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

EXEMPTIONS AD HOC WORKING GROUP – COMPLIANCE TO THE SPA)W) PROTOCOL



Exemptions Ad Hoc Working Group – Compliance to the SPAW Protocol

This report produced in the framework of the Exemptions working group intends to compile information about Contracting Parties' implemented measures in regards to the compliance to SPAW Protocol article 11(2) which in turn will help guide the Conference of the Parties (COP), the Scientific and Technical Advisory Committee (STAC) and Contracting Parties in defining their obligations under Article 11(2). This report focuses in particular on how Countries can report more about what is done to comply with the Protocol

1. Context

Discussions during STAC 8 emphasized that a few countries do not comply with SPAW Protocol and still allow threatened sea turtles or small cetaceans hunting (UNEP(DEPI)/CAR WG.40/7) without requesting exemptions. During the COP 10, a call was made upon all Parties to the SPAW Protocol of the Wider Caribbean region in regard to cetaceans to (i) comply with the Protocol by implementing national legislation prohibiting the hunting of cetaceans and taking enforcement and conservation measures to aid their protection and recovery; (ii) report the numbers and species of cetaceans taken in hunts or involved in other prohibited activities.

In Article 11(2), the STAC is granted power to assess the pertinence of Parties' exemptions to the Protocol. Such exemptions are to be granted "*for scientific, education or management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops*" and must not "*jeopardize the species*". However, article 11(2) does not provide clear definitions of these requirements.

Expert members of the Exemptions WG have observed that many Contracting Parties have not been reporting their exemptions as required under article 11(2).

For this reason, the Exemptions WG expert members have all agreed on the need to focus on Parties that are not reporting activities with impacts on SPAW listed species.

They also predominantly emphasized the importance to shift the Exemptions working group's focus from the use of a single format to encourage more Contracting Parties to report their Exemptions independently of the used format. In other words, the most important action item is to encourage countries to report the events and make the reports regardless of the format provided.

2. Bi-annual Country Report

The Cartagena Convention has a Biannual Country Report format including the three (3) protocols from the Convention. The protocol concerning Specially Protected Areas and Wildlife (SPAW) is treated under Section 8 of this report. Exemptions are part of question 7 of the format: "*has your country filed any exemption?*".

So far the working group (and the chair) had access to two reports, one from the Netherlands, one from Colombia. The Caribbean Netherlands currently reports some exemptions through the Cartagena Convention biannual country report. 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. This raises the possibility of implementing a SPAW reporting guidance to help interested Contracting Parties in the elaboration of a programmatic report rather than a report for individual species.

In Colombia's case, 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.

So far with the information provided, the biannual country reports do not go very deep in its collection of information and constitutionally are not formatted and expected to report exemptions.

Additionally, this reporting channel raises several questions for UNEP/CEP's Secretariat:

- Are these country reports published and made available to other Parties?
- Has there been any analysis of those country reports and are there conclusions drawn, including both protection legislations and conservation measures in favor of SPAW listed species?
- How does it really work for the countries?
- Which countries are actually reporting and under which format?
- Are they reporting to the Convention or to the protocol level?
- Could the Secretariat ask the countries to account for the lack of reporting?

3. Curaçao and US exemptions report comparative study

The Exemptions WG had for review the Curaçao and the United States exemptions reports. These documents have drawn interest among several expert members, and their discussions are summarized here.

First, the two exemptions reports are different both in form and in substance. They are presented following a different format and therefore the information presented and its scope are different. However, both account for the activities that these two Contracting Parties carried out or are planning to carry out and thus comply with the provisions of the SPAW Protocol Article 11 (2). These two reports can serve as examples to improve the efficiency of the exemptions procedure.

Curaçao Exemption Report:

- It adopts the format of Annex A of the "UNEP Document (DEPI) / CAR IG.37 / 3." and it became the Exemptions WG pilot case.
- It is presented *ex ante* to the exemption and deals with a dredging activity with possible impact to few species listed in the Protocol.
- The report allows knowing the mitigation measures that are carried out.
- 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.

Several expert members provided the remarks above and also recognized Curaçao's effort to present for several years now the *ex ante* report. However, as mentioned in STAC 7 (Miami, 2016), there are conceptual differences against some terms in this report (for example compensation, mitigation, restoration).

Many members expressed the need to have a follow-up of Curaçao's exemption report, as it was submitted in 2016. This would in turn allow to know what construction and infrastructure works have been done and what compensatory measures have been executed. The SPAW-RAC have requested UNEP/CEP-RCU's Secretariat the right procedure to do so.

USA Exemptions Report

- The Report is presented in a different format.
- It is presented *ex post* to the exemption or performance of activities that involve the species listed in the SPAW Protocol.
- This report also does not include the EIA in the Annexes, which is cited in item 6 of Document "UNEP (DEPI) / CAR IG.37 / 3." as a necessary complement.

