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and Wildlife (SPA)W) in the Wider Caribbean
Region

Cayenne, French Guiana, 13 March 2017

Guidance document

Criteria and process to assess exemptions under Article 11(2) of the Specially Protected Areas and Wildlife Protocol (SPA)W)

For reasons of economy and the environment, Delegates are kindly requested to bring their copies of the Working and Information documents to the Meeting, and not to request additional copies.

Background

During the Eighth Conference of the Parties to the SPAW Protocol (COP8) in Cartagena, Colombia, 9 December 2014, the Parties approved the draft guidance document relative to criteria and process to assess exemptions under article 11(2) of the Specially Protected Areas and Wildlife Protocol in keeping with recommendation IV of the sixth meeting of the Scientific and Technical Advisory Committee (STAC6).

The present guidance document reproduces the text of Annex III of the *Report of the Working Group to develop the criteria and process to assess exemptions under Article 11(2) of the SPAW Protocol* (UNEP(DEPI)/CAR WG.36/5).

1. Introduction

Article 11(1) of the SPAW Protocol requires all SPAW Parties to adopt measures to protect species listed in Annexes I and II of the Protocol.¹ These measures include prohibitions on the destruction and disturbance of listed species. Article 11(2) provides for exemptions from these prohibitions under defined circumstances.²

The purpose of this document is to provide guidance to stakeholders, Parties, the Secretariat and the Scientific and Technical Advisory Committee (STAC) on how an exemption report might be prepared and assessed in order to comply with 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

Further, granting of an exemption must not jeopardize the species, and the exemption must be reported to the Organization in order for the STAC to assess the pertinence of the exemption granted.

¹ Article 11(1) states “The Parties shall adopt co-operative measures to ensure the protection and recovery of endangered and threatened species of flora and fauna listed in Annexes I, II and III of the present Protocol.

a) The Parties shall adopt all appropriate measures to ensure the protection and recovery of species of flora listed in Annex I. For this purpose, each Party shall prohibit all forms of destruction or disturbance, including the picking, collecting, cutting, uprooting or possession of, or commercial trade in such species, their seeds, parts or products. They shall regulate activities, to the extent possible that could have harmful effects on the habitats of the species.

b) Each Party shall ensure total protection and recovery to the species of fauna listed in Annex II by prohibiting:

- i) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products;
- ii) to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress....”

² Article 11(2) states “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”.

2. Definitions

NB: In this section, as in the guidance document, in general, only Article 11(2) is considered: therefore section 2 presents definitions for the terms that are used in Article 11(2) only, and does not address definitions of the terms contained in Article 11(1).

Article 11(2) contains a number of key terms and operative phrases. Definitions of these key terms and phrases as used in Article 11(2) are provided below:

Adopt – the granting of a license, permit or other authorization of an activity by a Party.

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.

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.

Organization – the SPAW Protocol Secretariat.

Shall not jeopardize the species – shall not engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of survival or recovery of a covered species by reducing the reproduction, numbers or distribution of the species.

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.

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.

3. Roles and Responsibilities

The description of the roles and responsibilities of the various key players in the exemptions process are outlined below, based on the text of Article 11(2) and other relevant Articles of the SPAW Protocol (e.g. Article 20 on the mandate of the STAC, Article 13 on Environmental Impact Assessments, etc.).

a) SPAW Parties

Parties may adopt exemptions in accordance with Article 11(2). Parties are invited to report their exemptions projects before granting them. Any Party having granted an exemption must report the exemption to the Secretariat for assessment of pertinence by the STAC. The Party should ensure that the appropriate data are collected, organized and collated for presentation to the STAC for assessment. Parties are not excused from compliance with other provisions in the Protocol, including those related to protected areas and environmental impact assessments. Preliminary consultation with the Secretariat may provide guidance on whether an exemption report is required or necessary for a given activity.

b) The Secretariat

The Secretariat is responsible for acting as a conduit for information and document dissemination among the Parties, STAC and COP. It receives exemption reports and forwards them to the STAC for the assessment of their pertinence. The Secretariat is also responsible for keeping records of reported exemptions.

