

Global Workshop on CMS Legislation

Bonn, Germany, 3 – 5 June 2025

UNEP/CMS/GWL/Doc.4

**SESSION 3 FACILITATION QUESTIONS -
IMPLEMENTATION OF CMS ARTICLE III.5**

(Prepared by the Secretariat, as at 5 May 2025)

This document provides preparatory material for the workshop, which participants are encouraged to review in advance.

It includes a hypothetical case designed to support reflection on national legislation, best practices, and challenges related to the implementation of CMS Article III.5, particularly the “take prohibition.” Participants from countries taking part in the National Legislation Programme should read the case study in conjunction with their National Legislation Profile and the *Legislative Guidance Relating to Implementation of CMS Article III.5*.

In addition, the document outlines the breakout group questions that will be discussed during the workshop.



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SESSION 3 FACILITATION QUESTIONS - IMPLEMENTATION OF CMS ARTICLE III.5

Pre-workshop Preparation

1. To facilitate constructive discussions at the workshop and exchanges of best practices, challenges, and lessons learned, the Secretariat encourages you to familiarize yourself with the national legislation regarding the implementation of CMS Article III.5 “take prohibition” in your country.
2. To aid in this preparation, the Secretariat has created a hypothetical case involving the “take” of several species, some of which are listed in CMS Appendix I. This case is intended to support reflection on your national legislation.
3. During the opening day, you would have the opportunity to share and report on legislative development or practices at the national level to implement CMS Article III.5. Your findings would also enrich the discussions during the breakout group session.
4. Please read the following hypothetical case and then proceed to paragraph 5 of the document:

Hypothetical Case

A research institute in your country (a Party to CMS) seeks to study several marine species, some of which are listed in CMS Appendix I. The institute’s mission is to advance the understanding and protection of ocean biodiversity. One of the major sponsors of the institute is a prominent recreational company that owns an aquarium, and which donated ships and logistical support for the institute’s research expeditions. Institute’s research vessels are flagged in your country.

The institute’s next research project proposes capturing seven juveniles of several marine species, four of which are listed in CMS Appendix I. It is proposed that three individuals of the Appendix I-listed species will be used for research to conduct an academic study, and four individuals will be used for display in an aquarium, generating revenue for the company. The capture site lies in the High Seas, outside your country’s jurisdictional waters.

Knowing that some of the species are listed in CMS Appendix I, the research institute applies to the relevant national body of your country for a permit to capture the juveniles for scientific purposes.

5. To prepare for the workshop, the Secretariat encourages you to:
 - **Consult** your national legislation and, if available, the National Legislation Profile prepared for your country within the context of the National Legislation Programme;
 - **Consult** UNEP/CMS/GWL/Doc.2: *Legislative Guidance Relating to Implementation of CMS Article III.5* and UNEP/CMS/GWL/Doc.3: *Legislative Guidance Document: Exceptions to the Prohibition on Taking of Appendix I-listed Species under CMS Article III.5*;
 - **Review** the regulatory system in your country regarding the “take prohibition” of CMS Appendix I species; and
 - **Reflect** on the following questions:

Species listing

- a. Does your country have in place any kind of legislation to implement the CMS? If yes, what legislation?
- b. Are the CMS-listed species regulated under one law or covered by multiple laws?
- c. Do the laws and regulations your country has in place include a list of all CMS species currently included in CMS Appendix I?
- d. Do the laws and regulations your country has in place distinguish between CMS-listed species for which your country is a Range State and those for which your country is not?

Article III.5 "Take Prohibition"

- e. Do the laws and regulations your country has in place prohibit taking (as defined by the Convention) of all CMS Appendix I species? If no, which species are not covered by the prohibition against taking?
- f. Do the laws and regulations your country has in place prohibit the taking in regard to *all aspects* of the definition of taking by the Convention Article I.1.i)? If no, which aspects of the definition of taking are missing?
- g. Do the laws and regulations your country has in place envision penalties for individuals not complying with the prohibition against taking of CMS Appendix I species and/or conditions within a permit allowing exception to the "take prohibition"?

