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Ninth Meeting of the Scientific and Technical Advisory Committee (STAC) to the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region

## REPORT OF THE SPAW STAC EXEMPTIONS WORKING GROUP



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### INTRODUCTION

The First Meeting of the Contracting Parties (COP) of the SPAW Protocol, Havana (24-25 September 2001), in its Decision I.7, awarded “specific mandates to the STAC for the creation of *ad hoc* Working Groups to deal with those themes that, owing to their complexity or level of specialization, thereby require [special attention].”

Four (4) such *ad hoc* working groups exist dedicated respectively to Protected Areas, to Species, to Exemptions and the most recent one, to Sargassum. Working Groups were established by the STAC and recently reendorsed with terms of reference and specific tasks specially designed following the last STAC, in Panama, 2018. They are composed of experts designated for their acknowledged scientific and technical competence, their availability and readiness to be responsive in the group, and to cover as much as possible the geographical and thematic scope of the working group. Experts may be nominated by one or more Parties, the Secretariat including the SPAW-RAC, observers or a RAN. Once designated, they participate *intuitu personae*. The working groups are currently all chaired by the SPAW-RAC. In case consensus cannot be reached on a specific task, the chair guarantees that the diversity of opinions are dutifully reflected in the feedback and reports to the contracting parties and observers and ultimately to the STAC.

### MANDATE AND COMPOSITION

Formally established in January 2020, the SPAW STAC *ad hoc* Working group on Species has the following tasks assigned by the Terms of Reference of the SPAW STAC *ad hoc* Working Groups (UNEP(DEPI)/CAR WG.42/INF.12):

- *Task 1: Review for recommendation the exemptions reports submitted by contracting parties*
- *Task 2: Encouraging the use of the adopted Reporting Format for Exemptions under Article 11(2) of the Specially Protected Areas and Wildlife Protocol (SPAW) (UNEP(DEPI)/CAR WG 38/3)*
- *Task 3: Review the United States Exemptions Report (2017) and report to the STAC on their findings, as well as the Curacao Exemptions Report (2016) and any additional information that may be provided by the Government of Curacao since the original exemption report submission.*

The current species working group is composed of 11 experts from 6 countries, 2 NGOs and the Secretariat (SPAW-RAC) (Annex 1).

### GENERAL FUNCTIONING

Two introductory meetings with all the working groups were organized in March 2020 (18th and 24th of March). They were aimed at introducing the new nominated experts to SPAW Protocol’s background, working groups’ rules and objectives, and to create momentum among the veteran experts to launch a good work dynamic. 21 participants attended the first session and 19 participants the second one.

The working group work was then divided into online meetings and online collaborative review and drafting of documents and recommendations. Meetings were dedicated to discuss the tasks to be performed, the method to address them, identify and discuss potential points of disagreements, and validate the working group outputs. They work first at the task and later at the sub-tasks level. Most of the working group works was performed online, on shared documents that experts collaboratively drafted with SPAW-RAC support and reviewed.

As planned by the working groups terms of reference, all working group emails were sent via the “TeamWork” virtual platform and all final documents were downloaded on it. This allowed all members of

the working group (experts and SPAW-RAC) to keep track of exchanges and productions, including newcomers.

The work performed by the working group and the major outputs are presented in the following paragraphs.

## **WORKS CONDUCTED DURING THE BIENNIUM 2019-2020**

### ***TASK 1 - Review for recommendation the exemptions reports submitted by contracting parties see below (task 3)***

No additional proposal came from a contracting party outside the ones that were pointed out for review during the last STAC (see task 3 below).

### ***TASK 2 - Encouraging the use of the adopted Reporting Format for Exemptions under Article 11(2) of the Specially Protected Areas and Wildlife Protocol (SPAW) (UNEP(DEPI/CAR WG 38/3)***

#### ***Methodology***

A first meeting was organized on 05/05/2020. The main objective was to establish a brainstorming session to identify how such an objective could be achieved and behind that the fact that the countries report more about the enforcement of SPAW commitments and species protection. Choosing not to focus only on the reporting format, they started from existing reports (bi-annual country reports, exemptions reports) to identified avenues.

The working group (and the chair) had access to two bi-annual country reports, one from the Netherlands, one from Colombia. It also had access to the US exemptions report and the Curacao exemption report to be reviewed but also that could be used as examples by the experts.

On the 02/06/20, a draft that compiles information, reflections and ideas about how Contracting Parties comply to the SPAW Protocol's Article 11(2) was uploaded on the Teamwork platform. Comments were that it summarized well the discussions.

Final document : UNEP(DEPI)/CAR WG.42/INF.21- Compliance to the SPAW Protocol, a report from the Exemptions Ad Hoc Working Group.

#### ***Outcomes and highlights***

In the case of the Caribbean Netherlands, exemptions are for research reasons, for which the SPAW Protocol reporting format is not convenient since filing reports for each species is too much work for research permits. In the case of Colombia, the Biannual Country Report covering the two year period from 01/01/2017 to 31/12/2018 states no exemption requests by this Contracting Party.

Both the US and the Curacao exemptions reports can serve as examples to improve the efficiency of the exemptions procedure. In particular, the US report can serve as an example of programmatic reporting which solves the problem of an excessively slow and heavy procedure to file reports for individual species in the field of research (permits).

Experts stated that attention is focused on the listing of species, but there is almost no review of the legislation and protection measures implemented by all the Parties. Moreover, few countries are filling exemptions, partly because they know the protocol has no mean of enforcement or because they do not know when they should report. Another problem raised is that reporting format seems to be made by people knowing how protocols and conventions function rather than by the actual technical reports.

