

**5<sup>th</sup> Meeting of the Sessional Committee of the  
CMS Scientific Council (ScC-SC5)**

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**IMPROVING THE LISTING PROPOSAL PROCESS AND OUTCOMES**

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**Summary:**

Working together to conserve migratory species is the foundation of the Convention. Due to migratory species abilities to cross national jurisdictional boundaries regularly and predictably, conservation actions in one country will be ineffective without commensurate actions being undertaken throughout the species' range.

Adding species to the Convention Appendices is a key mechanism through which Parties seek to address threats to migratory species throughout their range. Consideration of a comprehensive listing proposal, based on the best available scientific evidence and presented with the support of all range states, is important to both Parties and the Convention itself.

This paper seeks to provide options to improve the preparation of listing proposals through enhancing consultation at all stages of the listing process.

## IMPROVING THE LISTING PROPOSAL PROCESS AND OUTCOMES

1. Consultation with Range States, and consideration of Scientific Council recommendations, are integral steps in both the preparation of proposals to list species, and consideration of inclusion of species on the Appendices of the Convention of Migratory Species. These steps are often omitted from the listing proposal process, resulting in the Conference of the Parties (COP) making decisions based on proposals that may not be based on the best scientific evidence available, or are incomplete or incorrect. This has potential to undermine the credibility of both the listing process and the Convention itself.
2. This paper seeks to provide background on the issue; set out relevant Party obligations in the Convention and Resolutions on preparation of listing proposals; suggests options to improve the preparation of listing proposals; and provides recommendations for consideration by both Scientific Council and Standing Committee.

### Background

3. The Convention recognises that the conservation and effective management of migratory species requires the concerted action of all Range States within the national jurisdictional boundaries of which such species spend any part of their life cycle.
4. Any conservation action that one Range State may make for a migratory species within their borders is wasted if all Range States do not work together to address the threats present throughout the whole of the species' range. The central tool of the Convention to conserve and enhance management arrangements for migratory species is through the inclusion of eligible species in either of its Appendices.
5. Key to any successful listing is communication and consultation among Range States and use of the best scientific information available.

### Processes for Preparing Listing Proposals

#### *Convention and relevant Resolution*

6. The process to propose species for inclusion in the Appendices is set out in both the Convention text and Resolution 13.7 – *“Guidelines for Preparing and Assessing Proposals for the Amendment of CMS Appendices”*.
7. Article XI, paragraph 3 of the Convention requires proposals to be “based on the best scientific evidence available”. It also explicitly outlines that species proposals must be submitted to the Secretariat at least 150 days before a COP. Article VII, paragraph 3 of the Convention also outlines that COPs shall be convened at intervals of not more than three years. This clear scheduling allows Parties to anticipate potential timeframes for listing proposals well in advance.
8. Article VIII sets out the functions of the Scientific Council and includes “making recommendations to the COP as to the migratory species to be included in Appendices I and II...”
9. The critical nature of consultation in relation to the listing of migratory species is recognised in Resolution 13.7, where paragraph 11 urges proponents to consult with, as far as possible, all Range States and their relevant authorities before the proposal is submitted.

10. Res.13.7 also includes an agreed template for listing proposals. This template contains a separate section (9) for Parties to complete regarding Consultations. The Explanatory Notes attached to this template further clarify that:

9. Consultations: The proponent(s) shall consult, as far as possible, nature conservation authorities of the other Range States before the proposal is submitted and give a brief outline of any comments received upon the proposal. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request. In the case of taxa that are also managed through other international agreements or intergovernmental bodies, consultations should be undertaken to obtain the comments of those organizations or bodies. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request.

### *Administrative Process*

11. The issues associated with the lack of consultation prior to listing proposals being submitted were previously recognised by both the Scientific Council and the Standing Committee, with Standing Committee approving a new document management process at its 48<sup>th</sup> meeting in 2018 ([StC48/Doc.10.1](#)) and implemented in the lead-up to COP13 in 2020. This process is summarized below:
- 150 days before COP – listing proposals submitted.
  - Shortly thereafter Scientific Council will consider all proposals and append comments and recommendations on each proposal. These comments and recommendations are sent to all relevant proponents for their information and possible action.
  - 60 days before COP – Parties and Inter-governmental bodies comment on proposals and these are sent to all relevant proponents for their information and possible action.
  - 45 days before COP – listing proponents to provide any additional information to address issues raised by Sessional Committee and/or Parties, particularly to address any comments which are directed towards the eligibility of their proposal.
12. This administrative process allows for clear articulation of Scientific Council, Party and Inter-governmental body comments and recommendations, and explicit responses to those comments by listing proponents.
13. COP13 demonstrated that this process can be effective, particularly if listing proponents adequately address any areas of deficiencies prior to commencement of COP. The implementation of this process significantly strengthened several proposals prior to consideration by all Parties. The listing proposal for the jaguar is one example where the listing proponent responded to the new process by providing additional targeted information in response to Scientific Council questions.
14. COP13 served to highlight a number of cases where consultation on listing proposals prior to submission was undertaken comprehensively, and cases where there was little or no consultation with all Range States.
15. COP13 also saw several Scientific Council recommendations on listing proposals disregarded. COP is the main decision-making body of the Convention, and Parties are entirely within their right to make decisions based on various considerations. However, the credibility of the Convention and its decisions are brought into question when it is not outwardly evident why recommendations from its Scientific Council are not followed. Scientific Council advice and recommendations are particularly pertinent as each CMS region has equal representation in the Sessional Committee of Scientific Council, where all listing proposals are considered. The equal regional representation means that the recommendations arising from the Council are balanced, and not the result of any one region holding greater proportional weight.

