

CMS NATIONAL LEGISLATION PROGRAMME FINDINGS REPORT

I. INTRODUCTION

1. The CMS provides a framework for Parties to cooperate in the conservation and sustainable management of migratory species and their habitats. National legislation is needed to incorporate the provisions and obligations of the CMS into domestic law and to ensure that the commitments made under the Convention are legally binding and enforceable within each Party's jurisdiction.
2. Migratory species depend on suitable habitats throughout their migratory routes and the establishment of protected areas, wildlife corridors, and other conservation measures can be facilitated through provisions for habitat preservation, hunting regulations and penalties for illegal activities that harm migratory species. National legislation helps integrate the objectives of the CMS with existing domestic laws and policies. It enables harmonization between international obligations and national priorities, ensuring that migratory species conservation is considered within broader frameworks of environmental protection, biodiversity conservation, and sustainable development. It provides the legal framework for enforcing the provisions of the CMS, including regulating activities that may impact migratory species, such as hunting, land use, and pollution. By establishing sanctions and enforcement mechanisms, Parties can deter illegal activities and promote compliance with conservation measures.
3. The purpose of this report is to inform the Parties of the findings of the National Legislation Programme (hereinafter: the NLP) based on the information submitted to the Secretariat concerning national legislation and other national measures related to the implementation of Article III.5. The report also aims to present common trends and practices, challenges, and issues regarding the implementation of Article III.5.
4. For this report, Parties participating in the National Legislation Programme are grouped by region, namely Africa¹, Europe (including the European Union as an entity)², South & Central America and the Caribbean (SCC)³ and Asia/Oceania⁴.

¹ Africa (23): Algeria, Angola, Burundi, Cabo Verde, Central African Republic, Cote d'Ivoire, Eritrea, Equatorial Guinea, Eswatini, Ethiopia, Guinea, Liberia, Madagascar, Maldives, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Somalia, Uganda, Zimbabwe.

² Europe (24): Austria, Belgium, Bulgaria, Finland, France, Georgia, Germany, Hungary, Israel, Italy, Latvia, Liechtenstein, Malta, Montenegro, the Netherlands, North Macedonia, Norway, Portugal, Serbia, Slovenia, Spain, Switzerland, Ukraine, and the European Union.

³ South & Central America and the Caribbean (12): Antigua and Barbuda, Argentina, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Honduras, Paraguay, Peru, Trinidad and Tobago, Uruguay.

⁴ Asia / Oceania (11): Australia, Bahrain, Iraq, Lebanon, Mongolia, New Zealand, Pakistan, Philippines, Sri Lanka, Uzbekistan, Yemen.



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.



II. BACKGROUND

5. The Conference of the Parties at its 12th meeting (COP12, Manila, 2017) adopted Resolution 12.9 and Decisions 12.6-12.9 to establish a National Legislation Programme (NLP) to strengthen the implementation of the Convention through national legislation and support Parties, if needed, in developing or improving relevant national legislation.
6. The National Legislation Programme is designed as a supportive, non-adversarial and facilitative activity that helps with the identification of implementation matters related to Article III.4 a) and b) and 5. It is focused on providing support to Parties that are experiencing difficulties with the implementation of the Convention. To facilitate the process of obtaining information on the Parties' legislation and other domestic measures relating to the implementation of these provisions, and in accordance with COP12 Resolution 12.9 and Decision 12.6, the Secretariat prepared in 2018 an inventory of the Secretariat's present information on Parties' current legislation in relation to Article III.5. The Secretariat also prepared a questionnaire, which was approved by the 48th Standing Committee,⁵ to enable Parties to identify legislation relating to the implementation of Article III.4 a) and b) and III.5.
7. COP Decision 13.23 as well as COP Decision 14.28 strongly encouraged Parties to submit to the Secretariat information regarding their legislation and other domestic measures relating to implementation of Article III.4 a) and b) and III.5. According to the responses provided in the questionnaires, a National Legislation Profile was prepared for each of the 70 Parties participating in the Programme. The National Legislation Profiles comprise findings and recommended actions to facilitate the identification of inconsistencies in the implementation of Article III.5. They enable governments to ascertain their needs and allow them to draw up realistic and ambitious work plans for improving their legislative process, indicating the assistance required and the timing of such assistance.
8. According to Resolution 12.9, within six months of having received the findings and recommended actions from the Secretariat, Parties are requested to indicate the procedures, actions and reasonable time frames that are envisaged in response. Following the delivery of this information, Parties are requested to take appropriate measures for effective implementation of Article III.5, in accordance with their indicated procedures and time frames. It is in the benefit of Parties that any findings and recommended actions are not only addressed by taking appropriate measures, but also supported, as necessary, through the provision of tailored capacity-building activities and adequate resources.

