



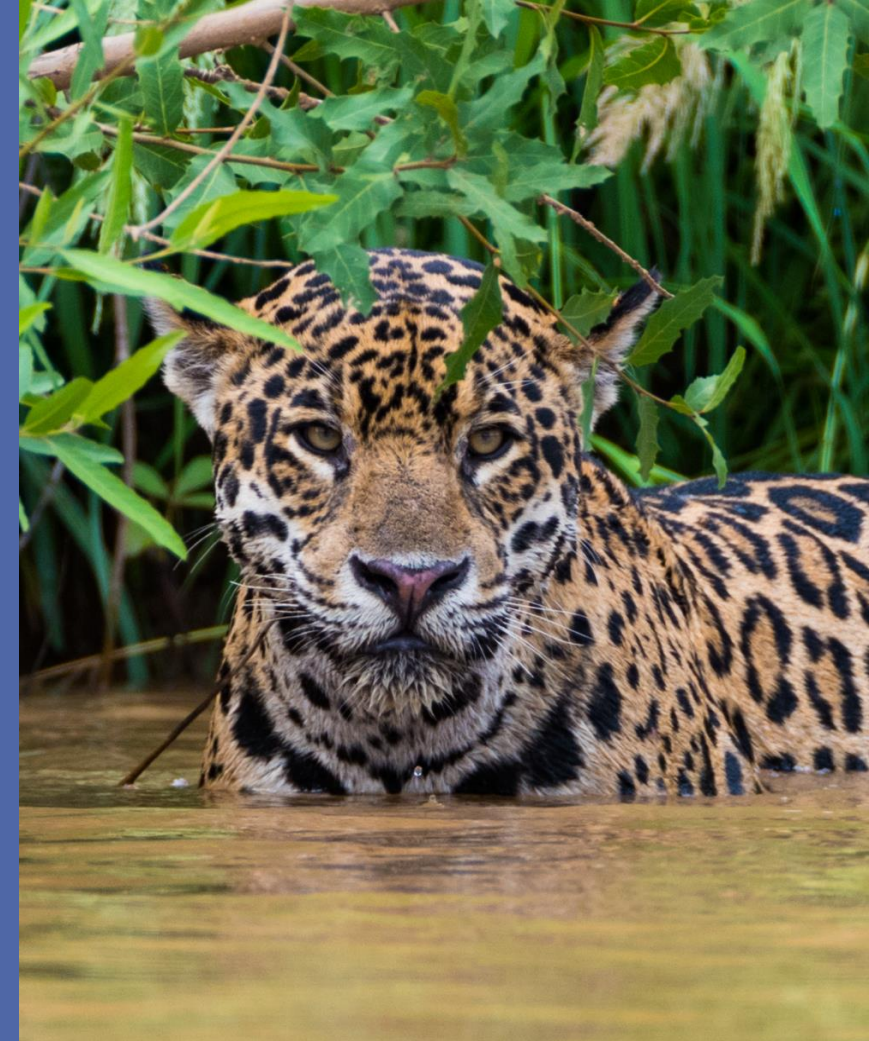
Global Workshop on CMS Legislation

Article III.5 "Take Prohibition" & CMS National Legislation Programme

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3-5 June 2025, Bonn, Germany



The European Union was recognized as Champion Plus for its generous support and commitment towards strengthening national legislation for migratory species for the period 2020 - 2025. This activity has been funded with the contribution granted by the European Commission under the Migratory Species Champion Programme and through the Global Public Goods and Challenges (GPGC Programme) Cooperation Agreements with UNEP.





NLP Mandate

Establishment of the NLP

- CMS Resolution 12.9 *Establishment of a Review Mechanism and a National Legislation Programme*
- CMS COP14 Decisions 14.28-14.29 *Review Mechanism and National Legislation Programme*





Objectives

- Support long-term compliance with Articles III.4(a), III.4(b), and III.5
- Facilitative, non-adversarial, Party-driven process
- Help Parties develop or improve national legislation
- Provide legal guidance, model laws, and technical support

