

# Convention on the Conservation of Migratory Species of Wild Animals

## 48<sup>th</sup> Meeting of the Standing Committee

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### **RELATIONSHIPS BETWEEN THE PROPOSALS FOR A REVISED NATIONAL REPORT FORMAT AND THE PROPOSALS FOR A REVIEW MECHANISM AND NATIONAL LEGISLATION PROGRAMME**

## **Relationships between the proposals for a revised National Report Format and the proposals for a Review Mechanism and National Legislation Programme**

Memorandum by Dave Pritchard

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### **Review Mechanism**

The Review Mechanism focuses on compliance with CMS Articles III.4, III.5, III.7, and VI.2, which cover (in summary) the following obligations:

#### **III.4**

- Conserve and restore habitats of App I species
- Address obstacles to migration of App I species
- Address factors endangering App I species

#### **III.5**

- Prohibit taking of App I species

#### **III.7**

- Notify exceptions to Art III.5

#### **VI.2**

- Notify Range State status for App I and App II species
- Inform about taking by flag vessels beyond national jurisdiction

According to Resolution 12.9, one of the ways in which a review can be triggered is by information being submitted at any time about an instance of “non-implementation” of any of these Convention provisions. The proposed “Case Information Template” for submitting such information simply asks for a description of the non-implementation matter concerned, the species, populations, habitats or sites “potentially affected” and the measures taken in response. This is uncomplicated, and since it sits outside the triennial national reporting process it raises no issues for the National Report Format.

The second way in which a review can be triggered is through the Secretariat’s scrutiny of national reports. The draft National Report Format as we have it at present provides a basis for this to the following extent:

Category of non-implementation	Where non-implementation might be revealed in proposed new National Report Format
<b>Art III.4</b>	
<ul style="list-style-type: none"> <li>Conserve and restore habitats of App I species</li> </ul>	<p>Section XIII asks a series of questions about area-based conservation measures and includes a specific question about measures taken to implement this particular provision of Art III.4. The question however asks this specifically in relation to the reporting period; so a pre-existing and on-going lack of legislation, for example, would not be picked up this way, and would instead be revealed by the separate proposed legislation inventory.</p> <p>In addition Section X documents pressures on migratory species including various types of habitat destruction/degradation, and this will also be a source of information that could trigger a review on this issue.</p>
<ul style="list-style-type: none"> <li>Address obstacles to migration of App I species</li> </ul>	<p>Section X includes a specific question about measures taken to implement this particular provision of Art III.4. The question however asks this specifically in relation to the reporting period; so a pre-existing and on-going lack of legislation, for example, would not be picked up this way, and would instead be revealed by the separate proposed legislation inventory.</p>
<ul style="list-style-type: none"> <li>Address factors endangering App I species</li> </ul>	<p>Numerous sections of the National Report Format would potentially have a bearing on this issue, but the most directly relevant is section X, which includes a specific question about advances made since the previous report in countering any of the particular pressures identified in the table provided (and the table asks for App I species to be specifically identified). There is also a question about implementation of relevant COP Resolutions.</p> <p>Where pressures on App I species are identified but no information on measures taken to address them is provided, this could be a basis for triggering a review.</p>
<b>Art III.5</b>	
<ul style="list-style-type: none"> <li>Prohibit taking of App I species</li> </ul>	<p>Section IV is dedicated to questions about this provision. In addition, section X asks about pressures occurring in connection with “taking” and measures taken in response, including reference to several relevant COP Resolutions.</p>
<b>Art III.7</b>	
<ul style="list-style-type: none"> <li>Notify exceptions to Art III.5</li> </ul>	<p>Section IV includes specific questions about this provision.</p>
<b>Art VI.2</b>	
<ul style="list-style-type: none"> <li>Notify Range State status for App I and App II species</li> </ul>	<p>Section III asks Parties to confirm pre-populated lists and to correct/update them as necessary. A failure to complete this section would be a basis for triggering a review.</p>
<ul style="list-style-type: none"> <li>Inform about taking by flag vessels beyond national jurisdiction</li> </ul>	<p>Section IV includes a specific question about this provision.</p>

## National Legislation Programme

The paper StC48/Doc15 comments on some deficiencies in the existing National Report Format in relation to information about legislation. A one-off questionnaire survey is proposed to address the gaps. The proposed new NRF however should itself improve the triennially-reported picture on some of these issues. The way in which it might do so is summarised in the table below.