III. NATIONAL LEGISLATION PROFILES

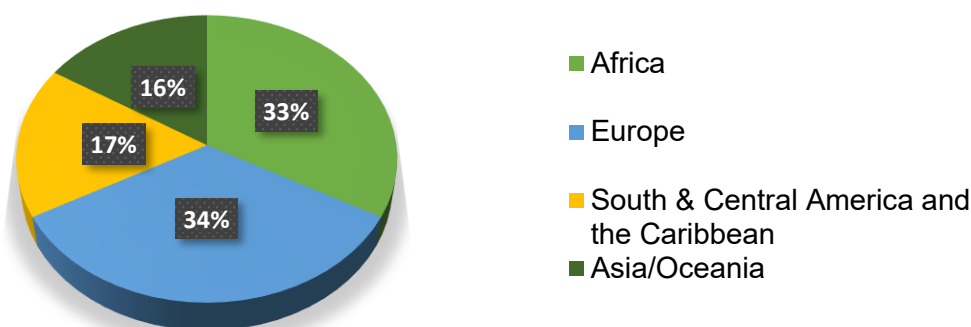
9. The CMS Secretariat has, to date, launched four calls - in 2018, 2021, 2022 and 2024 - to encourage Parties to submit the information regarding their legislation and other regulations relating to implementation of Article III.4 a) and b) and III.5.
10. In 2018, the questionnaire approved by the 48th Standing Committee was shared with Parties requesting information on implementation of CMS Article III.5. As a result of this first call, 39 CMS Parties participated in the NLP and submitted the completed questionnaire in 2019. Based on the responses, the Secretariat prepared 39 National

⁵ Decision 12.7 directed the Standing Committee at its 48th meeting to "review and decide on the template for communicating initial information and draft questionnaire referred to in Decision 12.6 a) and c);"

Legislation Profiles,⁶ and *Legislative Guidance Relating to Implementation of CMS Article III.5 and Model Law for implementation of Article III, paragraph 5.*⁷ As requested by Decision 13.20 d), the Secretariat shared the National Legislation Profiles with the Parties concerned.

11. As requested by Decision 13.20 a), the Secretariat revised the questionnaire to also request information on the implementation of CMS Articles III.4 a) and b), and shared it with all Parties in 2021 (Decision 13.20 b)). Parties which did not submitted information on Article III.5 in the first call (2018), were again invited to submit it through the second call (2021). Further 11 Parties submitted information on Article III.5 in the second call and 11 National Legislation Profiles were prepared and shared with these Parties.⁸
12. As a result of the third call in May 2022, 8 additional National Legislation Profiles were prepared by the CMS Secretariat.⁹
13. In July 2024, the Secretariat launched the 4th call to the Parties to submit the questionnaire on Articles III.4 a) and b) and 5, in accordance with the CMS COP14 Decisions 14.28 b) and 14.29 b). As a result of the 4th call, 12 Parties joined in participating in the NLP and 12 National Legislation Profiles were prepared for these Parties, accordingly.¹⁰
14. A total of 70 out of 133 CMS Parties completed the questionnaire on Article III.5 and the Secretariat drafted a National Legislation Profile for each Party participating in the NLP.
15. The preparation of the National Legislation Profiles was made possible with the contribution granted by the European Union under the Migratory Species Champion Programme and through the Global Public Goods and Challenges (GPGC) Programme Cooperation Agreements between the European Commission and UNEP.

