



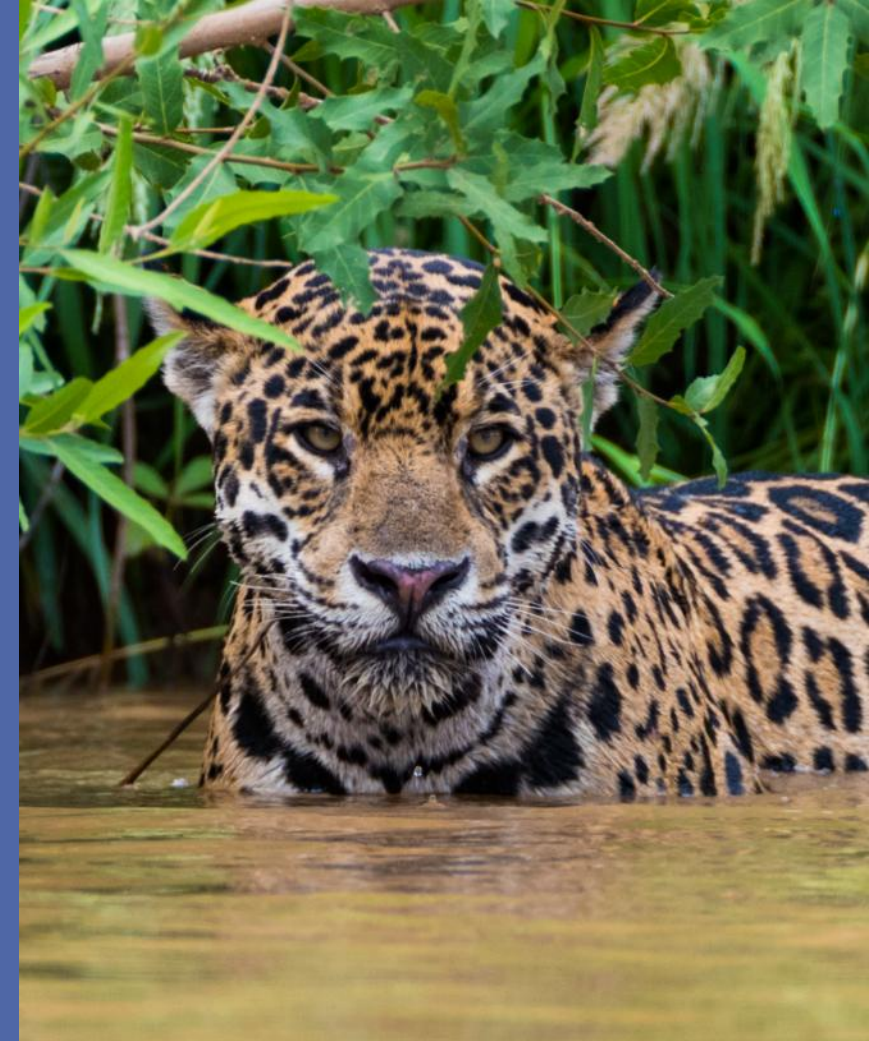
# Global Workshop on CMS Legislation

Portuguese approach to the  
protection of migratory species

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CMS Focal Point of Portugal

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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.





# Ratification / Transposition of CMS

## Implementation of CMS in Portugal (1)

- CMS was ratified in 1980 but there is a Decree-Law to implement the Convention only in 2021
- Current legislation that applies for all CMS listed species is Decree-Law n° 38/2021, 31 May
- Decree-Law n° 38/2021 implements CMS, Bern Convention and also the protection of some indigenous species not listed in any international regulation of nature conservation
- New species are automatically included in legislation as soon as they are included in the annexes to the Convention

## Implementation of CMS in Portugal (2)

### CMS:

Article III.5 prohibits the “taking” of Appendix I-listed species. “Taking” is defined to include “taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct.”

### PT implementation:

- prohibit taking (as defined by the Convention) of all CMS Appendix I species;
- prohibit hunting or fishing of all CMS Appendix I species;
- prohibit capturing of all CMS Appendix I species;
- prohibit harassing of all CMS Appendix I species;
- prohibit deliberate killing of all CMS Appendix I species;
- prohibit “attempting” to engage in hunting, fishing, capturing, harassing, deliberate killing of all CMS Appendix I species;
- prohibit that the taking, as defined by CMS, of all Appendix I species



# Implementation of CMS in Portugal (3)

Decree-Law n° 38/2021, 31 May

Article 5. Wildlife species

1 — With a view to protecting the species of wild fauna listed in Appendices II and III to the Bern Convention, in Appendices I and II to the Bonn Convention or in the annex to this decree-law and except with a license to be issued under the terms of Article 11, the following are prohibited:

- a) The capture or slaughter of its specimens;
- b) The detention of their specimens;
- c) The sale, offer and holding for sale, purchase and offer to purchase, public display or transportation of its specimens;
- d) The deterioration or destruction of their habitats;
- e) Disturbance of its specimens, particularly during the breeding, dependency or hibernation period;
- f) The destruction or harvesting of eggs from their natural environment, even empty ones.