Article III.5: Exceptions to the "Take Prohibition"

- h. Do the laws and regulations your country has in place allow exceptions to the prohibition against taking of CMS Appendix I species? If yes, for which purposes?
- i. Do the laws and regulations your country has in place contain CMS-enumerated exceptions of Article III.5 – a) for scientific purposes; b) for the purpose of enhancing the propagation or survival of the affected species; c) to accommodate the needs of traditional subsistence users of such species; d) if extraordinary circumstances so require? How are these exceptions regulated?
- j. Do the laws and regulations your country has in place allow exceptions consistent with the Article III.5 requirements that exceptions are "precise as to content and limited in space and time" and that "such taking should not operate to the disadvantage of the species"?
- k. Which administrative or regulatory body examines the application for a permit for an exception to be granted and how is a decision on an application for a permit made?
- l. What does an application for a permit to take CMS Appendix I species need to consist of in your country?
- m. What conditions are contained in permits allowing exceptions to the prohibition against taking of CMS Appendix I species in your country?
- n. How does your country monitor compliance with the take prohibition and the use of exceptions?
- o. What procedure is in place to inform the CMS Secretariat of the exception, in accordance with CMS Article III.7?

Geographical Application of CMS Article III.5 in national legislation

- p. Do the prohibitions against taking of CMS Appendix I species apply to all of your land-based territories, territorial seas, exclusive economic zone?
- q. Do the prohibitions against taking of CMS Appendix I species apply to vessels flagged by your country and which operate outside national jurisdiction?

Workshop Breakout Group Questions

Breakout Group 1

Please identify the following roles for your group: a notetaker, a timekeeper, and a group reporter.

Based on your knowledge of national legislation implementing CMS, discuss and address the following questions:

Legal Framework

1. What do you see as benefits and what as challenges of regulating CMS-listed species under one law or under multiple laws? Share your country's experiences.

Exceptions

2. How to ensure consistency in interpreting exceptions across multiple cases or across different government agencies if different agencies examine permit applications? Share your country's legislative approaches and discuss the best lessons.
3. How do you ensure that the exceptions are precise as to content and limited in space? Discuss your country's legislative approaches, best practices and challenges.
4. How to ensure that exceptions are not issued in amounts that would come to disadvantage of the species? Discuss your country's legislative approaches, best practices and challenges.

Strengthening Domestic Frameworks

5. What are the additional measures that could be provided in the legislation to further strengthen the prohibition on taking of CMS Appendix I-listed species (e.g. reporting, prohibition of landing of marine species)?
6. What are the top three challenges you face in your work when dealing with the "take prohibition" and exceptions to the "take prohibition"? Where do you identify the need for capacity building and technical support?

Identifying best practices

7. Share a success story where an exception was granted and successfully managed, resulting in a positive outcome for both species and the activity in question.

Breakout Group 2

Please identify the following roles for your group: a notetaker, a timekeeper, and a group reporter.

Based on your knowledge of national legislation implementing CMS, discuss and address the following questions:

Geographical Scope

1. What are the biggest obstacles in enforcing the take prohibition against flagged vessels operating in areas beyond national jurisdiction? Share examples of how best to address and overcome them.

Exceptions

2. How to balance the need for flexibility in applying exceptions with the need for legal certainty and predictability? Discuss the challenges and how best to overcome them.
3. How do you ensure that the exceptions are limited in time and do not operate to the disadvantage of the species? Discuss your country's legislative approaches, best practices and challenges.
4. What specific metrics could be used to monitor the impact of granted exceptions on the affected species and ecosystem? Discuss the possible approaches.

Strengthening Domestic Frameworks

5. What are the additional measures that could be provided in the legislation to further strengthen the prohibition on taking of CMS Appendix I-listed species (e.g. reporting, prohibition of landing of marine species)?
6. What are the challenges in implementing the "take prohibition"? Share your countries' legislative approaches to the implementation and discuss best practices.

Identifying Best Practices

7. What three factors do you consider essential for legislation to ensure CMS Appendix I species "take prohibition" is well implemented?