Experts also note that regarding the previous mentions on EIA, it is necessary to associate an EIA to these exemptions because exemptions are not exclusively granted in relation to a prohibited activity, and the impacts of the latter can vary greatly.

In response to these observations, USA's expert member has stated the following:

- The United State's report is indeed in a different format. That is because it is a report on programmatic exemptions per section 4 of Document "UNEP (DEPI) / CAR IG.3.7/3".
- The United States' report on exemptions provides a report after the exemptions have been taken. See section 5 of Document "UNEP (DEPI)/CAR IG.3.7/3". Article 11(2) states that the STAC is to assess the pertinence of the exemptions granted. Therefore, the assessment by the STAC takes place after the Contracting Party has granted an exemption."
- Regarding the EIA, an environmental impact assessment is not included with the report because this is a programmatic exemption report. The EIAs 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.

Using programmatic reports to encourage reporting?

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, in both US and Caribbean Netherlands cases, programmatic reporting solves the problem of an excessively slow and heavy procedure to file reports for individual species in the field of research (permits).

The **Reporting guidance from the SPAW Protocol could steer parties towards doing a programmatic report rather than imposing an biannual compulsory model of exemptions reporting.** The US report can serve as an example of this.

ANNEX 1 :

Exemptions WG : **Reporting format for exemptions** – report of the 5th may 2020 meeting

INPUTS:

STAC 9

Few countries do not comply with SPAW Protocol and still allow threatened sea turtles or small cetaceans hunting (UNEP(DEPI)/CAR WG.40/7) without requesting exemptions.

COP 10

Call upon all Parties to the SPAW Protocol of the Wider Caribbean region in regards to cetaceans to (i) comply with the Protocol by implementing national legislation prohibiting the hunting of cetaceans and taking enforcement and conservation measures to aid their protection and recovery ; (ii) report the numbers and species of cetaceans taken in hunts or involved in other prohibited activities.

WG introductory session

Was mentioned the importance of clarifying what stance the STAC should take in front of SPAW Parties still allowing sea turtle hunting. An assessment of the situation could be done to better tackle the lack of effective management and protection measures.

Species WG meeting « *Collaboration for improved protection task meeting* » (April 29th)

A lot of concern is focused on the listing of species, but very little action to review their legislation and implement protection measures by all the Parties.

Few countries are filling exemptions.

Questions:

Biannual country reports for the Cartagena Convention:

- *Has there been any analysis of those reports and conclusions drawn, including both protection legislations and conservation measures in favor of listed species?*
- Such an analysis could be a good tool for the WGs to work, but it should be provided by the Secretariat

Bi-annual reporting question N7: *has your country filed any exemption?*

- *Those who have, have they done so in the format?*
- *How does it really work for the countries?*
- *The Caribbean Netherlands exemptions are for research reasons, for the SPAW reporting format is not convenient so they do not use it. They do so through the Cartagena Convention report.*

Which countries are reporting?

Are they reporting at the Convention or the protocol level?

Which format do they use?

- Secretariat could ask the countries to account for the lack of reporting? (Supported by several WG members)

Discussion highlights:

Reporting guidance from SPAW helps doing a programmatic report rather than for individual species. Filing reports for each one is too much work for research permits

- The US is hoping that its report can serve as an example of a new reporting format

Reporting format seems to be made by people knowing how protocols and conventions function rather than by the actual technical reports

- Is the WG really necessary for exemptions? Can the STAC not deal with this?
- This WG should come up with some recommendations regarding the reporting of exemptions? Use the US example? Programmatic reports? Seriousness of exemptions towards the species? (research permits for tagging is completely different than hunting)
- When is it necessary to report exemptions? This should be one of this WG's concerns

Countries may not file exemptions because there is no justification required in most cases.

- Knowing that there is no means for enforcement, Parties have less incentives to file those reports.

- Encouraging them by giving examples is an option (USA)
- Networks can help on the ground level (example WIDECAST) in a collaborative way
- Some topics like cetacean hunting have only been discussed recently. **There is room for all Parties to improve in compliance with the requirements, it's important to avoid pointing fingers. Maybe countries should engage more towards each other.**
- Secretariat reaching out to countries (and countries to countries as well?) may have occurred
- Formal letters were written (sea turtles, cetaceans etc.) with no formal response

The more countries are present in the working group the better, so it's important to keep engaging with Parties that may not have nominated anyone yet.

So many countries have not been reporting, that we should go through the country reports and **focus on those not reporting activities with high impacts on species.**

- Not all activities should be treated the same way

US reports approach is a good approach for some of the exemptions. For Colombia, reporting is critical. The most important thing is for more Parties to report their Exemptions, not to continue discussing the use of a single format, which in itself is of great help, but only if there are exemption reports being presented by the Parties. **Focus on presenting the information rather than the format.**

- See Colombia and Netherlands reports to the Cartagena Convention shared on the Teamwork platform.

