

## 4<sup>th</sup> Meeting of the Sessional Committee of the CMS Scientific Council (ScC-SC4)

*Bonn, Germany, 12-15 November 2019*

UNEP/CMS/ScC-SC4/Doc.11.2

### **GUIDELINES FOR PREPARING AND ASSESSING PROPOSALS FOR THE AMENDMENT OF THE APPENDICES OF THE CONVENTION**

*(Prepared by the Secretariat)*

**Summary:**

This document aims at assisting the Scientific Council in fulfilling the mandates provided by Decision 12.10 *Listing of Species in the Appendices of the Convention* and Decision 12.101 *Guidelines for assessing listing proposals on Appendices I and II of the Convention*.

The document includes a proposal for the consolidation of Resolution 3.1 (Rev.COP12) *Listing of Species in the Appendices of the Convention* and Resolution 11.33 (Rev.COP12) *Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention*.

## **GUIDELINES FOR PREPARING AND ASSESSING PROPOSALS FOR THE AMENDMENT OF THE APPENDICES OF THE CONVENTION**

### Background

1. The Conference of the Parties at its 12<sup>th</sup> meeting (COP12, Manila, 2017) adopted Decision 12.10 on Listing of *species in the Appendices of the Convention* and Decision 12.101 on *Guidelines for assessing listing proposals on Appendices I and II of the Convention*. These Decisions provide:

#### **12.10 Directed to the Scientific Council**

*The Scientific Council should propose how to integrate the provisions of UNEP/CMS/Resolution 3.1 (Rev.COP12) on Listing of Species in the Appendices of the Convention into UNEP/CMS/Resolution 11.33 (Rev.COP12) on Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention<sup>1</sup> so that these Resolutions can be streamlined into one at the 13<sup>th</sup> meeting of the Conference of the Parties.*

#### **12.101 Directed to the Scientific Council**

*The Scientific Council shall trial the use of the guidelines as documented in the Annex to UNEP/CMS/Resolution 11.33 (Rev.COP12) on Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention, as a guide in assessing proposals to list migratory species in Appendices I and II, and report back to the 13<sup>th</sup> meeting of the Conference of the Parties on their effectiveness.*

### Integration of the provisions of Resolution 3.1 (Rev.COP12) into Resolution 11.33 (Rev.COP12)

2. To support the work of the Scientific Council to undertake this task, the Secretariat has prepared a proposal for the consolidation of [Resolution 3.1 \(Rev.COP12\)](#) and [Resolution 11.33 \(Rev.COP12\)](#), presented in this document.
3. Following the practice followed at COP12, Annex 1 presents a draft consolidated resolution that includes, in the left-hand column, the original operative part and preamble of the Resolutions being consolidated. The right-hand column indicates the source of the text and a comment regarding any proposed change.
4. Annex 2 contains the clean version of the draft consolidated Resolution, taking into account the comments in Annex 1.
5. Resolution 11.33 (Rev.COP12) includes two annexes, that are proposed to be maintained unchanged in the new consolidated resolution. They are not reproduced in this document to reduce its length and avoid confusion.

### Scientific Council report to the 13<sup>th</sup> meeting of the Conference of the Parties on the effectiveness of the guidelines to assess listing proposals to list migratory species in Appendices I and II.

6. Since their adoption by the 11<sup>th</sup> meeting of the Conference of the Parties (COP11, Quito, 2014) through Resolution 11.33, the Guidelines have served as a reference to the Sessional Committee of the Scientific Council to assess proposals for the amendment of the Appendices of the Convention submitted to COP12. Proposals for the amendment of the Appendices submitted to COP13 are expected to be assessed by the 4<sup>th</sup> meeting of the Sessional Committee (ScC-SC4).

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<sup>1</sup> The adopted version of this Decision included a wrong title of Resolution 11.33(Rev.COP12). This has now been fixed by the Secretariat.

7. The Sessional Committee may keep in mind the request in Decision 12.101 to report on the effectiveness of the Guidelines when examining listing proposals in the meetings of the taxonomic working groups, with a view to formulating its recommendations to COP13 in plenary session.