Issue in existing NRF/reports	Position in proposed new NRF
<ul style="list-style-type: none"> <li>National reports to date have not provided an accurate picture of the status of legislation in a country for implementing Articles III.4(a), III.4(b) and III.5.</li> </ul>	<p>For both III.4(a) and III.4(b) the draft NRF (sections X and XIII) asks about “legislation or other domestic measures” adopted in the reporting period. It does not ask about the full pre-existing situation concerning adopted legislation, to avoid the same information being repeated every triennium. The proposed one-off questionnaire survey might therefore be a suitable way of establishing this initial baseline.</p> <p>For III.5, section IV asks a series of quite detailed questions covering past, present and future legislative intentions.</p>
<ul style="list-style-type: none"> <li>The existing NRF asks the Parties to include relevant implementing legislation in a table. Most Parties have several pieces of legislation that implement the Convention. Later, the format asks if legislation included in the table prohibits the take of specific taxonomic groups. If a number of laws are included in the table, it cannot be seen which law might be responsible for the take prohibition.</li> </ul>	<p>Section IV now asks for the specific legal statute(s) addressing prohibition of taking to be identified.</p>
<ul style="list-style-type: none"> <li>The Convention defines “taking” to mean “<i>taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct</i>”. Parties may be saying “yes” that their national legislation prohibits taking when it does not necessarily prohibit all these forms of it (eg “harassing” or “attempting”); but not prohibiting one such form is unlikely to be seen as sufficient reason to answer “no” to the question as a whole.</li> </ul>	<p>Section IV just refers (as before) to “taking”, without asking separately about each of the seven elements in the Convention definition. Something to probe the breakdown of this could be considered, but it might make the format rather cumbersome.</p>
<ul style="list-style-type: none"> <li>Art III.5 requires exceptions to be “precise as to content and limited in space and time”. The existing NRF asks about exceptions, but does not ask for details of their scope.</li> </ul>	<p>Section IV now asks for details of the species covered by any exceptions, the particular justification being adduced (from those allowed by Art III.5) and any temporal or spatial limitations that apply.</p>
<ul style="list-style-type: none"> <li>Existing reports are not very revealing about the situation concerning activities by flag vessels beyond national jurisdiction (including those flagged by landlocked countries which would not be listed as Range States for marine species), as in Art VI.2.</li> </ul>	<p>Section IV includes a specific question about this provision.</p>
<ul style="list-style-type: none"> <li>Existing reports note whether policies and plans address obstacles to migration (Art</li> </ul>	<p>Section X includes a specific question about “legislation or other domestic measures” adopted (in the reporting period) to implement</p>