Regional Distribution of NLP Parties



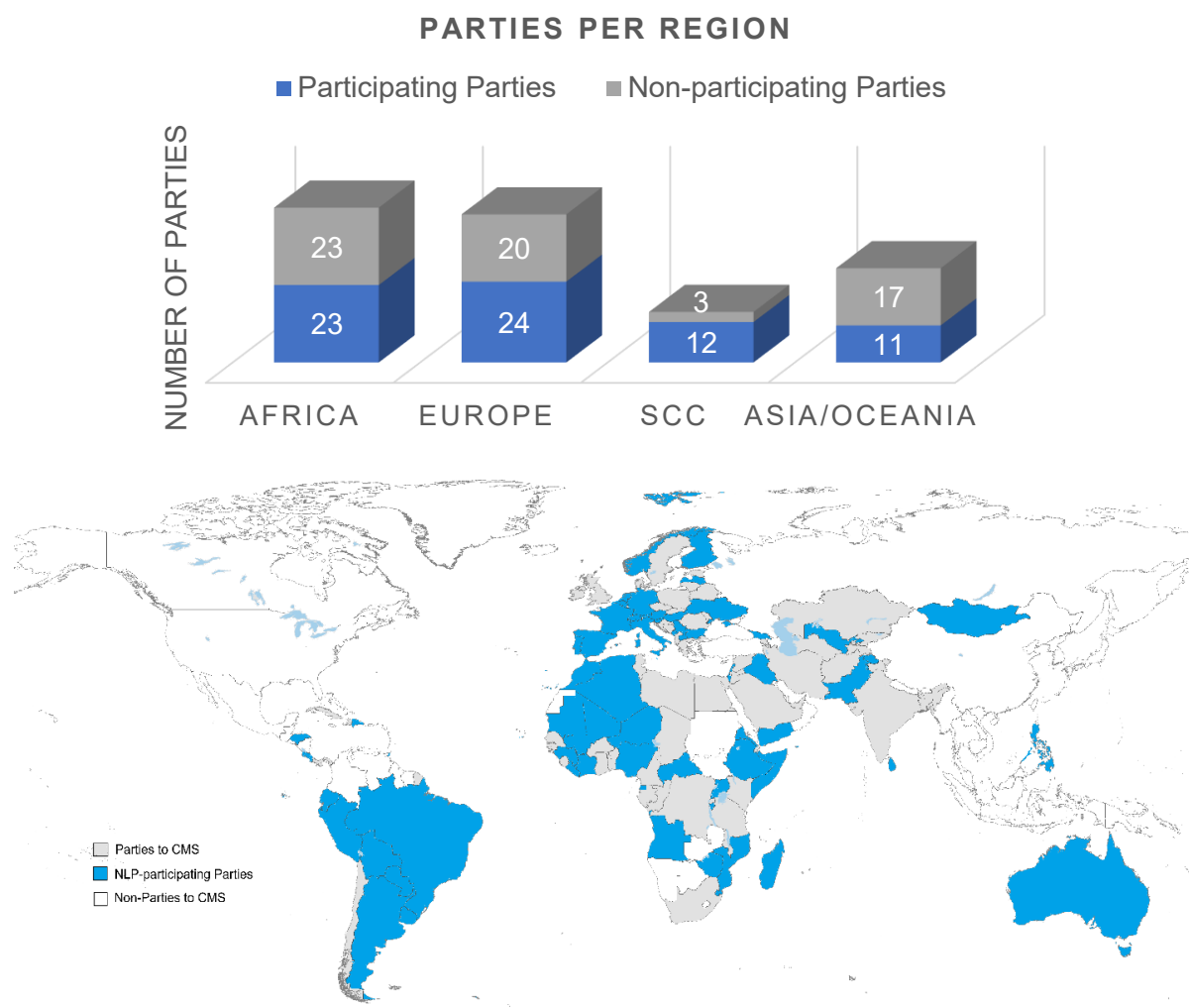
⁶ 1st NLP Call (2018): 39 CMS Parties responded to the questionnaire, namely Algeria, Angola, Australia, Austria, Bolivia, Brazil, Cabo Verde, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Eritrea, Eswatini, France, Georgia, Germany, Hungary, Italy, Latvia, Lebanon, Liechtenstein, Mali, Montenegro, Mozambique, Netherlands, New Zealand, Norway, Pakistan, Peru, Serbia, Slovenia, Somalia, Spain, Switzerland, Trinidad and Tobago, Uganda, Uruguay, Yemen and the European Union.