Articles III.4 a) and b) and III.5

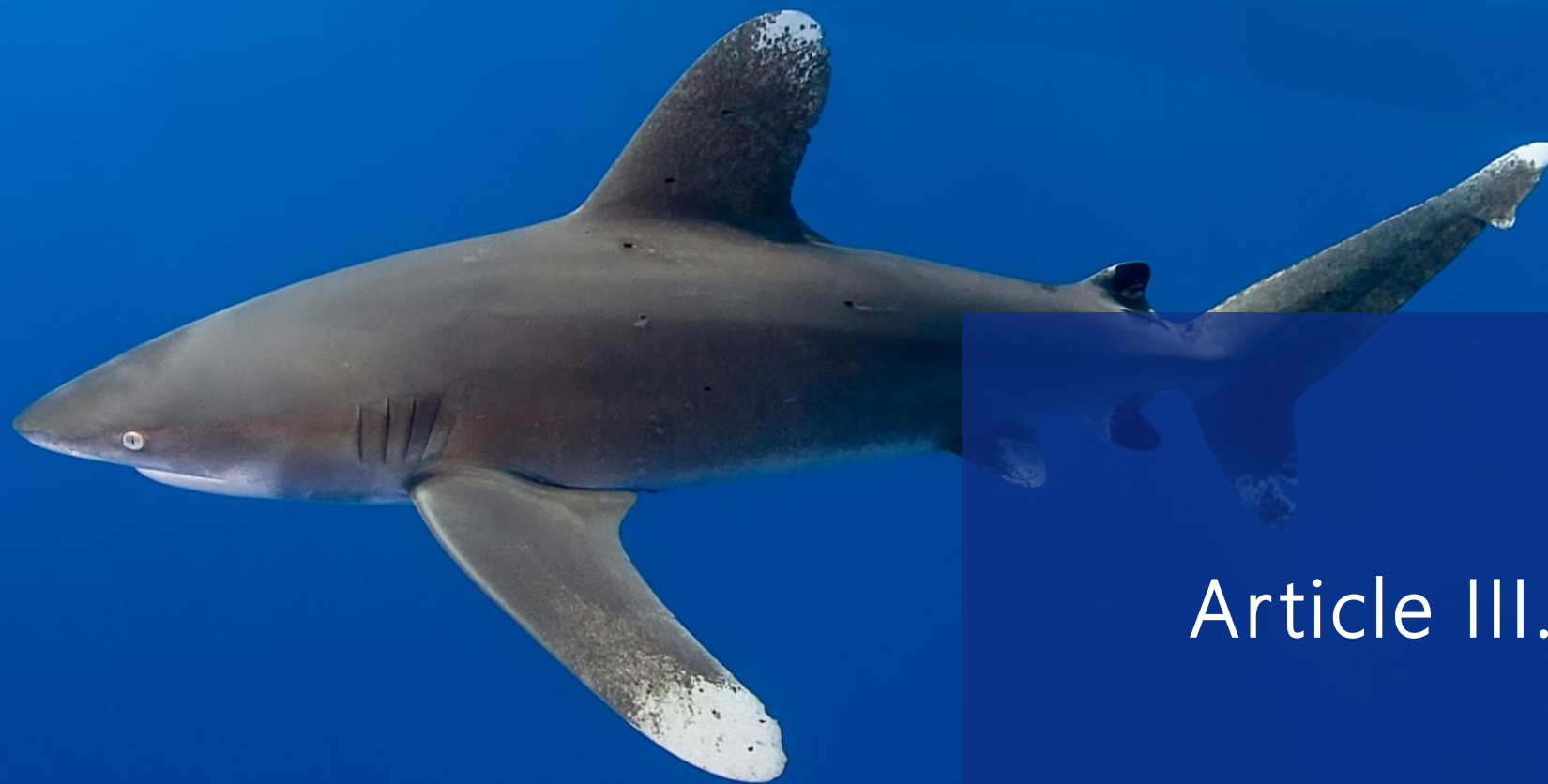
III. 4. Parties that are Range States of a migratory species listed in Appendix I **shall endeavour:**

- a) to conserve and, where feasible and appropriate, restore those **habitats** of the species which are of importance in removing the species from danger of extinction;
- b) to prevent, remove, compensate for or minimize, as appropriate, the **adverse effects of activities or obstacles** that seriously impede or prevent the migration of the species; and

III. 5. Parties that are Range States of a migratory species listed in Appendix I **shall prohibit the taking** of animals belonging to such species. **Exceptions** may be made to this prohibition only if:

- a) the taking is for scientific purposes;
- b) the taking is for the purpose of enhancing the propagation or survival of the affected species;
- c) the taking is to accommodate the needs of traditional subsistence users of such species; or
- d) extraordinary circumstances so require;

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.



Article III.5



“Taking” Definition and Species

*Parties that are Range States of a migratory species listed in Appendix I shall prohibit the **taking** of animals belonging to such species. (CMS Article III.5)*

“Taking” means taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct; (CMS Article I.1.i)

- Domestic legislation must account for the different types of activities that constitute “taking” and their attempt

Taking Definition - Suggestions for consideration

- Prohibit all conduct as defined by CMS Article I.1.i) "taking" definition
 - a) Adopt the "taking" definition and prohibit "taking"; or
 - b) List all conduct included in the definition and prohibit it
- Prohibit "attempt" and "harassing" and define "harassing" as follows:
 - *"Harassing" means to disturb, pursue, injure, feed, or otherwise disrupt an animal*
- Apply the "taking" prohibition to eggs, nests, breeding and nesting sites by including them in the "animal"/"species" definition in national legislation

Appendix I Species

- It shall apply throughout the entire span of migration of species included in Appendix I
- All relevant legislation (or a single law!) should prohibit the taking of “all species included in CMS Appendix I”

E.g. “This decree-law establishes the legal regime applicable to the protection and conservation of wild flora and fauna and the natural habitats of the species listed in the Appendices of the Convention on the Conservation of Migratory Species of Wild Animals, known as the Bonn Convention.”

“For the protection of species of wild fauna listed in [...] Appendices I (and II) to the Bonn Convention [...], and unless a licence is issued in accordance with Article 11, the following shall be prohibited:”



Geographical Scope

"Range State" in relation to a particular migratory species means any State (and where appropriate any other Party referred to under subparagraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species; (CMS Article I.1.h))

- Domestic legislation must extend the take prohibition throughout a State territory, territorial seas, exclusive economic zone (if applicable), and with respect to their flagged vessels to areas beyond national jurisdiction



Geographical Scope

Suggestions for consideration

- a) Identify the various habitats or areas to which the prohibition against taking applies:

e.g. "in terrestrial habitats, internal waters, territorial seas, and exclusive economic zones under the jurisdiction of [a State], and flagged vessels operating in areas beyond national jurisdiction"

or

- b) Focus on jurisdiction:

e.g. "in any area under the jurisdiction of [this State], including vessels flagged or registered by [this State] when operating in areas beyond national jurisdiction"



Exceptions to the “Taking” Prohibition

Article III.5 *Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. **Exceptions may be made to this prohibition only if:***

- a) the taking is for scientific purposes;*
- b) the taking is for the purpose of enhancing the propagation or survival of the affected species;*
- c) the taking is to accommodate the needs of traditional subsistence users of such species; or*
- d) extraordinary circumstances so require;*

***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.*

- Exceptions under domestic law shall be clearly defined, and must be geographically limited and time-bound.



