

52nd Meeting of the Standing Committee

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IMPROVING THE LISTING PROPOSAL PROCESS AND OUTCOMES

(Prepared by the Oceania Region and the South and Central America and the Caribbean Region)

Summary:

Working together to conserve migratory species is the foundation of the Convention. Due to migratory species' abilities to cross national jurisdictional boundaries regularly and predictably, conservation actions in one country will be ineffective without commensurate actions being undertaken throughout the species' range.

Adding species to the Convention Appendices is a key mechanism through which Parties seek to address threats to migratory species throughout their range. Consideration of a comprehensive listing proposal, based on the best available scientific evidence and presented with the support of all range states, is important to both Parties and the Convention itself.

This paper recommends establishing an intersessional working group to consider to encourage and enhance consultation prior to the submission of listing proposals.

Rev.1 of the document add the South and Central America and the Caribbean Region as a co-author.

IMPROVING THE LISTING PROPOSAL PROCESS AND OUTCOMES

1. Consultation with Range States, and consideration of Scientific Council recommendations, are integral steps in both the preparation of proposals to list species, and consideration of inclusion of species on the Appendices of the Convention of Migratory Species. These steps are often omitted from the listing proposal process, resulting in the Conference of the Parties (COP) making decisions based on proposals that may not be based on the best scientific evidence available, or are incomplete or incorrect. This has potential to undermine the credibility of both the listing process and the Convention itself.
2. This paper seeks to provide background on the issue; set out relevant Party obligations in the Convention and Resolutions on preparation of listing proposals; outlines what has been done to date to improve the preparation of listing proposals; and provides recommendations for consideration by Standing Committee.
3. A paper on this topic was submitted to the 5th Sessional Committee meeting of the Scientific Council for consideration. While discussions focused on the scientific mandate of the Sessional Committee to provide the best scientific advice available on listing proposals, it decided to defer the matter to Standing Committee for further consideration given the potential administrative oversight that may be required.

Background

4. The Convention recognises that the conservation and effective management of migratory species requires the concerted action of all Range States within the national jurisdictional boundaries of which such species spend any part of their life cycle.
5. Any conservation action that one Range State may make for a migratory species within their borders is wasted if all Range States do not work together to address the threats present throughout the whole of the species' range. The central tool of the Convention to conserve and enhance management arrangements for migratory species is through the inclusion of eligible species in either of its Appendices.
6. Key to any successful listing is communication and consultation among Range States and use of the best scientific information available.

Processes for Preparing Listing Proposals

Convention and relevant Resolution

7. The process to propose species for inclusion in the Appendices is set out in both the Convention text and Resolution 13.7 – *“Guidelines for Preparing and Assessing Proposals for the Amendment of CMS Appendices”*.
8. Article XI, paragraph 3 of the Convention requires proposals to be “based on the best scientific evidence available”. It also explicitly outlines that species proposals must be submitted to the Secretariat at least 150 days before a COP. Article VII, paragraph 3 of the Convention also outlines that COPs shall be convened at intervals of not more than three years. This clear scheduling allows Parties to anticipate potential timeframes for listing proposals well in advance.
9. Article VIII sets out the functions of the Scientific Council and includes “making recommendations to the COP as to the migratory species to be included in Appendices I and II...”

10. The critical nature of consultation in relation to the listing of migratory species is recognised in Resolution 13.7, where paragraph 11 urges proponents to consult with, as far as possible, all Range States and their relevant authorities before the proposal is submitted.
11. Res.13.7 also includes an agreed template for listing proposals. This template contains a separate section (9) for Parties to complete regarding Consultations. The Explanatory Notes attached to this template further clarify that:
 9. Consultations: The proponent(s) shall consult, as far as possible, nature conservation authorities of the other Range States before the proposal is submitted and give a brief outline of any comments received upon the proposal. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request. In the case of taxa that are also managed through other international agreements or intergovernmental bodies, consultations should be undertaken to obtain the comments of those organizations or bodies. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request.
12. This template, containing a specific section for listing proponents to indicate the level of consultation undertaken with Range States prior to submission of the listing proposal, was agreed at COP11. Listing proposals submitted for consideration at COP12 and COP13 used this template.
13. An analysis of proposals submitted to COP12 showed that consultation with all Range States occurred in only 40% of listing proposals submitted. A further analysis of listing proposals submitted to COP13 demonstrated that consultation with all Range States prior to submission of the proposal only occurred in 18% of COP13 listing proposals.
14. This lack of consultation also led to identical species listing proposals submitted by multiple Range States.