2 — The prohibitions referred to in points a), b) and c) of the previous paragraph apply to all stages of the life of specimens of species included in Appendices II and III to the Bern Convention, in Appendices I and II to the Bonn Convention or in the annex to this decree-law.

3 — The prohibitions referred to in points b) and c) of paragraph 1 apply to hybrids and mutations of specimens of species included in Appendices II and III to the Bern Convention, in Appendices I and II to the Bonn Convention or in the annex to this decree-law.



# Exemptions

# Implementation of CMS in Portugal (4)

## Section III - Article III.5: Exceptions to the "Take" Prohibition

Article III.5 allows exemptions to the prohibition against taking only if the taking is for scientific purposes, enhancing the propagation or survival of the species, accommodating the needs of traditional subsistence users, or, if it occurs in extraordinary circumstances

### PT implementation:

- allows taking of Appendix I species for scientific purposes
- allows taking for the purpose of enhancing the propagation or survival of the affected species
- allows taking when extraordinary circumstances so require
- doesn't allow taking to accommodate the needs of traditional subsistence users of such species
- Doesn't allow taking for any other purpose (for example, public display)
- Exemptions more frequent:
  - Specimens injured or likely to die due to man-made actions to treatment and further release in the wild

## Implementation of CMS in Portugal (5)

Article III.5 allows the exceptions described above 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.”

The acts and activities prohibited may be exceptionally permitted, by means of a license from the ICNF, I. P., provided that, cumulatively, there is no satisfactory alternative, the maintenance of the populations of the species in question in a favorable conservation status in its natural distribution area is not jeopardized and the act or activity in question aims to achieve one of the following purposes:

- Protect wild flora and fauna and conserve natural habitats;
- To avoid serious damage, particularly to crops, livestock, beekeeping, forests, fishing grounds and waters and other forms of property;
- Ensuring public health and safety, aviation safety, or other interests priority audiences, namely of a social or economic nature;
- Achieving positive impacts of primary importance to the environment;
- Enabling research and education



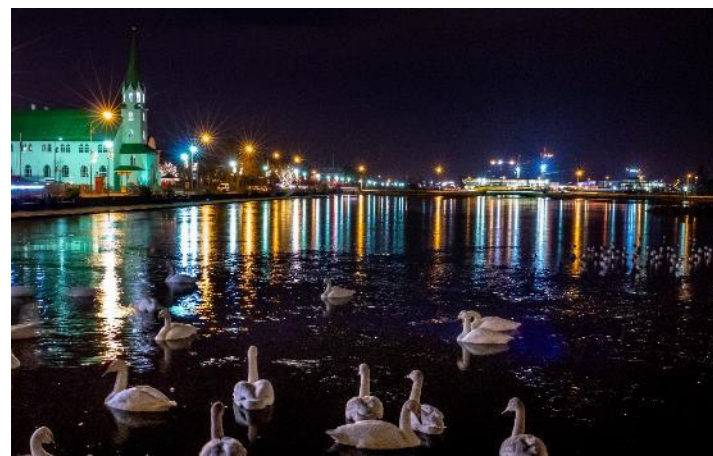
# Implementation of CMS in Portugal (6)

Under international law, treaties are presumed to apply to the entirety of a State's territory, including that State's overseas territories. A State has the right to exclude overseas territories from application of a treaty in its instruments of ratification. A State also has the right to adopt the opposite presumption through State practice. Consequently, the Secretariat is not certain in all circumstances whether a CMS Party has agreed to apply CMS to all of its territory.

In addition, Article I.1(h) defines a Range State as any State 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 (emphasis added). Thus, a Party must extend the prohibitions of Article III.5 to vessels that it flags and which operate on the high seas.

PT Implementation;

- Article III.5 of CMS apply to all of your land-based territory, including all overseas territories, territorial seas, exclusive economic zone, any vessels flagged by your country and which operate outside national jurisdiction (Fishing vessels)





