



BACKGROUND

“Introduction from the sea” (IFS) is an important issue for COP15. The Parties have been asked to resolve important questions concerning IFS, including whether the flag State or the port State issues the IFS certificate (CoP15 Doc. 27). Also, proposals to list Atlantic bluefin tuna (*Thunnus thynnus*), Oceanic whitetip shark (*Carcharhinus longimanus*), and other sharks involve IFS.

IFS is one of the four types of trade regulated by CITES and has always been a part of CITES. IFS applies to those specimens caught on the high seas—the area beyond the jurisdiction of any State—and then transported into a State. (Resolution Conf. 14.6).

In many respects, IFS is like imports and exports. Like imports of Appendix I specimens, IFS of Appendix I specimens is prohibited for primarily commercial purposes. For both Appendix I and II species, the State of introduction must make a non-detriment finding.

CoP15 Doc. 27 asks the Parties to answer the following questions to clarify implementation of IFS:

- (1) Should the State of introduction be the flag State or the port State?
- (2) Should the State of introduction determine that the specimen was acquired in a manner consistent with applicable conservation and management rules, including those adopted by regional fisheries management organizations (RFMOs)?
- (3) Should Parties respond in a timely a manner to requests for information for issuing an IFS certificate or verifying the authenticity of an IFS certificate.

STATE OF INTRODUCTION

The most significant issue concerning IFS is defining which State issues the IFS certificate—the port State or the flag State. Without a clear designation of the flag State or port State as the State of introduction, both States could claim

they have the authority to issue the certificate. Disputes over authority to issue IFS certificates may prevent the valuable CITES specimens from being traded.

Article I of CITES defines IFS as “transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.” From both a legal and practical perspective, the Parties should designate the port State as the State of introduction.

The Port State is the State of Introduction

From a legal perspective, the port State is the State of introduction:

- (1) The phrase “transportation into a State” requires movement from one place to another. In the case of IFS, this means movement from the high seas to the port State. Thus, the port State is the State of introduction.
- (2) “Transportation into a State” cannot mean landing a specimen on a vessel, because a vessel is not considered a part of the territory of the flag State (i.e., there is no transportation into a State). Instead, a vessel has the nationality of the State whose flag it flies. Also, catching a CITES specimen is covered by the second part of the IFS definition: taking a specimen in the marine environment beyond the jurisdiction of any State.
- (3) Designating the port State as the State of introduction does not upset a flag State’s jurisdiction to regulate its vessels. The flag State may continue to license its vessels to fish for specific species in specific quantities. Also, the U.N. Law of the Sea Convention, the Fish Stocks Agreement, and the new Agreement on Port State Measures all grant port States considerable authority to control vessels in their waters and ports.
- (4) Importing States regularly require foreign products to meet environmental and human health standards as a condition of market

access. They require manufacturers to obtain a phytosanitary certificates to prove consistency with those standards. The IFS certificate is the same. Through IFS certificates, port States would ensure certain criteria are met before allowing high seas catch to clear customs.

The Port State Is the Practical Solution to IFS

From a practical perspective, the Port State should issue IFS certificates.

- (1) Port State issuance of IFS certificates will reduce the issuance of certificates by flag States involved in illegal, unregulated, and unreported (IUU) fishing.
- (2) Port State issuance of IFS certificates will eliminate the need to issue documents for transshipment. If the port State is considered the State of introduction, then only one CITES document must be issued. If the flag State is considered the State of introduction, then any transshipment at sea to a vessel flying the flag of another State would require an export permit. Similarly, entry into the port of another State would require another CITES permit.

Room for Flag States?

Some Parties adamantly support defining the flag State as the State of introduction. While this position is flawed from a legal perspective, a flag State may have one important advantage over the port State: information.

If the flag State takes responsibility for vessels that fly its flag and participates in regional fisheries management organizations (RFMOs), then it may have better information about the species being harvested on the high seas than the port State or even the relevant RFMO. This is because neither FAO nor any other organization has disaggregated trade data based on where the fish are caught (e.g., the high seas or within an EEZ or territorial waters of a coastal State). The flag State will have that information—at least for its vessels.

Allowing the flag State to issue IFS certificates may be acceptable provided adequate safeguards are in place to prevent IUU fishing. The following safeguards would help ensure that CITES does not facilitate trade pursuant to IUU fishing:

- (1) Review flag State issuance of IFS certificates for potential problems at each COP.
- (2) Require the flag State to ensure that the catch was acquired consistently with any applicable international law.
- (3) Establish a blacklist of vessels that may not receive IFS certificates. The blacklist could be assembled from existing lists prepared by RFMOs and other organizations.
- (4) Reaffirm the authority of port States to refuse, or seek verification of, IFS certificates when they believe the certificates to be incomplete or inadequate.

“LEGALLY OBTAINED”

The requirements for issuing an IFS certificate are very similar to issuance of import permits and export permits (e.g., the requirement to make a non-detriment finding). However, for unknown reasons, the drafters excluded the requirement to determine that the specimens were “legally obtained,” an important finding required for the export of Appendix I and II specimens. The most likely reason is that there was little high seas regulation of fisheries at the time.

The draft resolution includes this recommendation to determine that the specimen was caught in accordance with applicable rules of RFMOs to help prevent IUU fishing. By asking the State of introduction to make this finding, CITES helps ensure that all vessels, not only those flagged by States that are members of the relevant RFMO, comply with the conservation and management rules of that RFMO.

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