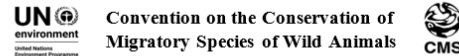
NLP Implementation

Scope of NLP in Articles III.4 a) and b) and III.5 CMS Resolution 12.9

Action / Responsibility	Article III.4 (a) and (b)	Article III.5
Submit information on legislation	<input checked="" type="checkbox"/> Encouraged (Library)	<input checked="" type="checkbox"/> Encouraged (Library)
Secretariat identifies gaps		<input checked="" type="checkbox"/> Requested (National Legislation Profiles)
Secretariat communicates findings and recommended actions		<input checked="" type="checkbox"/> Requested
Parties send comments back (6 months)		<input checked="" type="checkbox"/> Requested
Parties implement legislation		<input checked="" type="checkbox"/> Requested
Support from the Secretariat (guidance, model laws, technical assistance, workshops)	<input checked="" type="checkbox"/> Subject to resources	<input checked="" type="checkbox"/> Subject to resources
Exemption from further review		<input checked="" type="checkbox"/>
Voluntary contributions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Secretariat to collaborate with CITES National Legislation Project	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Workstreams

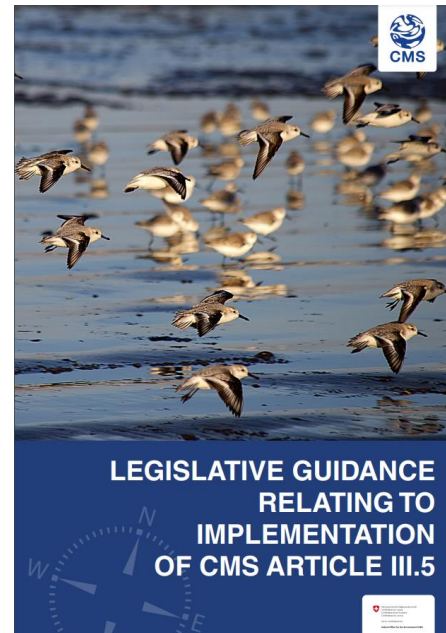
- National Legislation Profiles
- Legislative Guidance and Model Laws
- Technical assistance and capacity-building