<p>III.4) but do not comment on the implementation or impact of these.</p>	<p>this provision. “Measures” in principle could include implementation activities, although this is not made explicit. Something extra could perhaps be added, but for consistency the same approach would then need to be taken elsewhere in the format where the same formulation has been used.</p> <p>Section X in addition however asks about implementation of relevant COP Resolutions, including eg those on powerlines and bycatch etc, and this may be a satisfactory alternative way of getting at this aspect.</p>
<ul style="list-style-type: none"> <li>Some questions in the existing NRF ask about migratory species as a whole, and in those cases information on Appendix I species cannot be isolated for separate analysis; for example protected areas.</li> </ul>	<p>Many of the questions in the new draft NRF respond to SPMS targets which set objectives for migratory species as a whole. Section XIII on area-based conservation measures is one such; but it also includes a specific question on the Article III.4(a) requirement relating specifically to Appendix I species. This is the approach generally taken in the draft, ie referring to Appendix I where the Convention requirement or a Resolution or a target does so, and referring to migratory species in general where the Convention requirement or a Resolution or a target does so.</p>
<ul style="list-style-type: none"> <li>The territorial scope of application of the Convention in a few countries has been made explicit, but in others it is assumed to apply throughout the whole of their jurisdiction (including eg overseas territories) but this is not expressly confirmed in their reports.</li> </ul>	<p>Sections I and IV now include questions that ask for more explicit information on this.</p>
<ul style="list-style-type: none"> <li>As for territorial scope above, there is in many cases similar ambiguity about whether countries have applied the Convention to their EEZ.</li> </ul>	<p>Not covered; but perhaps the proposed one-off questionnaire survey would be a suitable way of establishing this, with the NRF not needing to repeat it.</p>

The proposed questionnaire includes a number of questions which overlap with issues proposed for triennial reporting in the draft National Report Format. Given that the questionnaire will be issued only once, a degree of potential duplication in a few areas might be harmless and acceptable. Alternatively, some re-drafting of either or both documents might be considered, for example to make a more definite distinction between (a) “one-time/baseline” information and (b) information on new facts and events relating to a single triennial reporting period – although this may not be straightforward.

A rough indication of the position on possible overlaps is given in the table below.

Questions in questionnaire	Relationship to questions in draft National Report Format
<p>1. Does your country have one law designed specifically to implement CMS? Yes/No.                      If yes, what is the name of the law?                      If yes, does the law require regulations, ordinances or decrees to implement the law?                      If the law and regulations are available online, please provide the links to the relevant law and regulations.                      If no, explain what the obstacles are to enacting such a law.</p>	<p>No equivalent.</p>
<p>2. Do the laws of your country include a list of all CMS species currently included in Appendix I? Yes/No.                      If yes, what process is required to apply your country's laws and regulations to additions to Appendix I made at Conferences of the Parties?                      If no, what process is required to apply your country's laws and regulations to additions to Appendix I made at Conferences of the Parties?                      Do the laws of your country distinguish between CMS-listed species for which you are a Range State and those for which you are not?</p>	<p>No equivalent.</p>
<p>3. Are any of the laws included in your most recent national report no longer in force? Yes/No.                      If yes, please identify those laws.</p>	<p>No equivalent.</p>
<p>4. Do the laws of your country prohibit hunting of all CMS Appendix I animals? Yes/No.                      If no, which species are not covered by the prohibition against hunting?                      Drop down menu of all Appendix I species                      If no, explain why your country does not prohibit the hunting of all CMS Appendix I species.</p>	<p>Section IV asks this, but only in terms of the wider/more generic term "taking". It also asks which species <i>are</i> covered rather than which species are <i>not</i> covered; and there is no equivalent of the "if no, explain why not" part of the question.</p>
<p>5. Do the laws of your country prohibit fishing of CMS Appendix I animals? Yes/No.                      If no, which species are not covered by the prohibition against fishing?                      Drop down menu of all Appendix I species                      If no, explain why your country does not prohibit the fishing of all CMS Appendix I species.</p>	<p>As for Q4 above.</p>
<p>6. Do the laws of your country prohibit capturing of CMS Appendix I animals? Yes/No.                      If no, which species are not covered by the prohibition against capturing?                      Drop down menu of all Appendix I species                      If no, explain why your country does not prohibit the capturing of all CMS Appendix I species.</p>	<p>As for Q4 above.</p>
<p>7. Do the laws of your country prohibit harassing of CMS Appendix I animals? Yes/No.                      If no, which species are not covered by the prohibition against harassing?                      Drop down menu of all Appendix I species</p>	<p>As for Q4 above.</p>