⁷ [UNEP/CMS/COP13/Doc.22, Annexes 2 and 3](#)

⁸ 2nd NLP Call (March 2021): 11 Parties responded to the questionnaire, namely Argentina, Belgium, Bulgaria, Central African Republic, Guinea, Liberia, Madagascar, Maldives, Paraguay, Uzbekistan, and Zimbabwe.

⁹ 3rd NLP call (May 2022): 8 Parties responded to the questionnaire, namely Burundi, Honduras, Iraq, Ethiopia, Philippines, Malta, Ukraine, and North Macedonia.

¹⁰ 4th call (July 2024): 12 Parties responded to the questionnaire, namely Antigua and Barbuda, Bahrain, Equatorial Guinea, Finland, Israel, Mauritania, Mongolia, Morocco, Niger, Nigeria, Portugal and Sri Lanka.

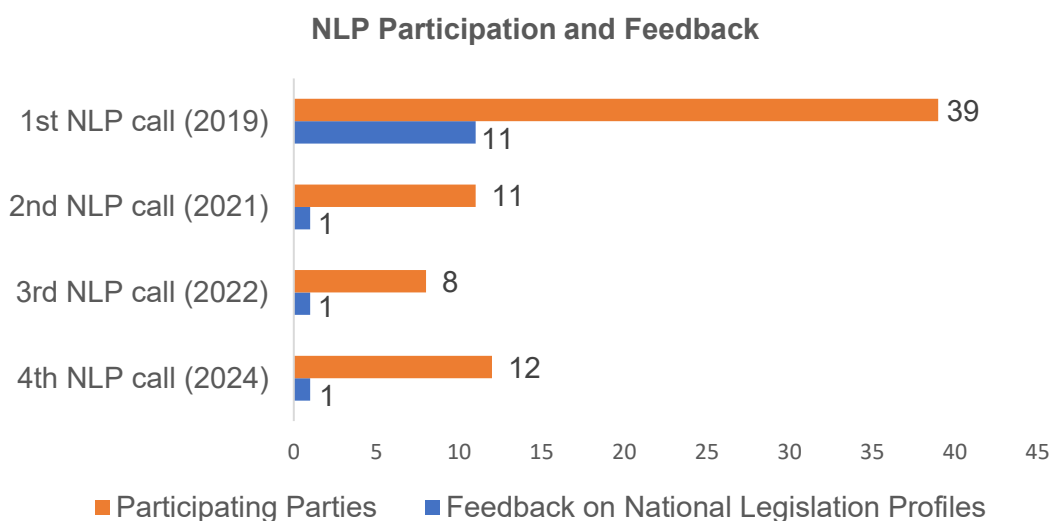


The depiction and use of boundaries, geographic names and related data shown on the map are not warranted to be error free nor do they necessarily imply official endorsement or acceptance by the United Nations.

16. The first section of the profile (Findings) is based on the information provided in the questionnaire, the analysis of legislation and domestic measures that a Party indicated as implementing CMS Article III.5 domestically, and any dialogue that has taken place between the Secretariat and the National Focal Point. The *Legislative Guidance Relating to Implementation of CMS Article III.5* and *Model Law for implementation of Article III, paragraph 5*, which were presented at and taken note of by CMS COP13, served as a baseline for the analysis and recommendations included in the Party profiles. The second section (Recommended actions) aims at supporting the implementation of CMS Article III.5 through the Party's domestic legislative framework by requesting further clarification of specific issues and/or recommending particular actions.
17. The analysis of the questionnaires and the national legislation and regulations is a complex process, and it has revealed different levels of implementation and interpretation of key concepts (definition and obligations of Range States, scope and definition of the taking prohibition and exceptions).
18. Given the differences in legislative systems worldwide, the complexity of analyzing national laws, as well as the limits of the CMS Secretariat's translation capacity, the National Legislation Profiles may have different interpretations, and inaccuracies and/or

omissions may exist in the findings or recommendations. In total, 17 National Legislation Profiles were translated – 8 into French and 9 into Spanish.

19. However, only a few Parties responded and provided feedback on their Profiles (11 Parties from the 1st call, 1 Party from the 2nd call, 1 Party from the 3rd call, and 1 Party from the 4th call).