Country's National Legislation Profile

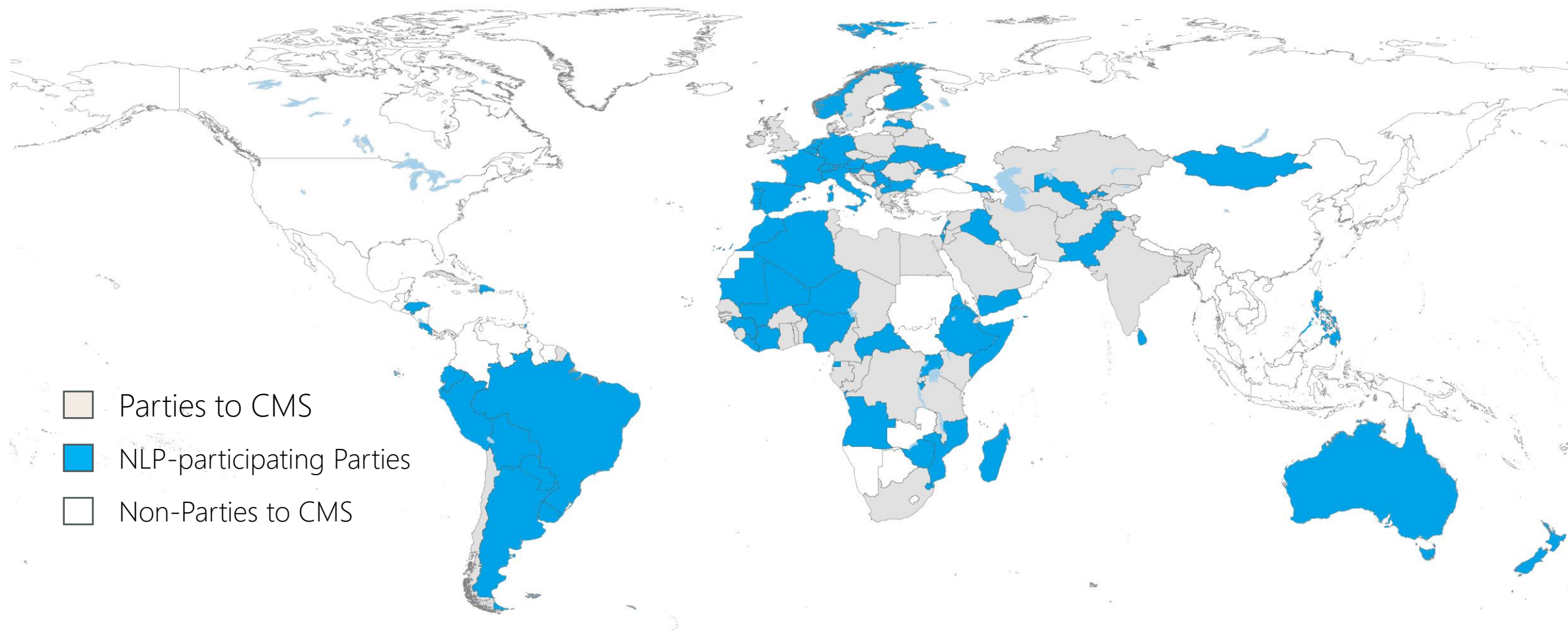
1. The Conference of the Parties at its 12th meeting (COP12, Manila, 2017) adopted [UNEP/CMS/Resolution 12.9](#) and Decisions 12.6-12.9 on the *Establishment of a Review Mechanism and a National Legislation Programme*. The Conference of the Parties at its 14th meeting (COP14, Samarkand, 2024) adopted [Decisions 14.28-14.29](#) on the *Review Mechanism and National Legislation Programme*.
2. Section II of Resolution 12.9 established a National Legislation Programme to support implementation of the Convention, specifically aimed at ensuring long-term compliance with Article III, paragraphs 4(a) and (b) and 5. It encouraged Parties to submit information to the Secretariat regarding their legislation and other domestic measures relating to implementation of Article III, paragraphs 4(a) and (b) and 5.
3. In order to implement the National Legislation Programme, the Secretariat prepared an inventory of information concerning each Party's implementation of CMS Articles III.4 and III.5, and developed a questionnaire for Parties to complete in order to fill in knowledge gaps concerning implementation of Article III, paragraph 5.
4. The responses to the questionnaires, together with information from the inventories, were used to prepare an initial set of Legislative Guidance Materials and a Model Law for implementation of Article III.5, as well as National Legislation Profiles, including findings and recommended actions.
5. The Secretariat has drafted a National Legislation Profile for the country. The first section of the profile (Findings) is based on the information provided in the questionnaire, the analysis of legislation and domestic measures that the country indicated as implementing CMS Article III.5 domestically, and any dialogue that has taken place between the Secretariat and the Focal Point for the country. The second section (Recommended Actions) is intended to provide constructive feedback that could be used to enhance legislation. It aims at supporting the implementation of CMS Article III.5 through the country's domestic legislative framework by requesting further clarification of specific issues and/or recommending particular actions.
6. Due to differences in legislative systems worldwide, different interpretations, limitations with respect to translation capacity in the Secretariat, and the complexity of analyzing national laws, errors and/or omissions may exist in the findings or recommendations below. As this aims to be a constructive dialogue, we kindly ask you to provide clarification of any such point that you may identify in the Findings or Recommended Actions.
7. Pursuant to Section II(5) of Resolution 12.9, within six months of having received this document from the Secretariat, the country is requested to indicate procedures, actions and reasonable time frames that are envisaged in response.

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Global Workshop on CMS Legislation
UN Campus Bonn, Germany
3-5 June 2025

70 NLP-participating Parties



The depiction and use of boundaries, geographic names and related data shown on the map are not warranted to be error free nor do they necessarily imply official endorsement or acceptance by the United Nations.