<p>If no, explain why your country does not prohibit the harassing of all CMS Appendix I species.</p>	
<p>8. Do the laws of your country prohibit deliberate killing of CMS Appendix I animals? Yes/No. If no, which species are not covered by the prohibition against deliberate killing? Drop down menu of all Appendix I species If no, explain why your country does not prohibit the deliberate killing of all CMS Appendix I species.</p>	<p>As for Q4 above.</p>
<p>9. Do the laws of your country prohibit “attempting” to engage in hunting, fishing, capturing, harassing, deliberate killing of CMS Appendix I animals? Yes/No. If no, which species are not covered by the prohibition against “attempting” to engage in hunting, fishing, capturing, harassing, deliberate killing of CMS Appendix I animals? Drop down menu of all Appendix I species If no, explain why your country does not prohibit “attempting” to engage in hunting, fishing, capturing, harassing, deliberate killing of CMS Appendix I animals.</p>	<p>As for Q4 above.</p>
<p>10. Do you have any plans to ensure that the taking, as defined by CMS, of all Appendix I species is prohibited? Yes/No. If no, explain why.</p>	<p>There is no equivalent of the “if no, explain why” part of this question. There is an equivalent for the rest of it however in section IV, which covers the basic issue and then goes further than the questionnaire’s Q10: the draft NRF’s section IV asks: “Where the taking of all Appendix I species is not prohibited and the exemptions in Article III(5) do not apply, are steps being taken to develop new legislation to prohibit the taking of all relevant species? Yes/No. If yes, please indicate which of the following stages of development applies: - Legislation being considered - Legislation in draft - Legislation fully drafted and being considered for adoption in [insert year.....] - Other (please specify) [free text]”.</p>
<p>11. Do the laws of your country allow taking of Appendix I species for scientific purposes? Yes/No. If yes, for which species? All Appendix I species Drop down menu of all Appendix I species</p>	<p>There is an equivalent in section IV’s question about exemptions for each of the grounds allowed by Art III(5) (overlapping also with Q16 below).</p>
<p>12. Do the laws of your country allow taking for the purpose of enhancing the propagation or survival of the affected species? Yes/No. If yes, for which species? All Appendix I species Drop down menu of all Appendix I species</p>	<p>As for Q11 above.</p>
<p>13. Do the laws of your country allow taking to accommodate the needs of traditional subsistence users of such species? Yes/No. If yes, for which species? All Appendix I species</p>	<p>As for Q11 above.</p>

<p>Drop down menu of all Appendix I species</p>	
<p>14. Do the laws of your country allow taking when extraordinary circumstances so require? Yes/No. If yes, what are the extraordinary circumstances under which an exception may be granted? If yes, for which species? All Appendix I species Drop down menu of all Appendix I species</p>	<p>As for Q11 above, and the section IV question also includes the extra element here that asks what the “extraordinary circumstances” are.</p>
<p>15. Do the laws of your country allow taking for any other purpose (for example, public display)? Yes/No. If yes, what are those other purposes? If yes, for which species? All Appendix I species Drop down menu of all Appendix I species</p>	<p>No equivalent (although something could be added in section IV if thought desirable).</p>
<p>16. Article III.5 allows the exceptions described in Question 4 provided that such exceptions are “precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.” Do the laws of your country allow exceptions consistent with these limitations? Yes/No. If yes, please describe the language in your laws that limits the use of these exceptions to the prohibition against the taking of Appendix I animals. If no, please describe the language in your laws that does not limit the use of the exceptions to the prohibition against the taking of Appendix I animals.</p>	<p>Partial equivalent in the question in section IV that asks (in respect of each exception) for details of any temporal or spatial limitations that apply. The question however does not ask for the exact language used in the relevant law(s) to be described, and there is no element that asks about satisfying the “no disadvantage to the species” stipulation.</p>
<p>17. Does your country have legislation that imposes an obligation to endeavour to conserve and, where feasible and appropriate, restore habitat of a species upon its inclusion in Appendix I? Yes/No.</p>	<p>Section XIII includes a specific question about “legislation or other domestic measures” taken to implement this particular provision of Art III.4. It goes further than “yes/no” by asking for the title and date of the measure concerned, and there is scope to provide descriptive text and links. The question however asks this specifically in relation to the reporting period; so pre-existing and in-force legislation, for example, would not be flagged in this way.</p>
<p>18. Does your country have legislation that requires consideration of a species’ Appendix I status when identifying and establishing protected areas? Yes/No.</p>	<p>No specific equivalent, although the free text section of the question referred to in Q17 above could allow information on this to be reported (but again only if it has emerged during the reporting period).</p>
<p>19. Does your country have legislation that imposes an obligation to endeavour to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of a species upon its inclusion in Appendix I? Yes/No.</p>	<p>Section X includes a specific question about “legislation or other domestic measures” taken to implement this particular provision of Art III.4. It goes further than “yes/no” by asking for the title and date of the measure concerned, and there is scope to provide descriptive text and links. The question however asks this specifically in relation to the reporting period; so pre-existing and in-force legislation, for example, would not be flagged in this way.</p>
<p>20. Does your country have legislation, other than Environmental Impact Assessment (EIA) or Social and Environmental Impact Assessment (SEIA),</p>	<p>No equivalent, although the free text section of the generic question referred to in Q19 above could allow information on this to be</p>