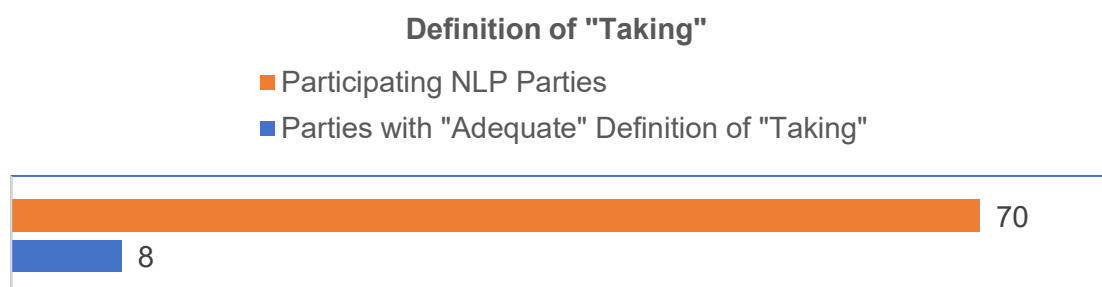


IV. FINDINGS OF THE NATIONAL LEGISLATION PROGRAMME

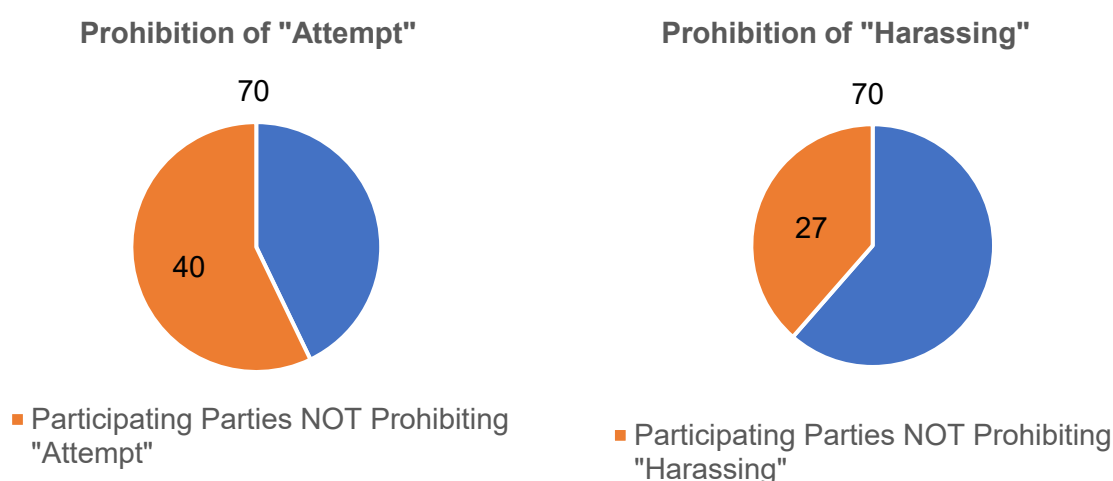
20. The National Legislation Profiles have facilitated the identification of inconsistencies in the interpretation of the Convention that lead to legislative gaps and regulatory challenges at the national level. The analysis showed different levels of implementation and different interpretations of key concepts, such as the definition of take or the exceptions. The review of national legislation revealed that while most laws cover the actions included in the definition of “taking” in CMS Article I(1)(i), such as hunting, fishing, capturing and deliberate killing, in several instances, harassment and attempt are not expressly prohibited.

A. Definition of Taking of Appendix I Species

21. While the laws of 46 Parties do explicitly prohibit the taking of protected wildlife species, only 8 Parties include in their legislation an adequate definition of take that covers all actions of the CMS “taking” definition, including “harassing” (through the actions of trapping, injuring, shooting at, wounding, disturbing or molesting) and “attempting” to engage in any of the actions constituting “taking”.