# Sanctions

# Implementation of CMS in Portugal (7)

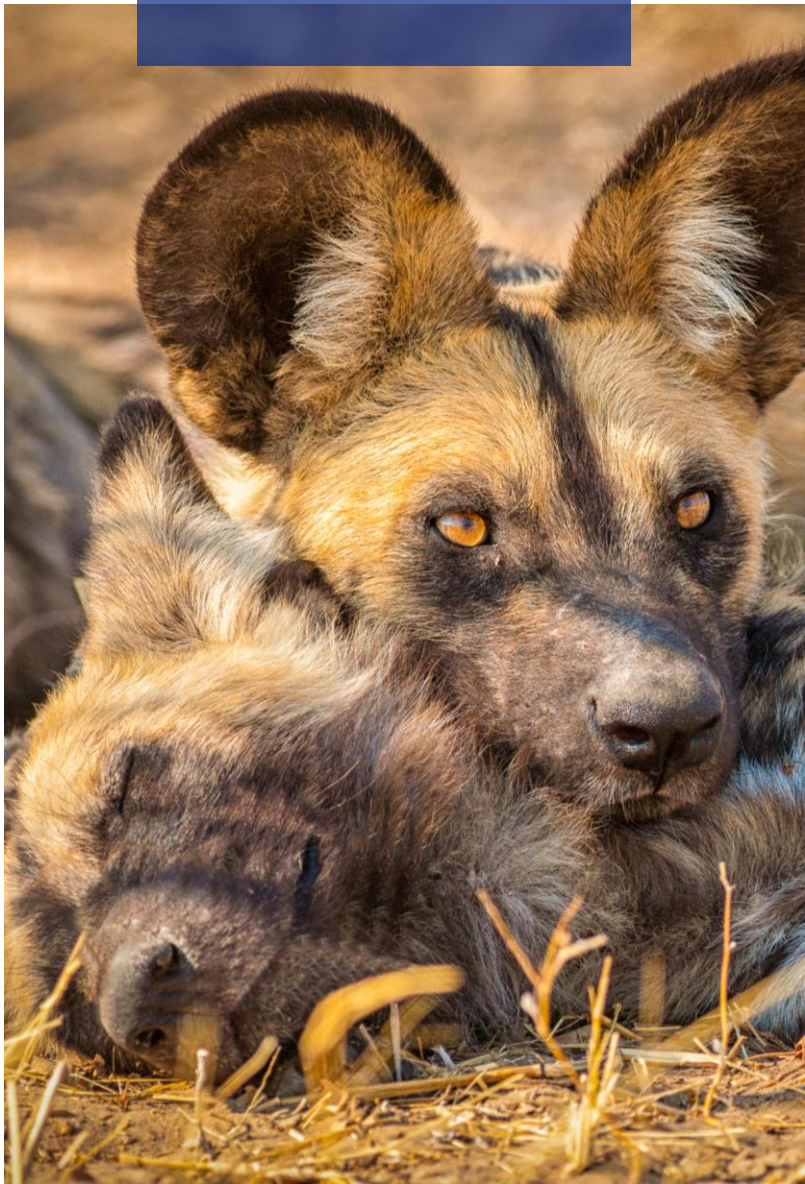
Article III.4 a) requires Parties that are Range States of a migratory species listed in Appendix I to “endeavour ... to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction.”

Article III.4 b) requires Parties that are Range States of a migratory species listed in Appendix I to “endeavour ... to prevent, remove, compensate for or minimise, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species”.

PT Implementation:

- Any infraction to Decree-Law n° 38/2021, of 31 May which implement CMS will be dealt in accordance with Framework Law on Environmental Offences, N° 50/2006, 29 August, consolidated version 2019, where it can be applied an Imposition of measures that are appropriate to prevent environmental damage, restore the situation prior to the infraction and minimize the effects resulting from it;
- Decree-Law n.º 151-B/2013, 31 October (Legal regime of environmental impact assessment), consolidated version 2017;
- Decree-Law n° 142/2008, 24 July (Legal Regime for the Conservation of Nature and Biodiversity)





## Implementation of CMS in Portugal (8)

- Decree-Law n.º 151-B/2013, 31 October (Legal regime of environmental impact assessment), consolidated version 2017;
- Article 41º (Decree-Law n.º 151-B/2013): Restoration of the situation prior to the infringement

The offender is always obliged to remove the causes of the infraction and to reconstruct the situation prior to the commission of the infraction.

When the provisions of the previous paragraph imply a manifestly disproportionate situation, the possibility of imposing minimisation and/or compensation measures on the offender under the terms of the following article may be considered instead of that reconstitution.

Whenever the duty to restore the previous situation is not voluntarily fulfilled, the competent services of the ministry responsible for the environment act directly on behalf of the offender, and the expenses are coercively collected through the procedure provided for tax foreclosures.

# Implementation of CMS in Portugal (9)

Article 1º (Decree-Law nº 151-B/2013) - All projects that are located, partially or totally, in a sensitive area and are considered, by decision of the pertinent authority, as likely to cause significant impact on the environment, including protected species, depending on their location, size or nature, in accordance with the criteria set out in Annex III to this Decree-Law, of which it is an integral part are subject to an Environmental Impact Assessment

## PENAL CODE

Article 278 - Damage to nature

1st - Anyone who, failing to observe legal or regulatory provisions or obligations imposed by the competent authority in accordance with these provisions:

- a) Eliminate, destroy or capture specimens of protected species of wild fauna or flora or eliminate specimens of fauna or flora in significant numbers;
- b) Destroy or significantly deteriorate protected natural habitat or unprotected natural habitat causing losses in protected species of wild fauna or flora or in significant numbers;

is punished with imprisonment of up to 5 years.



# THANK YOU!



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