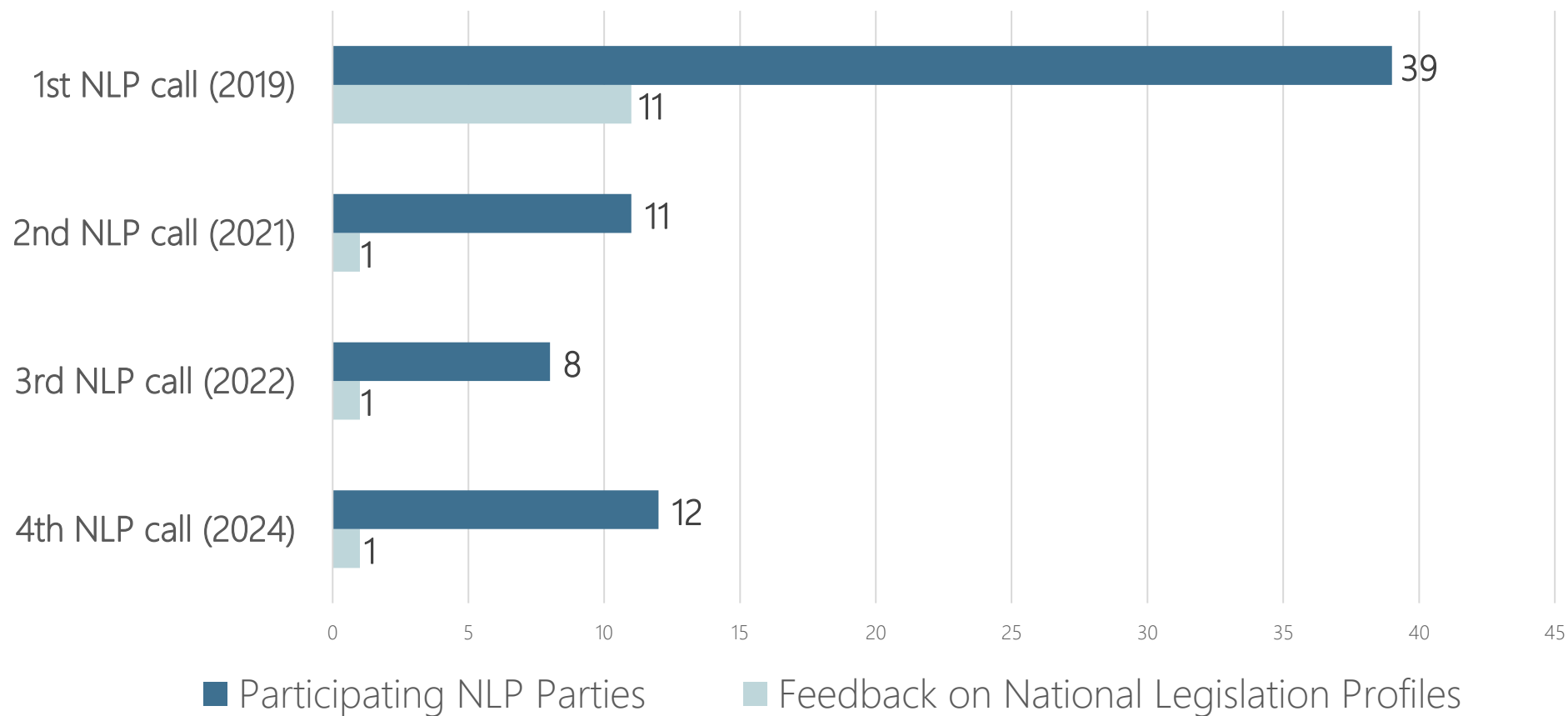
NLP Findings

National Legislation Profiles

- 4 calls (2019, 2021, 2022, 2024)
-
- Questionnaire on the implementation of Articles III.4 a) and b) and III.5
 - Table of CMS Appendix I species
-
- 70 National Legislation Profiles
 - Findings and Recommended Actions on Article III.5
 - based on *Legislative Guidance Relating to Implementation of CMS Article III.5*



NLP Parties Feedback to the Secretariat

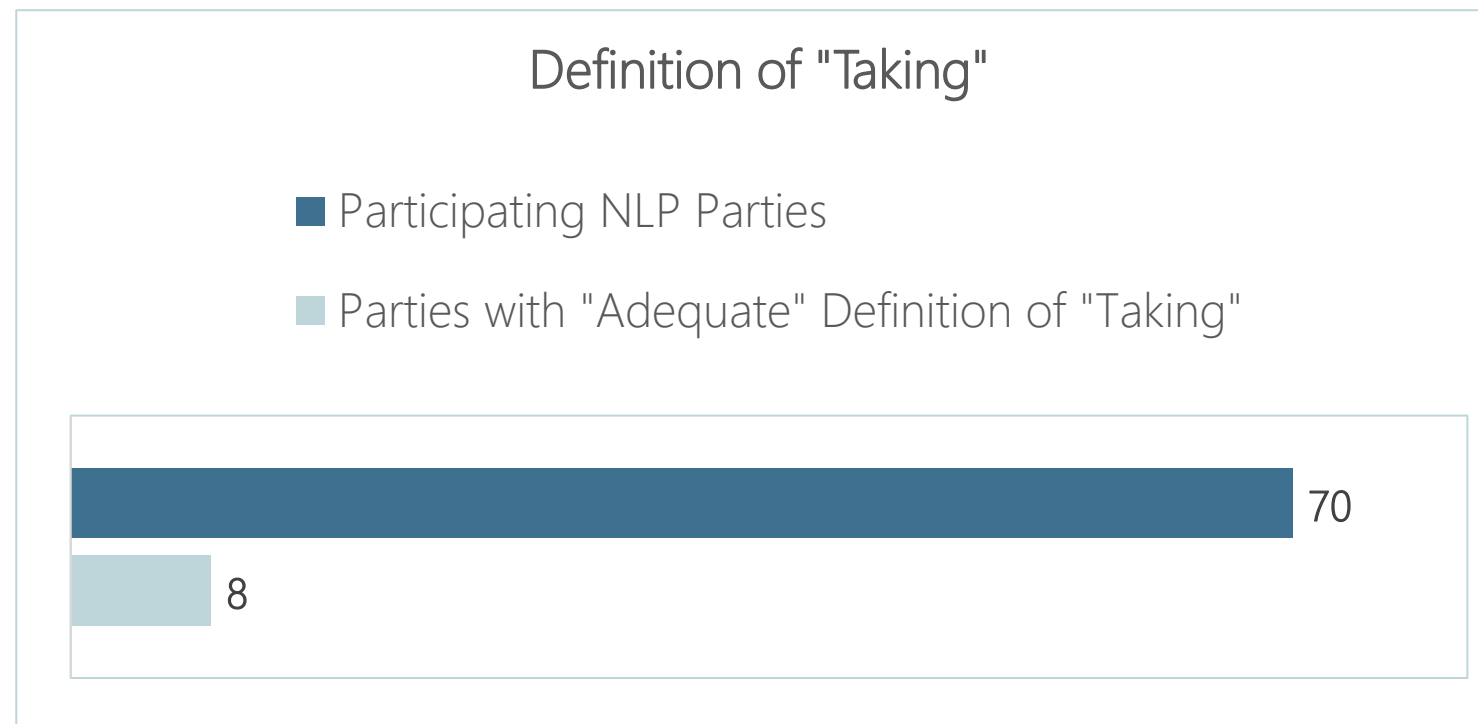




“Taking” Prohibition

"Taking" Prohibition

CMS Article I.1.i) *"Taking" means taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct*