22. On the other hand, the laws of many Parties, although they do not specifically refer to taking, do contain a definition of hunting; This is mainly the case for 30 Parties. The reasons for including definitions of hunting in legislation may vary among these countries. For many, wildlife-based tourism, which includes recreational hunting such as sport or trophy hunting represents an important source of income. In some cases, it helps to manage human-wildlife conflicts and involves controlled hunting – often indicated as an exception to the take prohibition – of specific species that pose a threat to human lives, crops, or livestock. Subsistence hunting is sometimes also allowed in these countries. While hunting is often defined as any act immediately directed at “killing”, “capturing”, “wounding”, “injuring” an animal, most of the definitions do not reflect all actions of the CMS definition of take and only six out of 30 Parties define hunting to include harassment and attempt.
23. Another feature revealed is that for some Parties, it appears that the existing taking prohibition does not apply to the entire national territory and is established for species in protected areas, which could potentially create a loophole for any taking of protected species outside these areas. In contrast, one Party may issue a permit to hunt any specially protected animal on any land other than in a national park.
24. A major omission for many Parties is the failure to prohibit “attempts” to take Appendix I species. While one Party had reported (2019 National Reports) that it prohibits “attempts” to take an Appendix I species, the review of the National Legislation Profiles revealed that the laws of 40 Parties (representing more than half of the Parties participating in the NLP) do not refer to, define nor prohibit the attempt to take wildlife species. It is interesting to note that out of 40 Parties, 25 Parties do not include both harassment and attempt in their legislation.
25. The Secretariat is also aware from its review of national laws that certain types of “taking” are not prohibited. For example, “harassment” is most often not prohibited by 27 Parties. Interestingly, of the 27 Parties, all but two do not include harassment and attempt in their legislation.



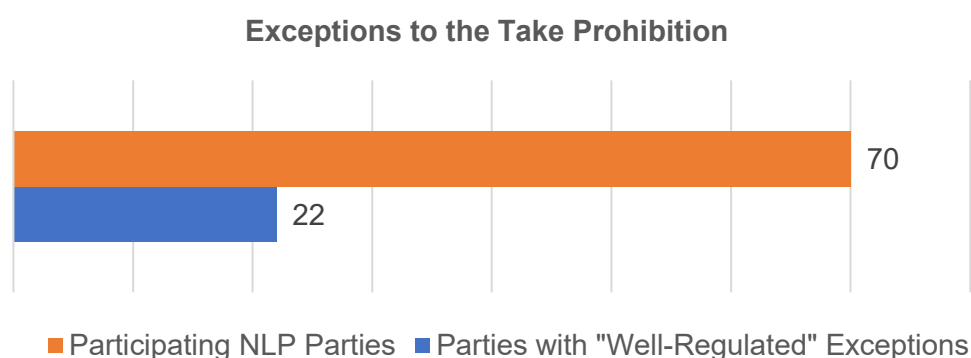
B. Protected species

26. Regarding species, it is not always clear whether all CMS Appendix I species are fully protected. Most Parties (38) list only those CMS Appendix I species that occur within the country's range. On the other hand, some Parties do not appear to have in place a list of protected species that includes CMS Appendix I species.

27. In addition, very few Parties have legislation that is specific to migratory species or to domestic implementation of CMS. Instead, broader hunting, wildlife or biodiversity legislation often serves the role of domestic implementation for CMS purposes. As a result, species protection is spread across various regulations, and while terrestrial and avian species are mostly protected, aquatic species, usually covered by fisheries legislation, happen in few cases to be excluded from the scope. Indeed, the legislation of some Parties does not seem to include marine mammals or fish species.
28. Many Parties (33) explicitly exclude CMS Appendix I species from taking, but only two Parties do specifically refer to CMS Appendix I species in its definition of protected species. In addition, it is advisable to make clear whether the prohibition of “taking” applies to eggs, nests, and natural breeding grounds. The laws of most Parties (49) specifically apply the take prohibition to “the destruction or removal of eggs or nests.”

C. Exceptions to Take Prohibition

29. The analysis has shown that 48 Parties have weaknesses or gaps in their legislation regarding exceptions to the take prohibition. For one Party, it was not possible to identify the exceptions to the taking prohibition in the law, while for 8 Parties, the exceptions are not clearly outlined in the legislation and no indication of limitations were found. In other cases, the exceptions are inconsistent with CMS, or the language used may lead to an overly broad interpretation of the exceptions.