IAC Model: requires annual reporting from the countries. Aggregated report compiling data from all the reports:

- Resolutions, data on fisheries etc.
- Compiling data on what the countries are doing as an aggregated set of information
- This should be done formally. Show that all countries can improve, instead of pointing fingers. Is there capacity to do that?

Key outcomes/ upcoming steps

→ **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* → Draft by the SPAW-RAC

→ *Ask the Secretariat about them reaching out to countries not complying with the protocol.*

→ *Encourage the countries to report more*, encourage, reach out, see who are the involved actors, encourage countries to nominate experts or representatives to the WG.

→ *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.

→ *Read the US and Curaçao reports* (on Teamwork within the 2 weeks) both to identify recommendations to provide to the parties but also to review them formally for the next STAC.

→ *Recommendations on when countries should submit their reports*, and the seriousness of the activities to report on.

ANNEX 2

Guidelines produced and shared for facilitating the exemptions report review during fall 2020

1. Article 11(2) and definition of the terms
2. Pertinence assessment of the exemption according to criteria specifically set forth in Article 11(2)
 - A. Three sets of main requirements under Article 11(2)
 - Contribution to the species' survival or prevention of significant damage to forests or crops
 - Scientific, educational or management purposes
 - Endangerment of the species
 - B. Evaluation of information included in the exemption report
 - C. Additional remarks

1. Article 11(2) and definitions

The role of the STAC in the exemptions process is to assess whether exemptions satisfy the various criteria for pertinence set forth in Article 11(2) 'Each Party may adopt exemptions to the prohibitions prescribed for the protection and recovery of the species listed in Annexes I and II for scientific, educational or management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops. Such exemptions shall not jeopardize the species and shall be reported to the Organization in order for the Scientific and Technical Advisory Committee to assess the pertinence of the exemptions granted.' The STAC's assessment should take into account the special needs of migratory species where actions taken in one jurisdiction may have unintended and unacceptable consequences to the population elsewhere in its range. An assessment of pertinence may also need to consider whether the activity is within the scope of the Protocol in general.

'Educational, management, scientific purpose', 'assess the pertinence', 'necessary to ensure the survival of the species', 'significant damage' and 'survival' being defined as follows:

Assess the pertinence – assess whether the exemption meets the criteria specifically set forth in Article 11(2).

For educational purposes – the use of species and/or their parts, or their habitats, for purposes of conducting educational programmes for members of the public, including children and/or adults, that have been shown to protect the species.

For management purposes – measures undertaken by humans for purposes of controlling or conserving species by means of, inter alia, artificial propagation and habitat conservation.

For scientific purposes – for purposes of conducting bona fide research activities by qualified scientific researchers who have applied in good faith to acquire data regarding survival, the conservation and/or protection of the species.

Necessary to ensure the survival of the species – Significantly contributing to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species. Activities necessary to ensure survival of the species may include scientific research, educational or management activities.

Significant damage – damage of such an intensity or of such a duration as to have a measurable harmful or destructive effect on forests or crops.

Survival – persistence of a viable population of a species within the geographic boundaries of the Party adopting the exemption Article 11(2)

2. Pertinence assessment of the exemption according to criteria specifically set forth in Article 11(2)

A. Three sets of main requirements under Article 11(2)

According to Article 11(2), only three situations can trigger the possibility of an exemption to Article 11 (1) prohibitions, namely:

- Scientific purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops
- Educational purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops
- Management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops

→ Contribution to the species' survival or prevention of significant damage to forests or crops

How the prohibited activity is likely to contribute to the species' survival or prevention of significant damage to forests or crops? In the case of prohibited activities taken to ensure the survival of the species, evidence should be presented as to how the proposed activities will accomplish this end.

→ Scientific, educational or management purposes

Whether the exemption is for scientific, educational or management purposes

→ Endangerment of the species

Why the prohibited activity will not jeopardize the species or, if relevant, other listed species.

B. Evaluation of information included in the exemption report

The report provides enough precise information and data on:

- the species affected (common name, quantity harvested, description):
- a *detailed description* of the current conservation status of the species (international and national status, management program, domestic legislation etc...):
- the type of prohibited activity to be undertaken:
- the purpose of the activity and its role to ensure the survival of the impacted species:
- the location of the activity:
- the duration of the activity (exact commencement and termination date):
- the principal threats to the subject species due to the prohibited activity (population size, fragmentation etc...):
- the potential for impacts on other species as a consequence of the prohibited activity:
- a detailed description of the activity, including if relevant any mitigation measures designed to limit or counteract any deleterious effects (with sufficient supporting documentation provided):
- a *detailed explanation* of the monitoring or evaluation protocols that will be used to assess the effect of the activity on species populations, including changes in range, numerical trend, or reproductive success
- the government department with responsibility for oversight of the activity:
- the names, affiliations and qualifications of the people involved:
- the methodology and equipment, if any, to be used (please note that any methodology should conform to international best practices, and these should be specified)