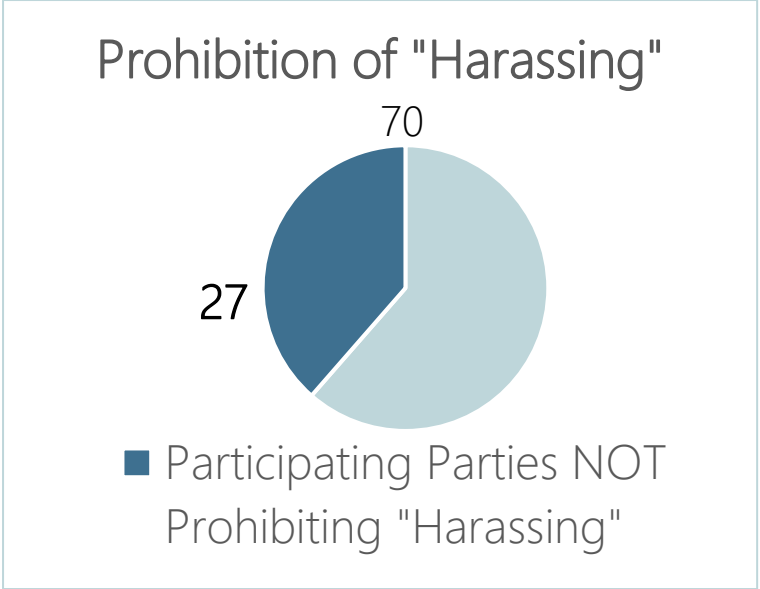


Some examples of Parties' Legislation

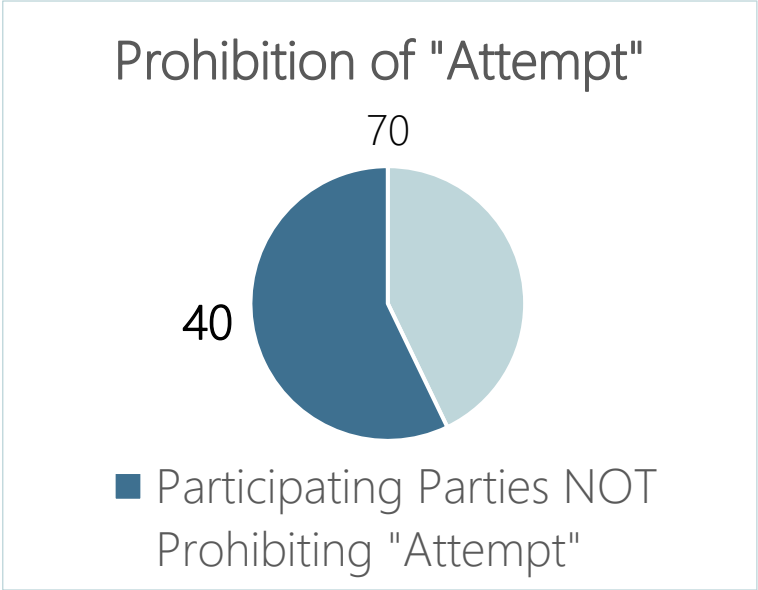
- Some Parties either prohibit “taking” as defined by the Convention or prohibit *all* range of actions falling under “taking”.
 - e.g. *“It is prohibited unnecessarily catching, killing or deliberately disturbing or harassing wild animals.”*
 - “The penalties against intentional acts shall apply not only to the completed act but also to the attempt and to any participation in an attempt.”*
- Many Parties, however, prohibit *most* of the full range of actions included in the “taking” definition.
 - e.g. *“The hunting, capture, trafficking or otherwise dealing in any specimen of species included in the First Schedule [wild animals considered to be threatened with extinction] is hereby prohibited.”*

What is often missing?

- Prohibition of "harassing"



- Prohibition of "attempt"