## Recommendations:

- Use existing information (use the country reports when existing at the Convention and the Protocol level) to identify what is implemented by countries to comply with the protocol and review the US and Curaçao reports both to identify recommendations to provide to the parties but also to review them formally for the next STAC
- Ask the Secretariat to reach out to countries not complying with the protocol and also provide more of the bi-annual reports received.
- Encourage the countries to report more and to nominate experts or representatives to the Working Group.
- Encourage the use of the reporting format but also to report even if they use another format, as long as it provides the necessary information.
- Clarify what stance the STAC should take in front of SPAW Parties still allowing protected species hunting. An assessment of the situation could be done to better tackle the lack of effective management and protection measures.
- Use networks on the ground level (example WIDECAST) in a collaborative way.

***TASK 3 - Review the United States Exemptions Report (2017) and report to the STAC on their findings, Review the Curacao Exemptions Report (2016) and any additional information that may be provided by the Government of Curacao since the original exemption report submission.***

## *Methodology*

The US exemptions and the Curacao exemption reports were first uploaded for review on the TeamWork platform in April 2020. Four experts made comments via TeamWork by Ana Maria Gonzalez Delgadillo, Angela Somma, Courtney Vail, and Julia Horrocks.

A guide to conduct a precise evaluation of the United States and Curacao exemption report was sent to all the experts on the 01/12/20 to complete the general comments received. This evaluation was elaborated according to criteria specifically set forth in Article 11. The comments below were provided.

## *Outcomes and highlights*

### **Regarding the US report, the following comments were made:**

- The report accounts for the activities that the United States carried out or are planning to carry out and thus comply with the provisions of the SPAW Protocol (Article 11 (2)).
- While it does not include the Environmental Impact Assessment as an annex, which is cited in item 6. of Document UNEP (DEPI) / CAR IG.37 / 3 as a complement, it is a programmatic exemption report. Thus, the Environmental Assessments developed for each exemption can be accessed through the links to permits and other documents provided in the United States report to the individual exemptions.
- The US Exemptions Report is missing reference to public display facilities that may require a public display or import permit under the MMPA, and that may be considered an exempted activity under SPAW for educational or scientific purposes. Nevertheless it was clarified that when the United States ratified the SPAW Protocol, it took a reservation to Article 11(1) that reads: "The United States does not consider itself bound by Article 11(1) of the Protocol to the extent that United States law permits the **limited** taking of flora and fauna listed in Annexes I and II  
(A) which is incidental, or

(B) for the purpose of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation."

- Therefore those prohibitions are not applicable to the United States. The United States voluntarily reported additional exemptions and permits/authorizations issued under the ESA and MMPA in its Exemptions Report, but it was not required to report exemptions or authorizations (including information on public display) where the underlying prohibition did not apply to the U.S. due to the reservation.

USA's ex post report's offers a punctual scope that makes it easier to share information. This functioning gives the opportunity to submit information with more flexibility. Also, programmatic reporting solves the problem of an excessively slow and heavy procedure to file reports for individual species in the field of research (permits).

#### **Regarding the Curaçao report, the following comments were made:**

- The report accounts for the activities that Curaçao carried out or are planning to carry out and thus comply with the provisions of the SPAW Protocol (Article 11 (2))

- The report is presented *ex ante* to the exemption and deals with a dredging activity with possible impact to few species listed in the Protocol.

- It adopts the format of Annex A of the "UNEP Document (DEPI) / CAR IG.37 / 3." and it became the Exemptions Working Group pilot case

- Despite following the format of Document "UNEP (DEPI) / CAR IG.37 / 3.", the report does not have an Annex to the Environmental Impact Assessment (EIA), which is cited as a supplement material to item 6 of said document.

- In this report there are conceptual differences against some terms (for example compensation, mitigation, restoration), as mentioned in the STAC Miami 2016.

#### ***SPAW-RAC OVERALL CONCLUSION***

First SPAW-RAC wish to thank the group for their dedication, commitment and work all other the period.

Considering the experts thoughtful contributions, SPAW-RAC recommends the STAC to:

→ Encourage the countries to report more and to nominate experts or representatives to the Working Group.

→ Encourage them to use of the reporting format but also to report even if they use another format, as long as it provides the necessary information.

→ Clarify what stance the STAC/COP should take in front of SPAW Parties still allowing protected species hunting. An assessment of the situation could be done to better tackle the lack of effective management and protection measures.

→ Request the Secretariat to reach out to countries not complying with the protocol and also provide more of the bi-annual reports received.

→ Request the Working Group to link with the Species working group, especially regarding its task 4 (improving management of species listed)

→ Use networks on the ground level (example WIDECAST) in a collaborative way

→ to revise the **Terms of reference** If deemed necessary and it **in particular its Annex** (update the current tasks of the working group).

ANNEX: LIST OF THE EXEMPTIONS WORKING GROUP EXPERTS

<b>Expert name</b>	<b>Affiliation</b>
Julia Horrocks	Barbados
Kelly Moreno	Colombia
Ana Maria Gonzalez- Delgadillo	Colombia
Otto Cordero	Dominican Republic
Jean Vermot	France
† Paul Hoetjes	Netherlands
Eric F. Salamanca	Turks and Caicos
Kristen Koyama	USA
Angela Somma	USA
Courtney Vail	AWI
James Franks	GCFI
Sandrine Pivard	SPAW-RAC/ chair