

7th Conference of the Parties to the Protocol on Specially Protected Areas and Wildlife
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Report of the Working Group to Develop the Criteria and Process to Assess Exemptions Under Article 11(2) of the SPAW Protocol



Hélène SOUAN

Regional Activity Center for the SPAW Protocol

Background

- **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.”

- SPAW COP 6 : Decision to establish an Ad Hoc Working Group of Experts to develop criteria for the assessment of exemptions, with the SPAW-RAC acting as coordinator and chair of the Working Group.

UNEP(DEPI)/CAR IG.29/5, Decision 12 : “The Contracting Parties [...] **Decide to:** [...] 12. Prioritize in the 2010-2011 Workplan the establishment of a Working Group to develop the draft criteria for the assessment of exemptions regarding Article 11 paragraph 2, and to this end, establish a Working Group under the leadership of SPAW-RAC to begin its work as soon as feasible.”

- The document **UNEP(DEPI)/CAR WG.34/5** presents the work undertaken by the Working Group, the key points that were discussed, and the recommendations from the Working Group.

- The guidance document on exemptions to species protection under Article 11(2) of the SPAW Protocol, elaborated within the Working Group, is presented in Annex I of the report.

Summary of the activities of the Working Group for the period 2010-2012 (1/2)

- **February 2011** : Members of the Ad Hoc Working Group nominated in by SPAW Parties, as well as by the scientific and NGO communities. The WG is comprised of a total of members :
 - 13 members nominated by 8 SPAW Parties
 - 3 representatives of Mexico as observers
 - 5 NGO/experts
 - UNEP/CAR-RCU and the SPAW-RAC
- **March 2011** : Initiation of the discussions by the SPAW-RAC by means of an electronic discussion group.
 - The members of the Working Group were presented with a proposed process and approach that were pursued given the lack of objection raised by any member of the Working Group.
 - Two documents were made available : UNEP(DEC)/CAR WG.29/INF.5, and a review of exemption systems developed in other international agreements prepared in 2010 by the SPAW RAC
 - In order to facilitate discussions , the SPAW-RAC provided a series of documents summarizing the reviews mentioned above.
- **April 2011** : Preliminary guidance document prepared by the SPAW-RAC and shared with the Working Group
 - Document completed by additional points and sent again for discussion and feedback.
 - Small sub-group of experts of the Working Group volunteering to further work on the guidance document in collaboration with the SPAW-RAC.
- **Fall 2011** : New, more concise guidance doc. prepared by the sub-group of experts and the SPAW-RAC

Summary of the activities of the Working Group for the period 2010-2012 (2/2)

- **March 2012** : SPAW-RAC invited comments of the Working Group on the revised guidance document
 - **May 2012** : 2nd round of comments called by the SPAW-RAC
 - **July 2012** : 3rd and final round of comments called by the SPAW-RAC
- All the exchanges within the Working Group are included in the report.
- Specific contribution received from Cuba where a dedicated workshop was held in December 2011 on the first draft guidance document and that contained proposals, suggestions and comments on the document
- All questions and comments were addressed and incorporated to the extent possible into a final draft guidance document.

Status of feedback received from the members of the Working Group on the draft guidance document

| Country | Nominees | Feedback on draft guidance document | Content of the feedback |
|---|------------------------|-------------------------------------|---|
| Colombia | Claudia Luz Rodríguez, | Yes | The draft guidance document is Ok |
| | Andrea Ramírez M, | | |
| Guyana | Michelle Kalamandeen | No | |
| | Damian Fernandes | | |
| St. Vincent and the Grenadines | Mr. Raymond Ryan | No | |
| | Mr. Kris Isaacs | | |
| Netherlands (Bonaire, Eustatius, Saba) | Mr. Paul Hoetjes | No | |
| France | Fanny Lendi-Ramirez | Yes | The draft guidance document is Ok |
| Cuba | Yadira Medina Guevara | Yes | The draft guidance document is globally ok but some edits/proposals have been made and incorporated to the extent possible into the final draft |
| | Susana Pereira | | |
| St. Lucia | Sarita Williams-Peter | No | |
| Mexico (observers) | Oscar Ramirez | No | |
| | Hesiquio Benitez | | |
| United States of America | Nancy Daves | No | |
| | Trevor Spradlin | | |
| Humane Society International | Ronald Orenstein | N/A* | |
| Whales and Dolphins Conservation Society | Courtney Vail | N/A* | |
| Animal Welfare Institute | Susan Millward | N/A* | |
| Wider Caribbean Sea Turtles Conservation Network | Karen Eckert | Yes | The draft guidance document is Ok with a few edits that have been incorporated into the final draft |
| Society for the Conservation and Study of Caribbean Birds | Lisa Sorenson | Yes | The draft guidance document is Ok with a few edits that have been incorporated into the final draft |