Recommended Actions:

8. The Scientific Council is recommended to:
  - a) review the proposal for consolidation of Resolutions 3.1 (Rev.COP12) and 11.33 (Rev.COP12) contained in Annex 1;
  - b) recommend the consolidated Resolution included in Annex 2 for adoption by COP13;
  - c) formulate its evaluation of the effectiveness of the guidelines to assess proposals to list migratory species in Appendices I and II and transmit its views to COP13.

**DRAFT CONSOLIDATED RESOLUTION:  
GUIDELINES FOR PREPARING AND ASSESSING PROPOSALS FOR THE AMENDMENT OF  
CMS APPENDICES**

*NB: Proposed new text is underlined. Text to be deleted is ~~crossed-out~~.*

<b>Text from Existing Resolutions</b>	<b>Origin/Comments</b>
<i>Recalling</i> that CMS requirements for listing migratory species in Appendix I are set out in paragraphs 1 and 2 of Article III, and requirements for listing migratory species in Appendix II are set out in paragraph 1 of Article IV of the Convention,	Resolution 11.33 (Rev.COP12)  Retain
<i>Emphasizing</i> that species proposed to be included in either Appendix I or II of the Convention must be migratory species, as defined in Article I, paragraph 1(a),	Resolution 11.33 (Rev.COP12)  Retain
<i>Recalling</i> that Resolution 1.4 from its first meeting directed the Scientific Council to formulate guidelines on terms used in the Convention and to review the species listed in its Appendices,	Resolution 3.1 (Rev.COP12)  Retain
<del><i>Noting with thanks that the Council has now reported to the Conference of the Parties on these matters and has made a number of recommendations to it,</i></del>	Resolution 3.1 (Rev.COP12)  Repeal; out of date
<i>Noting</i> that in Resolution 5.3 the Conference of the Parties decided to interpret 'endangered' in Article 1 paragraph 1(e) of the Convention as meaning "facing a very high risk of extinction in the wild in the near future" and <i>considering</i> that this interpretation should be maintained,	Resolution 11.33 (Rev.COP12)  Retain
<i>Further noting</i> that in Resolution 2.2, paragraph 1(a) the Conference of the Parties adopted guidelines for the interpretation of the words 'cyclically' and 'predictably' in the definition of 'migratory species' and <i>considering</i> that these interpretations should be maintained,	Resolution 11.33 (Rev.COP12)  Retain
<i>Noting with appreciation</i> the work undertaken by the CMS Scientific Council through Document UNEP/CMS/COP11/Doc.24.2/Rev.1 to develop guidelines to assist the Scientific Council and the Conference of the Parties to assess proposals for listing of species in, and the delisting of species from, the Appendices of the Convention,	Resolution 11.33 (Rev.COP12)  Retain
<i>Considering</i> that the best scientific evidence available should be used in <u>preparing and assessing</u> listing proposals,	Resolution 11.33 (Rev.COP12)  Retain and amend to reflect the extended scope of the resolution
<i>Considering</i> the unique features and phenomenon of migratory species and significance of ecological networks in this regard,	Resolution 11.33 (Rev.COP12)  Retain
<i>Considering further</i> that there should be conservation benefit expected to arise from a listing proposal being adopted,	Resolution 11.33 (Rev.COP12)  Retain