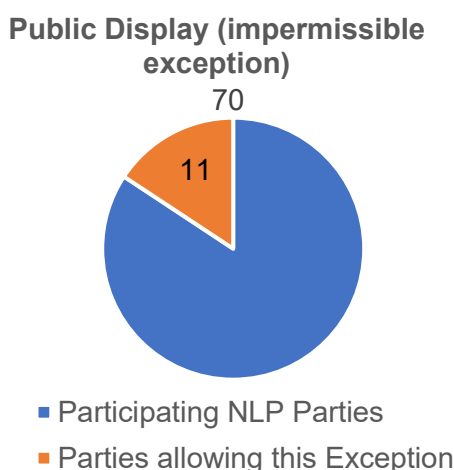


i. Article III.5 exception a) for scientific purposes

30. The scientific purpose exception is potentially broad, i.e. the taking must merely be for “scientific purposes” and the treaty does not further define what constitutes a “scientific purpose”. Therefore, a permit system that clearly defines the eligibility of the applicant (i.e., which presents an affiliation with a scientific institution or program and describes the scientific needs and institutional conditions under which the scientific take can be conducted) would help delineate the exception.
31. Most Parties provide a general exception for scientific purposes, but only 17 limit its use to educational or academic institutions and/or registered or recognized scientific research institutions. This is one means of reconciling the potential for overlap without interpreting the exception in an overly broad manner. Such limitations could ensure that research is conducted ethically, with minimal impact on species and their habitats, and that conservation authorities can carefully monitor the activities of accredited institutions to ensure that they comply with regulations.
32. On the other hand, for 37 Parties the taking or capture of species may be permitted for other purposes, i.e., “educational”, “teaching” and “academic” purposes. CMS Article

III.5 does not allow exceptions for exclusively educational purposes. However, where regulations expressly limit the education exception to only instances where the education is for a scientific purpose, then the exception may fall within the CMS' "scientific purpose" exception.

33. Similarly, the display of an animal in a zoo or aquarium may or may not be associated with scientific purposes, depending on whether a particular animal is necessary for the scientific studies being conducted. The analysis of the national profiles revealed that the legislation of 11 Parties allows the taking of an animal for public display, which appears to be inconsistent with the CMS provisions, since the purpose of the display exception is for revenue generation or education. One Party expressly conditions the exhibition of an animal in a zoo only for scientific purposes.



ii. Article III.5 exception b) for the purpose of enhancing the propagation or survival of the affected species

34. The Convention also authorizes take of Appendix I species "for the purpose of enhancing the propagation or survival of the affected species." Driven by the EU Habitats Directive, many EU countries contain such provisions in their national legislation, which allows take for the purpose of "restocking and reintroduction . . . and for operations necessary for that purpose." However, Parties approach wildlife conservation and management in very different ways, and it appears that this exception, in some cases, is associated with sport hunting. In contrast, one party's legislation explicitly prohibits sport hunting of protected species.

35. While captive breeding and/or wildlife farming exceptions exist in the national law of 40 Parties, and usually aim at boosting wildlife populations, it is interesting to note that in one Party the collection of "threatened wildlife" for "breeding or propagating purposes" is only permissible by "accredited individuals, business, research, educational or scientific entities."

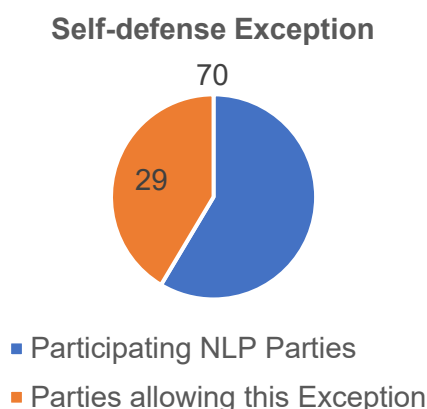
iii. Article III.5 exception c) to accommodate the needs of traditional subsistence users of such species

36. CMS Article III.5 contains an exception to the take prohibition "to accommodate the needs of traditional subsistence users of Appendix I species". This exception hinges on careful scoping of the meaning of "traditional" and "subsistence".

