Penalization of illegal trade (2)

### Recommended (Res. 11.3)

- Are the departments and agents responsible for enforcing the Convention clearly designated in the legislation and are enforcement agents given the necessary powers to carry out their tasks?
- Does the legislation cross-reference any offences and penalties related to CITES that are provided in Customs, general crime, environmental or other legislation?
- Does legislation provide a maximum penalty of at least 4 years of imprisonment for CITES-related offences involving organized crime or trafficking in endangered species, in order to qualify such offences as serious crimes under the UN Convention against Transnational Organized Crime?



## Penalization of illegal trade (3)

### Desirable

- Does criminal legislation on regulated or prohibited goods, organized crime, money laundering, controlled deliveries, wire tapping, the use of informants, etc. cover offences related to CITES?
- Does legislation provide offences and penalties for attempted violations, aiding and abetting, corporate and corporate officer liability, recidivism, obstruction of justice, false statement, tampering, fraud, CITES-related violations by government officials acting under colour of law, etc.?



# Authorization to confiscate

## Essential

- Does legislation (either specialized CITES legislation or other legislation) provide for the permanent confiscation - as distinguished from the temporary seizure - of illegally traded or possessed specimens?



## Authorization to confiscate (2)

### Recommended

- Does legislation authorize the confiscation of not only specimens but also vehicles, vessels, containers, equipment, etc. used in the commission of a CITES-related offence?



# Authorization to confiscate (3)

## Desirable

- Does legislation specify which authorities may confiscate, the extent of their confiscation powers, the procedures that must be followed, and the final disposal of confiscated specimens?



## Developing legislation

- Parties' experience in the development of strengthened CITES implementing legislation has shown the importance of
  - simultaneous preparation of enabling and implementing legislation
  - provision for the timely incorporation of periodic amendments to the CITES Appendices
  - addressing illegal possession as well as illegal trade
  - policy coherence in relation to national wildlife trade policy, other biodiversity-related conventions to which a State is party, natural resource management, the criminal justice system and development policy



# CITES Secretariat Geneva