Text from Existing Resolutions	Origin/Comments
<p><i>Recalling</i> that in Resolution 3.1 the Conference of the Parties agreed that additions to the Appendices of the Convention should be limited to species or lower taxa and that the migratory species covered by higher taxa listings in Appendix II need only be identified when agreements were being prepared,</p>	<p>Resolution 11.33 (Rev.COP12)  Retain</p>
<p><i>Further recalling</i> that many species are listed in the Appendices of both the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and CMS and that for States that are Party to both Conventions it is desirable that the actions of the Conventions be complementary,</p>	<p>Resolution 11.33 (Rev.COP12)  Retain</p>
<p><i>Further recalling</i> that Regional Fisheries Management Organizations (RFMOs) establish conservation and management measures for many marine species (target or bycatch) managed under their purview, as applicable to all fishing vessels operating within the RFMOs Convention Area, based on the advice of the scientific committees of these bodies, and</p>	<p>Resolution 11.33 (Rev.COP12)  Retain</p>
<p><i>Recognizing</i> the value of seeking views from other intergovernmental bodies with respect to proposals for amendments to the Appendices,</p>	<p>Resolution 11.33 (Rev.COP12)  Retain</p>
<p><i>The Conference of the Parties to the Convention on the Conservation of Migratory Species</i></p>	
<p>1. <i>Decides</i> to interpret the term “endangered” in Article I, paragraph 1(e), of the Convention, as meaning:  “facing a very high risk of extinction in the wild in the near future”;</p>	<p>Resolution 11.33 (Rev.COP12)  Retain</p>
<p><del>1.2.</del> <i>Agrees</i> that, in applying the <del>guideline</del> for interpretation of the term “endangered” <del>adopted in Resolution 2.2 from the second meeting of the Conference of the Parties,</del> the following general principles should apply:</p> <p>a) The restriction of the listing of species in Appendix I to those which are “endangered” applies to the consideration of future proposals, but not necessarily retrospectively to species already listed;</p> <p>b) Bearing in mind that Article III, paragraph (3) (b) of the Convention provides that a migratory species may be removed from Appendix I when it is determined that the species is not likely to become endangered again because of loss of protection due to its removal from Appendix I, <u>and referring to the interpretation of the term “endangered” provided in this Resolution</u>, recognizing that CMS Appendix I species are broadly defined as ‘endangered’, which has been defined by the Convention in Resolution 11.33 (Rev. COP12) as “facing a very high risk of extinction in the wild in the near future”; species categorized by the International Union for Conservation of Nature (IUCN) Red List Categories and Criteria (Version 3.1, second edition) as ‘Extinct in the Wild’, ‘Critically Endangered’, or ‘Endangered’ using the IUCN Red List criteria should be retained in Appendix I;</p>	<p>Resolution 3.1 (Rev.COP12)  Retain and amend to eliminate outdated text and avoid redundancy</p>

Text from Existing Resolutions	Origin/Comments
<p><u>2.3.</u> <i>Decides</i> that in the interpretation of the term "migratory species" in Article I, paragraph 1 (a) of the Convention:</p> <p>(i) The word "cyclically" in the phrase "cyclically and predictably" relates to a cycle of any nature, such as astronomical (circadian, annual etc.), life or climatic, and of any frequency;</p> <p>(ii) The word "predictably" in the phrase "cyclically and predictably" implies that a phenomenon can be anticipated to recur in a given set of circumstances, though not necessarily regularly in time;</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>
<p><u>3.4.</u> <i>Resolves</i> that, by virtue of the precautionary approach and in case of uncertainty regarding the status of a species, the Parties shall act in the best interest of the conservation of the species concerned and, when considering proposals to amend Appendix I or II, adopt measures that are proportionate to the anticipated risks to the species;</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>
<p><u>2.5.</u> <i>Agrees</i> that further additions to the Appendices of the Convention should be limited to species or lower taxa and that the migratory species covered by higher taxa listings already in Appendix II need only be identified when <del>AGREEMENTS</del> <u>Agreements are prepared pursuant to Art. IV of the Convention were being prepared</u>;</p>	<p>Resolution 3.1 (Rev.COP12)</p> <p>Retain and amend to reflect the fact that the Parties have alternatives to AGREEMENTS. In line with Resolution 12.8, the term "Agreement" is used to refer to AGREEMENTS, agreements and Memoranda of Understanding.</p>
<p><u>3.6.</u> <i>Adopts</i> the guideline that a State should be considered a "Range State" for a migratory species when a significant proportion of a geographically separate population of that species occasionally occurs in its territory;</p>	<p>Resolution 3.1 (Rev.COP12)</p> <p>Retain</p>
<p><u>4.7.</u> <i>Adopts</i> the <i>Format for Proposals to Amend CMS Appendices</i>, contained in Annex 2 to this Resolution;</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>
<p><u>4.8.</u> <i>Requests</i> Parties preparing proposals for addition of a species to Appendix I to consider whether that species should also be listed in Appendix II;</p>	<p>Resolution 3.1 (Rev.COP12)</p> <p>Retain</p>