Geographical Scope of Application of Art.III.5

Some examples of Parties' Legislation – observed omissions

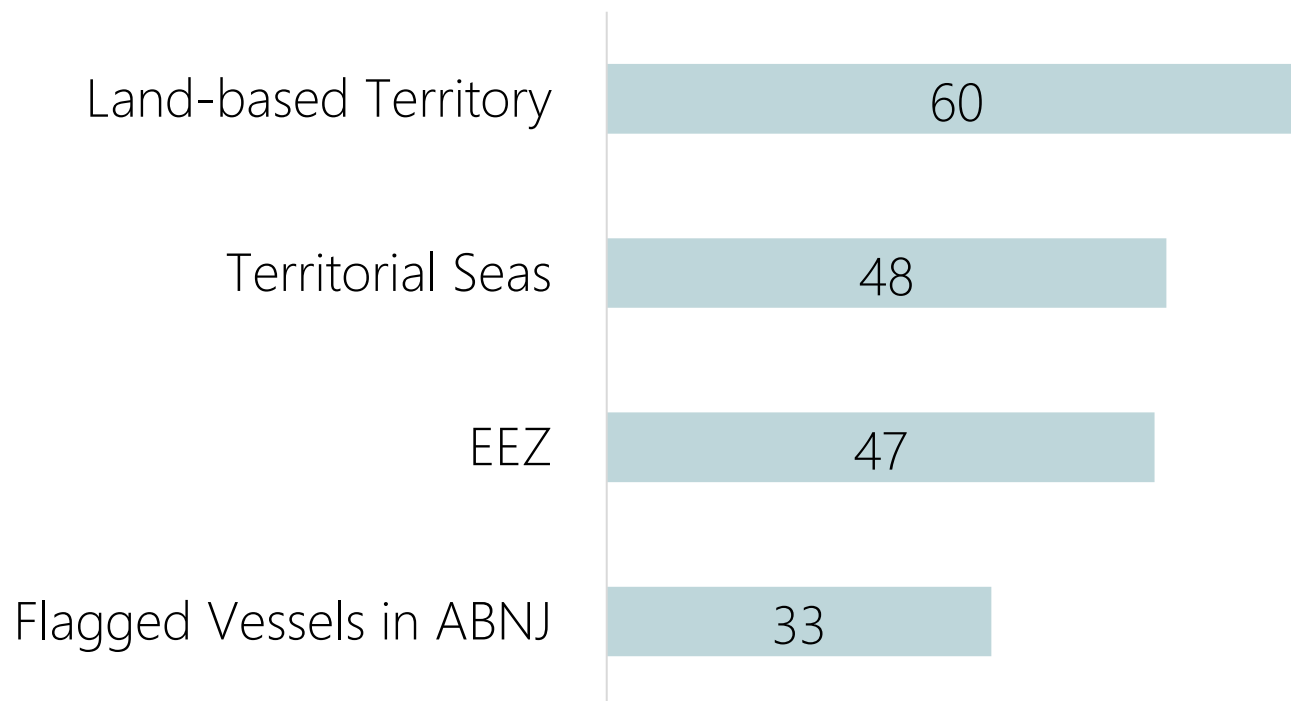
a) Scope of application excludes a key jurisdictional zone – sometimes EEZ, but most frequently country's flagged vessels in areas beyond national jurisdiction (ABNJ) - or is not clearly defined

"Fishing Waters: The marine area in which fishing is practised, and located within the territorial sea of [a State], including coastal areas and deep waters"

b) "Taking" prohibition is applied only to protected areas

"The resolution shall specify and determine the prohibited activities, actions and practices in the protected area that [...] damage the wild life [...]"

Geographical Application of the “Taking” Prohibition among 70 NLP-participating Parties





