



**CONVENTION ON
MIGRATORY
SPECIES**

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13th MEETING OF THE CONFERENCE OF THE PARTIES
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Agenda Item 21

APPLICATION OF ARTICLE III OF THE CONVENTION

(Prepared by the Secretariat)

Summary:

This document draws the attention of the Conference of the Parties to circumstances whereby species listed on CMS Appendix I may be the subject of international trade involving a CMS Party, which may violate and/or undermine provisions of the Convention.

The document proposes a draft Resolution to address this and to provide guidance to Parties on the application/interpretation of Article III of the Convention in this regard.

APPLICATION OF ARTICLE III OF THE CONVENTION

Background

1. Article II (3)(b) of the Convention states that Parties “shall endeavour to provide immediate protection for migratory species included in Appendix I”. Species listed under Appendix I are endangered and have the highest level of protection under the Convention. Such species are strictly protected throughout the global range unless otherwise explicitly indicated.
2. Article III of the Convention sets forth actions to be taken by Parties with respect to species listed on Appendix I. Foremost among these is the prohibition against the taking of animals that belong to Appendix I-listed species (Article III(5)). Article III(5) defines a narrow set of exceptions to this obligation: if the taking is for scientific purposes, for the purpose of enhancing the propagation or survival of the affected species, to accommodate the needs of traditional subsistence users of such species or if extraordinary circumstances so require. Such exceptions must be precise as to content and limited in space and time and should not operate to the disadvantage of the species.
3. In addition to the prohibition on taking, Article III (4)(c) of the Convention states that “Parties that are Range States of a migratory species listed in Appendix I shall endeavour, to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species”.
4. Further, Article III (6) states that the Conference of the Parties may recommend to the Parties that are Range States of a migratory species listed in Appendix I that they take further measures considered appropriate to benefit the species.

Circumstances around international trade by CMS Parties of Appendix I-listed species

5. The CMS Secretariat has become aware of several reports of CMS Parties having engaged in international trade in CMS Appendix I species. Such trade may involve a variety of circumstances, including but not limited to species intentionally taken from the wild in an area outside of a Range State Party for primarily commercial purposes.
6. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the main global instrument that addresses trade in endangered species. In some cases, the circumstances described above may arise when a species is listed on CMS Appendix I, but for which trade is not prohibited under CITES, and where the taking occurs in a country that is not a Party to CMS.
7. It appears that the extent to which this issue is addressed in national legislation by CMS Parties varies, although a full examination of this has not been carried out.
8. Considering that the listing of species in Appendix I is based on reliable evidence, including the best scientific evidence available, and that species listed under Appendix I are strictly protected throughout the global range unless explicitly indicated, such activities may violate and undermine the obligations of Parties under the Convention.

Discussion and analysis

9. There are various circumstances that may be occurring involving international trade of Appendix-I species. To the extent that this involves CMS Parties, it is an issue that warrants consideration by the CMS COP.

10. The different situations where this may occur has not been comprehensively examined. Such trade may contravene the provisions of the Convention, particularly Article III(5), and undermine a key objective of the Convention.
11. Therefore, the Secretariat has drafted the present resolution calling for additional work to better understand the occurrences of trade in Appendix I species for possible future action by the COP, and for appropriate action at the national level.

Recommended actions

12. The Conference of the Parties is recommended to:
 - a). adopt the draft Resolution contained in Annex 1 of this document,
 - b). adopt the draft Decisions contained in Annex 2 of this document.

DRAFT RESOLUTION

APPLICATION OF ARTICLE III OF THE CONVENTION

Recalling preambular paragraph 1 of the text of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), which expresses the determination of the Parties “that wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of mankind”,

Recalling further preambular paragraph 6, which recognizes that conservation and effective management of migratory species of wild animals require the cooperation of all States,

Recalling further Article II (3b), which states that Parties “shall endeavour to provide immediate protection for migratory species included in Appendix I” and Article III (6), which states that “the Conference of the Parties may recommend to the Parties that are Range States of a migratory species listed in Appendix I that they take further measures considered appropriate to benefit the species.”,

Noting with urgent concern that the 2019 *Global Assessment Report on Biodiversity and Ecosystem Services* of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) concludes that human actions already threaten around 25 per cent of species in assessed animal and plant groups and that around 1 million animal and plant species could go extinct, many within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss, including international trade,

Recalling that commercial utilization has caused the depletion of many species included in Appendix I of this Convention and has resulted in a threat to the survival of a number of these species and stocks,

Recognizing further that Article III (4) of CMS, requires Parties, to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species listed on Appendix I,

Recognizing further that Article III (5) of CMS prohibits the taking of species included in Appendix I, with a narrow set of exceptions,

Noting that species listed on Appendix I are strictly protected throughout the global range unless otherwise indicated;

Further noting that there have been circumstances whereby Parties to the Convention have engaged in international trade of some species that are included in Appendix I of the Convention,

Concerned, that such international trade in Appendix I listed species may violate and undermine the objectives of this Convention,

Determined to ensure that the provisions of the Convention are effectively implemented,

*The Conference of the Parties to the
Convention on the Conservation of Migratory Species of Wild Animals*

1. *Expresses its concern* that the import or export by a Party of Appendix I-listed species may contravene the obligations of the Convention, in particular the taking prohibition of Article III (5);
2. *Further finds* that such activities may undermine the fundamental objective of the Convention with respect to the conservation of migratory species throughout the global range;
3. *Invites Parties* that have not already done so to develop and implement national legislation and enforcement measures prohibiting activities involving the import or export of Appendix I-listed species that violate the Convention and undermine its objectives, and to provide information to the Secretariat on import and export of Appendix-I species on a regular basis;
4. *Requests* the Secretariat to communicate to Parties information on import and export of Appendix-I species, and to develop a list of species included in Appendix I of the Convention which are also listed on CITES Appendix II, publish it on the CMS website, and revise and republish this list as necessary.

DRAFT DECISIONS

APPLICATION OF ARTICLE III OF THE CONVENTION

Directed to Parties:

13.AA Parties are requested to:

- a) submit information to the Secretariat on the import or export of Appendix I-listed species,
- b) inform the Secretariat, as required and as appropriate, about the need for support with the review and/or the development of new legislation regarding the above.

Directed to Scientific Council:

13.BB The Scientific Council shall:

- a) with the support of the Secretariat and subject to the availability of resources, assess the impact of international trade in Appendix I Species on their conservation status.

Directed to the Secretariat:

13.CC The Secretariat shall, subject to the availability of resources:

- a) in the context of the National Legislation Programme, and upon request by Parties, provide technical support to assist Parties in drafting adequate national legislation to support the implementation of Article III of the Convention regarding the import and export of Appendix I-listed species,
- b) review information submitted by Parties on the import or export of Appendix I-listed species, review that information, and any other information on the extent and circumstances of trade in Appendix I-listed species, and
- c) report to the Sessional Committee of the Scientific Council at its sixth meeting, and to the COP at its fourteenth meeting.