Administrative Process

15. The issues associated with the lack of consultation prior to listing proposals being submitted were previously recognised by both the Scientific Council and the Standing Committee, with Standing Committee approving a new document management process at its 48th meeting in 2018 ([StC48/Doc.10.1](#)) and implemented in the lead-up to COP13 in 2020. This process is summarized below:
 - 150 days before COP – listing proposals submitted.
 - Shortly thereafter Scientific Council will consider all proposals and append comments and recommendations on each proposal. These comments and recommendations are sent to all relevant proponents for their information and possible action.
 - 60 days before COP – Parties and Inter-governmental bodies comment on proposals and these are sent to all relevant proponents for their information and possible action.
 - 45 days before COP – listing proponents to provide any additional information to address issues raised by Sessional Committee and/or Parties, particularly to address any comments which are directed towards the eligibility of their proposal.
16. This administrative process allows for clear articulation of Scientific Council, Party and Inter-governmental body comments and recommendations, and explicit responses to those comments by listing proponents.

17. COP13 demonstrated that this process can be effective, particularly if listing proponents adequately address any areas of deficiencies prior to commencement of COP. The implementation of this process significantly strengthened several proposals prior to consideration by all Parties. The listing proposal for the jaguar is one example where the listing proponent responded to the new process by providing additional targeted information in response to Scientific Council questions.
18. Strengthening communication and consultation prior to submitting listing proposals will lead to robust proposals which include the best scientific evidence available. Comprehensive consultation will also serve to increase support for the listing between all Range States. This in turn allows Parties at COP to make effective, credible decisions that accurately reflect the mandate and purpose of the Convention.
19. Fulsome consultation can also increase the likelihood of a listing proposal being accepted unanimously at COP. While it could be asserted that COP can allow for robust discussion of listing proposals and voting can address any lingering differences in opinions, the voting majority required highlights some difficulties associated with relying on voting to deliver an outcome suitable for most Parties.
20. Reservations are legitimate instruments that are a feature of all international conventions for Parties to use when necessary. However, reservations are usually seen as a last measure for Parties to use and are not something that are taken lightly. To use reservations to mitigate the unintended consequences of a lack of consultation prior to submitting listing proposals is not a desirable outcome for Parties, nor the Convention.

A way forward

21. The need for comprehensive consultation on listing proposals is an ongoing issue that requires further consideration as to any other additional approaches that may aid in improving rates of consultation on listing proposals, prior to submission.
22. It is proposed that Standing Committee establish a working group to discuss and identify improvements to CMS processes to encourage and enhance effective consultation with all Range States when developing proposals for listing of migratory species on CMS Appendices.
23. The intention would be for the working group to present its final recommendations at the 53rd Standing Committee meeting. This would allow for Standing Committee to consider and potentially agree to recommendations provided by the working group.
24. Any potential recommendations relating to improving administrative processes, such as additions to the document handling process, could be agreed by Standing Committee and be implemented prior to COP14. Any potential recommendations that involved amending resolutions could be forwarded by Standing Committee to COP14 for consideration.
25. The working group should endeavour to have equal CMS regional representation, and Standing Committee should also extend an invitation for interested Sessional Committee members to be involved in discussions. The desirable outcome from enhanced consultation is that listing proposals will contain the best scientific evidence available from all Range States, and as such Sessional Committee members are a legitimate stakeholder in these discussions.

Recommended Actions

26. It is recommended that Standing Committee agree:
- a) To establish a working group which will be tasked with identifying any suitable options for improving the listing proposal process to encourage and enhance consultation;
 - b) To the draft Terms of Reference for the working group at the Annex;
 - c) The working group will extend an invitation to Sessional Committee members to be involved; and
 - d) The working group will work intersessionally and provide draft recommendations to the 53rd Standing Committee meeting.

**TERMS OF REFERENCE FOR THE WORKING GROUP TO IMPROVE
CONSULTATION AND THE LISTING PROCESS**

Objective

1. The objective of the Working Group will be to discuss and identify various activities to encourage and enhance effective consultation with all Range States prior to the submission of listing proposals.
2. The Joint Working Group is tasked with undertaking the following activities:
 - a. Identify additional options, if needed, designed to encourage and enhance consultation with all Range States, particularly prior to the submission of listing proposals; and
 - b. Develop a list of recommended options to pursue, outlining the benefits associated with the recommended approaches.
3. The Working Group will present its final recommendations at the 53rd Standing Committee meeting.

Composition of the Working Group

1. The Working Group will be open to both members of the Standing Committee, members of the Sessional Committee of the Scientific Council, and interested observers.
2. Each CMS region should be represented by at least one Standing Committee representative.
3. Each Standing Committee member of the Working Group will be responsible for consulting with CMS Focal Points in their region to ensure comprehensive regional input is facilitated.
4. The Chair and Vice-Chair shall be chosen among the members of the Working Group at its first meeting.
5. The activities of the Working Group will be facilitated by the CMS Secretariat.