c) The Scientific and Technical Advisory Committee

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), namely that the exempted activity is necessary for the intended purpose (scientific, educational or management) and will not jeopardize the species. 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. The STAC refers the results of its assessment to the COP via the Secretariat. If appropriate, and to the extent possible, before submitting its assessment report to the Secretariat, the STAC may request a Party to provide additional information. If appropriate, and to expedite matters between meetings of the STAC, the STAC may establish a Review Committee to provide a preliminary assessment of the reported exemption.

d) The Conference of the Parties

The Conference of Parties (COP) will review the assessment of the STAC regarding the pertinence of the exemption reported by the Party. In the case of an assessment by the STAC that the exemption is pertinent, the COP may take a decision noting such.

4. Exemption Reports

Article 11(2) states three scenarios under which an exemption may be warranted: namely, for scientific, educational or management purposes, each of which must be necessary to ensure the survival of the species or to prevent significant damage to forests or crops.

a) Scientific purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops

An exemption may be warranted if it can be demonstrated to the satisfaction of the STAC that an otherwise prohibited activity will significantly contribute to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species. Any removal of individuals (or forms of, including seeds, eggs, etc.) shall not jeopardize the survival of the species. Steps should be taken to protect the welfare of removed living individuals. Any action should be undertaken in accordance with international best practices, and these should be specified in the documentation sent by the Party as outlined in Annex A.

b) Educational purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops

Education can be a key component to ensuring a species' survival. Any educational activity that would result in a prohibited act, including a prohibited act incidental to an educational activity undertaken in accordance with the Protocol, may warrant an exemption. Any removal of individuals (or forms of, including seeds, eggs, etc.) from the wild also requires an exemption. Educational activities should not normally result in the intentional killing, capture or destruction of a listed species. Possession for primarily commercial purposes should not be accepted as constituting any educational purpose. Any action should be undertaken in accordance with international best practices, and these should be specified in the documentation sent by the Party as outlined in Annex A (*see document UNEP(DEPI)/CAR WG.38/3*).

c) Management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops

An exemption may be warranted when the demonstrated consequence of the otherwise prohibited activity is likely to contribute to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species. An exemption may also be warranted if necessary to prevent significant damage to forests or crops. Any action should be undertaken in accordance with international best practices, and these should be specified in the documentation sent by the Party as outlined in Annex A.

5. Process for Reporting an Exemption

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 Party has granted an exemption. Parties are invited to consider reporting their exemption projects before adopting exemptions.

Taking into account the roles and responsibilities set out in Section 2, this section aims to present the step-by-step process for a Party's informing the STAC of an exemption. Parties are kindly invited to note that the process below is given only for their guidance, and may be adapted as appropriate. Nonetheless Parties should recall that reporting their exemptions to the STAC for assessment of their pertinence is a requirement of the Protocol, whatever the process they choose to follow.

1. *Step 1: Identification of a Prohibited Act*

A Party becomes aware that a prohibited activity is planned within its borders, or the Party itself considers that a prohibited activity is necessary, and decides to seek guidance regarding an exemption in advance.

If a Party is uncertain whether any activity, either ongoing or planned for the future, is prohibited by Article 11(1), it may undertake preliminary consultation with the STAC to seek guidance.

2. *Step 2: Decision to Grant an Exemption*

Once a Party determines that an activity is prohibited under Article 11(1), it determines whether to grant an exemption pursuant to its domestic law.

3. *Step 3: Preparation of an Exemption Report*

It is assumed here that the Party has granted the exemption prior to its assessment by the STAC. Parties are nonetheless invited to consider reporting their exemption projects before actually granting them.

Reporting Parties prepare the necessary documentation concerning the exemption, with the assistance of interested stakeholders as determined by the Party to be appropriate, for assessment by the STAC. Documentation prepared to receive an exemption under domestic law may be submitted in lieu of the information suggested below.

An activity may potentially impact species in more than one country or the conservation status of a species across its range and within the region. In the case of species or populations of a species migrating between two (or more) countries, the survival of the populations should be assessed separately for each country the species resides in or migrates through and jointly for all countries the species resides in or migrates through. In the case of a common activity undertaken by a number of Parties in cooperation, a joint exemption report may be submitted, but assessment of the pertinence of an exemption is done on a Party-by-Party basis. If the activities involved are significantly different (e.g. capture of animals by one Party for exhibition by another), each reporting Party should submit a separate exemption report for the prohibited acts.