16. Strengthening communication and consultation prior to submitting listing proposals will lead to robust proposals which include the best scientific evidence available. Comprehensive consultation will also serve to increase support for the listing between all Range States. This in turn allows Parties at COP to make effective, credible decisions that accurately reflect the mandate and purpose of the Convention.
17. Fulsome consultation can also increase the likelihood of a listing proposal being accepted unanimously at COP. While it could be asserted that COP can allow for robust discussion of listing proposals and voting can address any lingering differences in opinions, the voting majority required, and past practice highlights some difficulties associated with relying on voting to deliver an outcome suitable for most Parties.

## Discussion and Analysis

### *A way forward*

18. The need for comprehensive consultation on listing proposals is an issue that spans the breadth of the Convention and its subsidiary bodies. As such, both Scientific Council and Standing Committee needs to be involved in any proposed approach, particularly as Standing Committee approved the document management process that sought to address ongoing concerns about lack of consultation on listing proposals previously.
19. It is proposed that Sessional Committee and Standing Committee establish a joint working group to discuss and identify various activities to encourage and enhance effective consultation with all Range States prior to the submission of listing proposals.
20. The intention would be for the working group to present its final recommendations at the 6<sup>th</sup> Sessional Committee meeting, and the 53<sup>rd</sup> Standing Committee meeting. This is to allow for any agreed improvements to the document handling process to be implemented prior to COP14 and allow COP14 to consider any proposed amendments to resolutions and/or administrative approaches for COP handling of listing proposals.
21. The working group should endeavour to have equal CMS regional representation, and as a start, consider the following options:
  - Amendments to Resolution 13.7 *Guidelines for Preparing and Assessing Proposals for the Amendment of the CMS Appendices*, which may include, but are not restricted to:
    - strongly urge Parties to make joint proposals with relevant Range States;
    - request listing proponents to consult with Range States prior to submission of relevant listing proposals;
    - urge listing proponents to consider any Range State comments received before submission and provide an appropriate addendum which explains how they have, or have not, revised information in the listing proposal; and
    - oblige Parties who submit listing proposals to take account of Scientific Council recommendations and any other Party comments received 60 days before COP, and revise any listing proposal accordingly, and/or explain why any recommendations have not been followed.
  - Consider amending Section 9 *Consultations* of the Listing Proposal Template to add a requirement for listing proponents to demonstrate what consultation has occurred, how comments have been addressed/incorporated in the listing proposal, including an explicit explanation of why comments did not require any revisions, if this is the case. The Explanatory Notes would also need to be amended to reflect any recommended changes to the template if this option was considered desirable.

- Consider how COP could implement administrative procedures if listing proposals continue to be submitted without appropriate prior consultation. This may include, but is not limited to:
  - recommend that any listing proposal that is submitted without full consultation with Range States is restricted to the listing proponent's jurisdiction only, or in the case where some Range States were consulted and agreed, the listing is restricted to those jurisdictions only;
  - recommend that when considering a listing proposal that has not been subject to appropriate consultation prior to submission, Parties can adopt an inclusion approach or an exclusion approach. For an inclusion approach, the listing would only apply within those Parties jurisdictions that explicitly state their agreement. For an exclusion approach, the listing would explicitly list those Parties that are excluded from the listing. This approach is similar to that currently taken when a species is included in the Appendices as a regional listing whereby the range that is included in the listing is explicitly listed;
  - a listing proposal that has not been subject to appropriate consultation prior to submission could be considered at COP, however, it would not be confirmed as included in the Appendices until the following COP. This would allow for appropriate consultation to occur during the intersessional period; and
  - Consider whether COP should only consider those listing proposals that Scientific Council recommend be included in the Appendices.

#### Recommended actions

22. It is recommended that Scientific Council and Standing Committee agree:
- a) to establish a working group which will be tasked with identifying suitable options for improving the listing proposal process to incorporate effective consultation;
  - b) the working group will consider the feasibility of the potential options outlined in paragraph 21, and identify additional options if needed; and
  - c) the working group will work intersessionally and provide draft recommendations to the 6<sup>th</sup> Meeting of the Sessional Committee and 53<sup>rd</sup> Standing Committee meeting.