* These three experts were the ones drafting the guidance document in collaboration with the SPAW-RAC

Key points discussed within the Working Group

Interpretation of the language used in Article 11(2) :

→ Article 11(2) should be read: “*Each Party may adopt exemptions [...] for scientific purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops, for educational purposes necessary to ensure the survival of the species or to prevent significant damage to forests, or for management purposes necessary to ensure the survival of the species or to prevent significant damage to forests or crops.* [...]”

Activities that require or not an exemption :

The Working Group clarified that it was formed in order to delineate and prescribe a *process to implement article 11(2) that only comes into play once a party has determined that it has violated, or may violate, 11(1).*

→ Deciding what constitutes a violation of 11(1) was a separate issue out of the mandate of the Working Group which was focused on 1/ develop the draft criteria and 2/ agree upon a process

→ The Working Group recommends leaving the competency with the STAC to assess interpretation and compliance with Article 11(1) prohibitions.

Categories of exemptions were illustrated in the guidance document:

1/ For prohibited activities that are to take place only once and in the short-term

2/ For ongoing activities repeated over time on the middle- to long-term = “programmatic exemptions”.

→ In the case of ongoing activities, the Party responsible for them could request a programmatic exemption and not repeat the process each time the action is to be repeated.

Sample forms to request an exemption and to report on this exemption :

Discussions on the risk for such formats to allow the exemption process to appear routine. On the other hand, the usefulness of formats was recognized.

→ Decision to develop draft sample forms, to keep them at a preliminary stage, and to request advice from the STAC on their relevance

Structure of the draft Guidance document (1/2)

Structure and content of the draft guidance document presented by the Working Group to SPAW
STAC 5 and SPAW COP 7 :

1. Introduction

2. Definitions

- Adopt
- Assess the pertinence
- Educational
- Management
- Necessary to ensure the survival of the species
- Organization
- Shall not jeopardize the species
- Scientific
- Significant damage
- Survival

3. Roles and responsibilities

- SPAW Parties
- The Secretariat
- The STAC
- The COP

4. Types of exemptions

- 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

Structure of the draft Guidance document (2/2)

5. Process for providing for an exemption

- Step 1: Identification of a Prohibited Act
- Step 2: Decision to Pursue an Exemption
- Step 3: Preparation of an Exemption Proposal
- Step 4: Assessment of the Exemption Proposal by the STAC
- The COP Makes a Determination on the Exemption Proposal

6. Exemption proposal

- Details of the prohibited activity
- Detailed explanation of how the prohibited activity will ensure the species' survival or prevention of significant damage to forests or crops
- Detailed explanation of why the prohibited activity will not jeopardize the species or, if relevant, other listed species.
- Detailed explanation of the monitoring or evaluation protocols
- Evidence indicating that there is no alternative option available that would achieve the same result with less risk to the species concerned or to other listed species.
- Detailed description of the current conservation status of the species
- Description of the threat to the subject species from the prohibited activity
- Description of other threats to the species in the short- and long-term
- Description of the potential for impacts on other species

7. Post-implementation reporting

Annex A: Sample form for preparing a proposal for an exemption to a prohibited activity

Annex B: Sample form for preparing a report on a prohibited activity subject to an exemption (not yet developed)

Action to be Taken

The fifth SPAW STAC is invited :

- To review the guidance document, amend it as necessary and recommend its review and if appropriate, adoption by SPAW COP7;
- To provide guidance on the next steps with respect to the formats for respectively requesting an exemption and reporting on an exemption once granted and implemented.

The Working Group also recommends that the work is pursued in 2013-2014 so that formats for requesting and reporting on an exemption are finalized and made available.

The seventh SPAW COP is invited :

- To review the recommendations of SPAW STAC 5 ;
- To review and if appropriate adopt the Guidance document ;
- To extend the mandate of the Working Group in 2013-2014 in order to finalize the sample forms.



Thank you for your attention!

SPAW/RAC

Parc national de Guadeloupe, Habitation Beausoleil, Montéran, BP 93
97120 Saint-Claude Guadeloupe (FWI)

Helene.souan.carspaw@guadeloupe-parcnational.fr
Tél: 0590 (0) 590 80 14 99