Text from Existing Resolutions	Origin/Comments
<p><del>5.9.</del> <i>Urges</i> any Party proposing the addition to Appendix II of a species for which it is a Range State to initiate negotiations with other Range States towards an <del>AGREEMENT</del> <u>Agreement or a Concerted Action</u> for that species;</p>	<p>Resolution 3.1 (Rev.COP12)</p> <p>Retain and amend to reflect the fact that the Parties have alternatives to AGREEMENTS, including Concerted Actions. In line with Resolution 12.8, the term “Agreement” is used to refer to AGREEMENTS, agreements and Memoranda of Understanding.</p>
<p><del>6.10.</del> <i>Encourages</i> Parties to consider submitting proposals for the listing of species from regions of the world currently under-represented in the Appendices and to assist developing country Parties to prepare such proposals;</p>	<p>Resolution 3.1 (Rev.COP12)</p> <p>Retain</p>
<p><del>5.11.</del> <i>Requests</i> the Secretariat to consult other relevant intergovernmental bodies, including RFMOs, having a function in relation to any species subject to a proposal for amendment of the Appendices and to report on the outcome of those consultations to the relevant meeting of the Conference of Parties; and</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>
<p><del>6.</del> <i>Decides</i> that this Resolution replaces Resolutions 2.2 and 5.3 for assessing listing proposals to Appendix I and II of the Convention.</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Repeal</p>
<p><u>12. Repeals</u></p> <p>(a) <u>Resolution 3.1 (Rev.COP12) Listing of Species in the Appendices of the Convention;</u></p> <p>(<del>b</del>) <u>Resolution 11.33 (Rev.COP12) Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention.</u></p>	<p>New text to reflect consolidation</p>
<p style="text-align: center;"><b>ANNEX 1</b> <b>GUIDELINES FOR ASSESSMENT OF APPENDIX I AND II LISTING PROPOSALS</b></p> <p style="text-align: center;">[Omitted due to length]</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>
<p style="text-align: center;"><b>ANNEX 2</b> <b>FORMAT FOR PROPOSALS TO AMEND CMS APPENDICES</b></p> <p style="text-align: center;">[Omitted due to length]</p>	<p>Resolution 11.33 (Rev.COP12)</p> <p>Retain</p>

DRAFT RESOLUTION

**GUIDELINES FOR PREPARING AND ASSESSING PROPOSALS  
FOR THE AMENDMENT OF CMS APPENDICES**

*Recalling* that CMS requirements for listing migratory species in Appendix I are set out in paragraphs 1 and 2 of Article III, and requirements for listing migratory species in Appendix II are set out in paragraph 1 of Article IV of the Convention,

*Emphasizing* that species proposed to be included in either Appendix I or II of the Convention must be migratory species, as defined in Article I, paragraph 1(a),

*Recalling* that Resolution 1.4 from its first meeting directed the Scientific Council to formulate guidelines on terms used in the Convention and to review the species listed in its Appendices,

*Noting* that in Resolution 5.3 the Conference of the Parties decided to interpret 'endangered' in Article 1 paragraph 1(e) of the Convention as meaning "facing a very high risk of extinction in the wild in the near future" and *considering* that this interpretation should be maintained,

*Further noting* that in Resolution 2.2, paragraph 1(a) the Conference of the Parties adopted guidelines for the interpretation of the words 'cyclically' and 'predictably' in the definition of 'migratory species' and *considering* that these interpretations should be maintained,

*Noting with appreciation* the work undertaken by the CMS Scientific Council through Document UNEP/CMS/COP11/Doc.24.2/Rev.1 to develop guidelines to assist the Scientific Council and the Conference of the Parties to assess proposals for listing of species in, and the delisting of species from, the Appendices of the Convention,

*Considering* that the best scientific evidence available should be used in preparing and assessing listing proposals,

*Considering* the unique features and phenomenon of migratory species and significance of ecological networks in this regard,

*Considering further* that there should be conservation benefit expected to arise from a listing proposal being adopted,