37. The analysis of the 70 National Legislation Profiles has shown that among 70 participating Parties, 17 Parties reported that their national legislation contains the exception “to accommodate the needs of traditional subsistence users of Appendix I species”.

iv. Article III.5 exception d) if extraordinary circumstances so require

38. A review of national legislation reveals a handful of categories that may or may not fit within the “extraordinary circumstances” exception. These include “take” out of self-defense or to avoid harm to human life; take to prevent significant damage to crops, livestock, forests, fisheries, waters and other forms of property; take to control an invasive species; take for the protection of other flora or fauna; take to control pathogens; take to mitigate aviation risks; and take for biomedical purposes.
39. For example, while many laws (29) allow for excepted takings when necessary for self-defense and/or to protect others from physical harm, it is worth noting that 7 Parties require either proof of self-defense (2) or the obligation to make a declaration of killing in self-defense within a few days to the nearest authority.



40. Parties often grant exceptions under extraordinary circumstances in case of “national interest” or “public interest”. It has to be highlighted that, while “national interest” may in some cases rise to the level of “extraordinary circumstances” in compliance with CMS Article III.5, the term may be overly broad, creating the possibility of take in situations that do not qualify as truly “extraordinary circumstances.” Similarly, the term “public interest” is somewhat broad, and it risks authorizing takes that are arguably in “the public interest” but not compelled by “extraordinary circumstances”.
41. In addition, the laws and/or regulations of many Parties contain an exception allowing for take “under strictly controlled conditions, in a selective manner and to a limited extent, the taking of a limited number of specimens.” This exception falls outside the scope of the allowable CMS exceptions since no restriction on the use of the animal exists.

D. Geographical scope of application

42. The review of national legislation also provided additional information about the geographical scope of application of the taking prohibition regarding protected species.
43. Some Parties indicated that CMS Article III.5 do not apply to the country’s exclusive economic zone (EEZ), and this interpretation may conflict with other provisions of CMS. Parties to CMS that are Range States of any CMS Appendix I species shall protect the

species in the part of the range under their jurisdiction. Article I(1)(h) of the CMS Convention defines “Range” as “all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route”, and “Range State” as any State “that exercises jurisdiction over any part of the range” of the migratory species, “or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species”. Therefore, in order to comply with the obligations of CMS Article III.5, Parties that are Range States of a CMS Appendix I migratory species shall prohibit the “taking” of the species in all areas under their jurisdiction, unless they have entered an explicit territorial reservation.

44. Regarding landlocked countries, although they would not appear to be Range States for cetaceans, marine turtles, or sharks, Article I, paragraph I(h), of the Convention defines “Range State” to include “a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species”. Under international law, landlocked countries are allowed to—and do—flag fishing and other vessels. According to questionnaires, while 17 Parties out of 69 are landlocked countries, four Parties have reported to apply the taking prohibition to any flagged vessels operating in areas beyond national jurisdiction.
45. The graph below shows that most Parties, 60 out of 69, apply the take prohibition on their land-based territories while less than half (33) extend the taking prohibition of CMS Appendix I species to flagged vessels in areas beyond national jurisdiction.

Geographical Application of Art.III.5 among 70 NLP-participating Parties



E. Penalties

46. The analysis of the questionnaires also provided some preliminary information on the penalties for violations of the taking prohibition. Although it was not possible to review all the legislation (61/70), it appears that in most cases the legislation punishes violations with a fine and secondarily with imprisonment. Administrative sanctions consist mainly of the confiscation of collected species and equipment. However, the suspension of permits happens only in a few cases. A further study into deterrence and penalties for effective implementation of the “take prohibition” is suggested.

F. Monitoring and reporting

47. CMS Article III.7 requires Parties to inform the Secretariat “as soon as possible” that they have implemented an exception to the take prohibition of Article III.5.
48. The responses to the questionnaire, and the Secretariat’s experience, however, show that few of the 70 NLP Parties are notifying the Secretariat of their exceptions. For determining compliance with Article III.5, it is important to know whether any exceptions

have been granted as well as the scope of permissible exceptions. Nonetheless, four Parties indicated in the questionnaire that no exception were granted so far for the “taking” of CMS Appendix I species.

49. Through the National Report system, for each CMS Conference of the Parties, Parties should report on the use of exceptions by answering question 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.

50. Reporting to the Secretariat on the use of any exceptions is mandatory under the terms of the treaty and therefore establishing mechanisms to ensure that such information is collected and shared with the Secretariat is critical.