4. *Step 4: Assessment of the Exemption by the STAC*

The STAC, taking into account the recommendations of a Review Committee if appropriate, assesses whether the exemption satisfies the criteria for pertinence. In the case of species or populations of a species migrating between two (or more) countries, the survival of the populations should be assessed separately for each country the species resides in or migrates through and jointly for all countries the species resides in or migrates through. If the STAC finds the exemption to be pertinent, its assessment is reported to the COP via the Secretariat.

If the STAC determines that additional information is necessary before it can complete its assessment, it may ask the Party, through the Secretariat, to provide additional information.

Final assessment of the pertinence of the exemption is reported to the COP by the STAC

The STAC assessment process can be carried out during a formal meeting, or via electronic consultation (such as e-mail or teleconference).

The Conference of Parties (COP) will review the assessment of the STAC regarding the pertinence of the exemption reported by the Party. In the case of an assessment by the STAC that the exemption is pertinent, the COP may take a decision noting such.

NOTE: In the event that a Party anticipates that an activity for which an exemption is granted will recur, without significant change from its description in Annex A, then the party may report a programmatic exemption, under which all occurrences of the activity may be assessed in a single exemption report.. For non-programmatic exemptions, an exemption report will apply to a single occurrence of an exempted activity. Any additional occurrence of the exempted activity will require a new exemption report for assessment by the STAC. For programmatic exemptions, any significant modification or extension of the conditions of the exemption will require a new exemption report and a separate review by the STAC.

6. Exemption Reporting

The exemption report should provide the information below regarding the exemption. A sample report form is contained in Annex A (see also UNEP(DEPI)/CAR WG.38/3, but at a minimum, the report should contain:

- Details of the prohibited activity, including: the species affected; the type of prohibited activity to be undertaken; the government department with responsibility for oversight of the activity; the location of the activity; a detailed description of the activity, including if relevant any mitigation measures designed to limit or counteract any deleterious effects; the names, affiliations and qualifications of the people involved; the methodology and equipment, if any, to be used; and the duration of the activity. Any methodology should conform to international best practices, and these should be specified.
- A detailed explanation of how the prohibited activity is likely to contribute to the species' survival or prevention of significant damage to forests or crops (and whether the exemption is for scientific, educational or management purposes).
- A detailed explanation of why the prohibited activity will not jeopardize the species or, if relevant, other listed species.
- 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.

In all cases, the report should include, consistent with Article 13 (Environmental Impact Assessment):

- i) a detailed description of the current conservation status of the species subject to the prohibited activity;*
- ii) the threat to the subject species from the prohibited activity, including impacts on the population size, distribution and fragmentation, cumulative impacts, and impacts on the quantity and quality of suitable habitats available for the species;*
- iii) other threats to the species in the short- and long-term; and*
- iv) the potential for impacts on other species as a consequence of the prohibited activity. 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.*

In the case of species or populations of a species migrating between two (or more) countries, the survival of the populations should be assessed separately for each country the species resides in or migrates through and jointly for all countries the species resides in or migrates through.

7. Post-Implementation Reporting

After a prohibited activity for which an exemption exists has taken place the concerned Party is encouraged to prepare a report on that activity.

The format described in Annex of this guidance document can be usefully followed to that purpose. In order to reduce the reporting burden on Parties, the reports on prohibited activities subject to an exemption may be combined with reporting undertaken under Article 19 of the SPAW Protocol and other reports required by the Cartagena Convention.