*Recalling* that in Resolution 3.1 the Conference of the Parties agreed that additions to the Appendices of the Convention should be limited to species or lower taxa and that the migratory species covered by higher taxa listings in Appendix II need only be identified when agreements were being prepared,

*Further recalling* that many species are listed in the Appendices of both the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and CMS and that for States that are Party to both Conventions it is desirable that the actions of the Conventions be complementary,



*Further recalling* that Regional Fisheries Management Organizations (RFMOs) establish conservation and management measures for many marine species (target or bycatch) managed under their purview, as applicable to all fishing vessels operating within the RFMOs Convention Area, based on the advice of the scientific committees of these bodies, and

*Recognizing* the value of seeking views from other intergovernmental bodies with respect to proposals for amendments to the Appendices,

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

1. *Decides* to interpret the term “endangered” in Article I, paragraph 1(e), of the Convention, as meaning:
 

“facing a very high risk of extinction in the wild in the near future”;
2. *Agrees* that, in applying the interpretation of the term "endangered", the following general principles should apply:
  - a) The restriction of the listing of species in Appendix I to those which are "endangered" applies to the consideration of future proposals, but not necessarily retrospectively to species already listed;
  - b) Bearing in mind that Article III, paragraph (3) (b) of the Convention provides that a migratory species may be removed from Appendix I when it is determined that the species is not likely to become endangered again because of loss of protection due to its removal from Appendix I, and referring to the interpretation of the term “endangered” provided in this Resolution, species categorized by the International Union for Conservation of Nature (IUCN) Red List Categories and Criteria (Version 3.1, second edition) as ‘Extinct in the Wild’, ‘Critically Endangered’, or ‘Endangered’ using the IUCN Red List criteria should be retained in Appendix I;
3. *Decides* that in the interpretation of the term "migratory species" in Article I, paragraph 1 (a) of the Convention:
  - (i) The word "cyclically" in the phrase "cyclically and predictably" relates to a cycle of any nature, such as astronomical (circadian, annual etc.), life or climatic, and of any frequency;
  - (ii) The word "predictably" in the phrase "cyclically and predictably" implies that a phenomenon can be anticipated to recur in a given set of circumstances, though not necessarily regularly in time;
4. *Resolves* that, by virtue of the precautionary approach and in case of uncertainty regarding the status of a species, the Parties shall act in the best interest of the conservation of the species concerned and, when considering proposals to amend Appendix I or II, adopt measures that are proportionate to the anticipated risks to the species;
5. *Agrees* that further additions to the Appendices of the Convention should be limited to species or lower taxa and that the migratory species covered by higher taxa listings already in Appendix II need only be identified when Agreements are prepared pursuant to Art. IV of the Convention;

6. *Adopts* the guideline that a State should be considered a "Range State" for a migratory species when a significant proportion of a geographically separate population of that species occasionally occurs in its territory;
7. *Adopts* the *Format for Proposals to Amend CMS Appendices*, contained in Annex 2 to this Resolution;
8. *Requests* Parties preparing proposals for addition of a species to Appendix I to consider whether that species should also be listed in Appendix II;
9. *Urges* any Party proposing the addition to Appendix II of a species for which it is a Range State to initiate negotiations with other Range States towards an Agreement or a Concerted Action for that species;
10. *Encourages* Parties to consider submitting proposals for the listing of species from regions of the world currently under-represented in the Appendices and to assist developing country Parties to prepare such proposals;
11. *Requests* the Secretariat to consult other relevant intergovernmental bodies, including RFMOs, having a function in relation to any species subject to a proposal for amendment of the Appendices and to report on the outcome of those consultations to the relevant meeting of the Conference of Parties; and
12. Repeals
  - (a) Resolution 3.1 (Rev.COP12) Listing of Species in the Appendices of the Convention;
  - (b) Resolution 11.33 (Rev.COP12) Guidelines for Assessing Listing Proposals to Appendices I and II of the Convention.

**ANNEX 1  
GUIDELINES FOR ASSESSMENT OF APPENDIX I AND II LISTING PROPOSALS**

[Omitted due to length]

**ANNEX 2  
FORMAT FOR PROPOSALS TO AMEND CMS APPENDICES**

[Omitted due to length]