Listing of CMS Appendix I Species in National Legislation



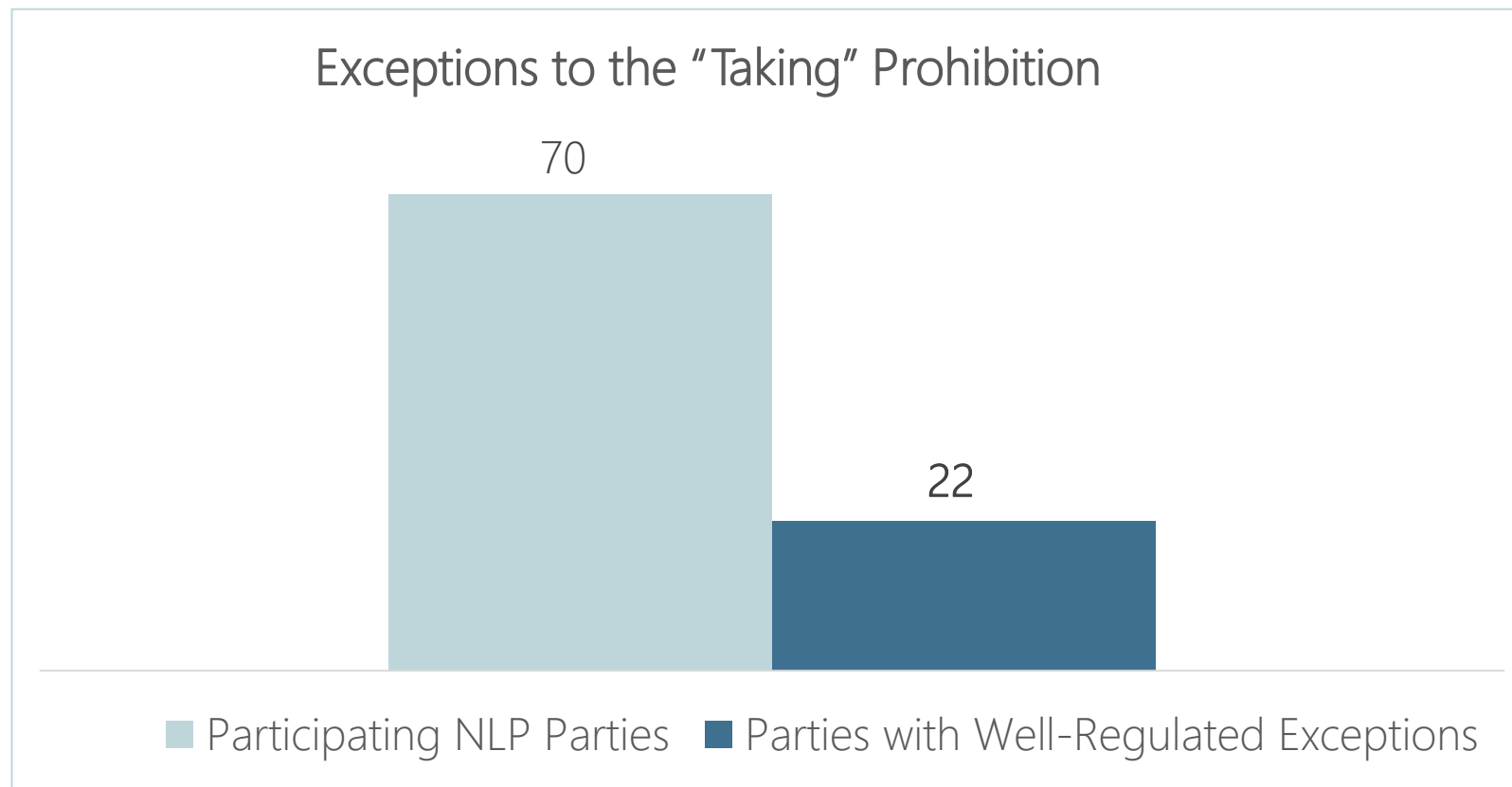
Observations

- Implementation of CMS through multiple laws; CMS Appendix I species not always fully covered
- Definition of “taking” often varies among different laws; similar with exceptions to the “taking” prohibition
- Multiple laws applying to different species sometimes apply across different geographic areas



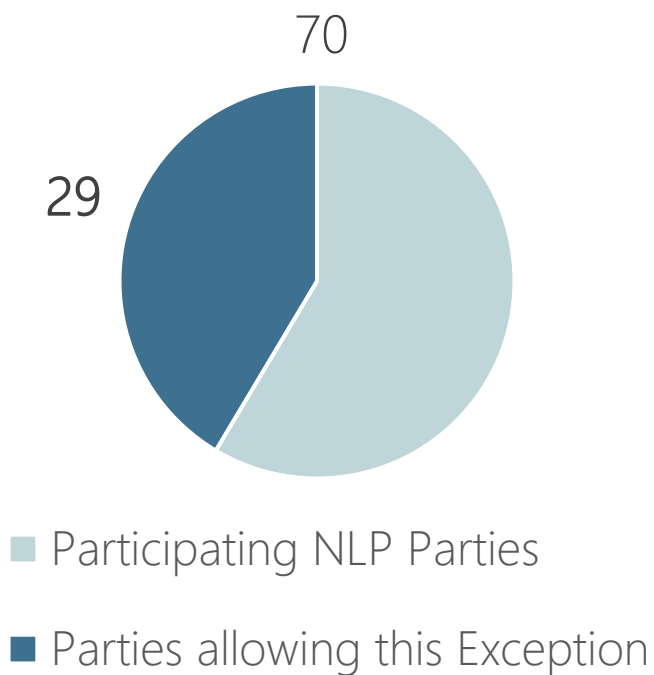
Article III.5 Exceptions
&
Article III.7

Exceptions to the “Taking” Prohibition

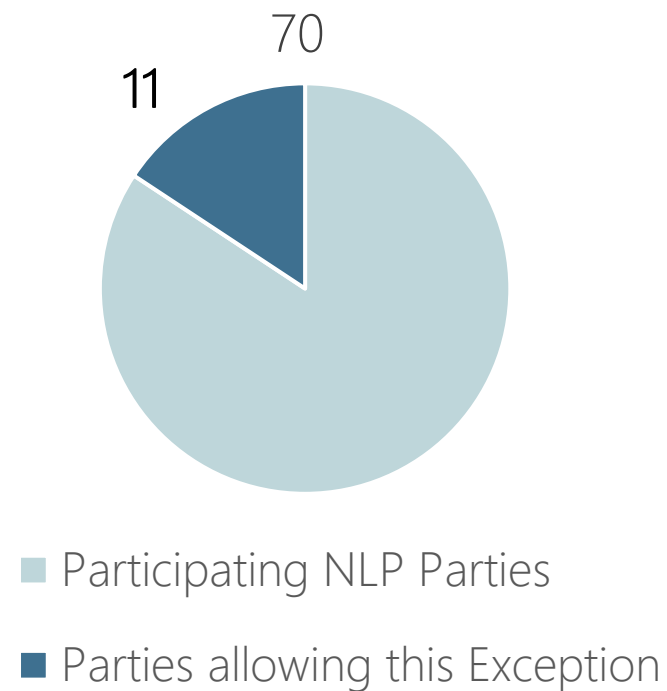


Exceptions to the “Taking” Prohibition

Self-defense Exception



Public Display (impermissible exception)



CMS Article III.7 – Informing of exceptions

CMS Article III.7

The Parties shall as soon as possible inform the Secretariat of any exceptions made pursuant to paragraph 5 of this Article.

Current status

Reporting period:

COP13: 5 Parties (most for exception III.5 c))

COP14: 5 Parties (most for exception III.5 a))



CMS National Report

QIV.2 Exceptions: Where the taking of Appendix I species is prohibited by national legislation, have any exceptions been granted to the prohibition during the reporting period?



If *yes*, please indicate individual cases and provide details of the circumstances in the Excel file linked below, which species, which reasons (among those in CMS Article III(5) (a)-(d)) justify the exception, any temporal or spatial limitations applying to the exception, and the nature of the “extraordinary circumstances” that make the exception necessary.



Discussion



Q1:

- How is your country implementing CMS Article III.5 in the national legislation?

Q2:

- What challenges does your country face in implementing Article III.5, including the recommendations contained in the National Legislation Profiles?



THANK YOU!



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