ANNEX A

REPORTING FORMAT FOR EXEMPTIONS UNDER ARTICLE 11(2)

SECTION RESERVED FOR THE ADMINISTRATION

Application No :
Date of receipt:
Name of the reviewer :
Date of review by the STAC:
Recommendation made by the STAC:
Date of review by the COP:
Decision of the COP on pertinence of exemption:

I. CONTRACTING PARTY *

Contracting Party:
Contact Person:
Title:
Department:
Contact address:
Email: Phone number:

** In the case of a common activity undertaken by a number of Parties in cooperation, a joint exemption report may be submitted, but assessment of the pertinence of an exemption is done on a Party-by-Party basis.*

II. DESCRIPTION AND JUSTIFICATION OF THE PROHIBITED ACTIVITY*

** If the space provided is insufficient, please add continuation sheets throughout this report to provide the details necessary for a STAC review*

A. Description of the activity:

★ Has the exemption already been granted by the Contracting Party? Yes No

★ Has the activity started? Yes No

★ General description of the activity :

★Place and full address of activity (Attach map if necessary):

.....

★Commencement date:

.....

★Termination Date/or On-going:

.....

★Name, affiliation and qualification of the personnel (governmental and non-governmental) responsible and involved in the activity :

Name	Experience	Affiliation (name, address)

★Identification of the Government department responsible for oversight of the activity – Reference the domestic legal authority under which the exemption is granted:

★ Request for exemption to the protection of species of flora listed in Annex I of the Protocol for:

- picking
- collecting
- cutting
- uprooting
- possession of, or commercial trade in such species, their seeds, parts or products

★ Request for exemption to the protection of species of fauna listed in Annex II for :

- the taking of the species, their eggs, parts or products
- possession of the species, their eggs, parts or products
- killing (including, to the extent possible, the incidental taking*, possession or killing)
- commercial trade of the species, their eggs, parts or products.

**Incidental take includes killing or destruction as an unintentional by-product of any kind of action, including fisheries, construction activities, recreational activities, mining, hydrological works, etc.*

★ The disturbance of the species, during periods of :

- breeding
- incubation
- estivation
- migration
- other periods of biological stress (please precise)

B. Justification for the exemption (check all the appropriate boxes; provide details on separate sheets if necessary)

- Scientific purposes
- Educational purposes
- Management purposes

★ Explain why the prohibited activity is necessary to ensure the survival of the impacted species or to prevent significant damage to forests or crops, and why it will not jeopardize any impacted species :

★ List the equipment and explain the methodology used for your activity (include substantive information as attachments or as hyperlinks). Consider that any methodology should conform to international best practices, which should be specified:

III. DESCRIPTION OF THE SPECIES IMPACTED BY THE EXEMPTION
 (Please provide separate answers to the questions in this section for each listed species; use additional sheets if necessary):

★ SPAW listed species impacted by the exemption:

Species (Common name, Latin name)	Quantity harvested (if applicable)	Description of the species, specimen, individuals ¹

¹ Any specific characteristics such as sex, age, etc. ...

★ Please give a detailed description of the current conservation status of the species subject to the prohibited activity (such information could include international and national status, management program, domestic legislation relating to the conservation of the species, nature of legal protection for the affected species, recovery plans for species, technical publications relevant to the species):

IV. DESCRIPTION OF THE IMPACTS AND MITIGATION MEASURES

★ Tick the box that applies to your situation concerning the principal threats to the subject species due to the prohibited activity :

- impacts on population size
- distribution (including number of sub-populations) and fragmentation
- cumulative impacts
- impacts on the quantity and quality of suitable habitats available for the species
- other threats to the species in the short- and long-term
- impacts on other species as a consequence of the prohibited activity

★ Explain why the prohibited activity will not jeopardize the species or, if relevant, other listed species.

*In the case of species or populations of a species migrating between two (or more) countries, the survival of the populations should be assessed separately for each country if the species resides in or migrates through and jointly for all countries the species resides in or migrates through.

★ *Does the activity require a separate exemption by another Party, and if so which one?*

★ *Has an Environmental Impact Assessment (EIA) or equivalent process been completed? If so, please attach the EIS or other impact studies*

★ *Describe the mitigation measures designed to limit or counteract any deleterious effects (provide a list and supporting documentation, such as guidelines, policies, reports, videos/photographs etc. as attachments or hyperlinks)*

★ *Please give 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, numbers, or reproductive success (include as attachments or hyperlinks)*

★ *Additional remarks*

Signature
(Authorized responsible for the Contracting Party)

Date