<p>that requires action to prevent, remove, compensate for or minimize the adverse impacts to Appendix I species associated with:          Wind turbines/windfarms? Yes/No.          If yes, what actions are required or recommended?          Cell towers? Yes/No.          If yes, what actions are required or recommended?          Electrocutation? Yes/No.          If yes, what actions are required or recommended?          Dams? Yes/No.          If yes, what actions are required or recommended?          Road construction? Yes/No.          If yes, what actions are required or recommended?          Train tracks? Yes/No.          If yes, what actions are required or recommended?          Bycatch? Yes/No.          If yes, what actions are required or recommended?          Vessel strikes? Yes/No.          If yes, what actions are required or recommended?</p>	<p>reported (but only if it has emerged during the reporting period).          There is also a question in the same section inviting comments on the implementation of relevant individual COP Resolutions, in response to which Parties may report on some of the specific issues mentioned here.</p>
<p>21. Does your country implement national action plans or management plans for Appendix I species? Yes/No.          If so, are these plans mandated by legislation? Yes/No.          Do these plans include mandatory duties? Yes/No.</p>	<p>No equivalent; although section XVI asks about NBSAPs, which in some cases may include species-specific components.          The legal status of these plans and related duties is not covered.</p>
<p>22. Do the prohibitions of Article III.5 of CMS apply to all of your land-based territory, including all overseas territories and semi-autonomous zones within your country? Yes/No.          If no, please list the overseas territories and semi-autonomous ones to which CMS does not apply.</p>	<p>This is addressed in section IV, although with different wording, and asking which territories <i>are</i> covered rather than which territories are <i>not</i> covered.</p>
<p>23. Do the prohibitions of Article III.5 of CMS apply in your territorial seas? Yes/No.</p>	<p>No equivalent (although something could be added in section IV if thought desirable).</p>
<p>24. Do the prohibitions of Article III.5 of CMS apply in your exclusive economic zone? Yes/No.</p>	<p>No equivalent (although something could be added in section IV if thought desirable).</p>
<p>25. Do the prohibitions of Article III.5 of CMS apply to any vessels flagged by your country and which operate outside national jurisdiction? Yes/No.          If yes, which vessels?          All vessels          Fishing vessels only          Other (please explain).          If no, does your country flag vessels (fishing, cargo, cruise, other) that operate in areas beyond national jurisdiction?</p>	<p>The issue is addressed in section IV, but by asking whether this kind of taking occurs (and for a description of it), rather than asking how it is framed in statute.          There is no equivalent of the final part that asks whether flag vessels operate beyond national jurisdiction at all.</p>