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

Panama City, Panama  
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**Implementation and Compliance Issues within the SPA W Protocol:  
Briefing Paper  
March 2025**

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## **Implementation and Compliance Issues within the SPAW Protocol: Briefing Paper March 2025**

### **The Challenge**

The implementation and ultimate effectiveness of multi-lateral environmental agreements (MEAs) relies upon the adherence (compliance) by Parties to the mandated or voluntary provisions and requirements of these accords. In 2002, the United Nations Environment Programme (UNEP) identified the strengthening of compliance with MEAs as a key issue and adopted guidelines to further guide discussion and action towards effective implementation of these treaties.<sup>1</sup> Subsequent to these guidelines, UNEP expanded upon these guidelines with their *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* that was published in 2006.<sup>2</sup>

These developments underscore the importance of implementation and compliance issues within the UNEP-administered system of treaties and accords that have been forged over decades, while at the same time recognizing that many countries are struggling to implement their commitments under numerous agreements to which they are party.

While the term *compliance*<sup>3</sup> does not necessarily have a negative connotation, other terms associated with implementation issues, including *monitoring*, *reporting*, and *enforcement*, often do. These mechanisms (monitoring, reporting, enforcement) are possible avenues towards encouraging and achieving compliance and serve as useful benchmarks by which to evaluate existing frameworks within the Specially Protected Areas and Wildlife (SPAW) Protocol that may serve to support successful implementation of the Protocol's provisions.

### **Compliance and the SPAW Protocol**

While most major MEAs have a process to review compliance and implementation within their frameworks and often include some form of enforcement (punitive) mechanisms for noncompliance, the SPAW Protocol does not.

There are, however, explicit reporting requirements within the Protocol meant to solicit and foster data exchange between Parties, the UNEP Cartagena Convention Secretariat (Regional Coordinating Unit), and the Regional Activity Centre (SPAW-RAC) to better understand implementation issues and

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<sup>1</sup> UNEP. (2002). Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements. Available at <https://wedocs.unep.org/handle/20.500.11822/17018>

<sup>2</sup> UNEP. (2006). *Manual on Compliance and Enforcement of Multilateral Environmental Agreements*. UNEP Division of Environmental Conventions. 800 pp.

<sup>3</sup> As defined by the UNEP Guidelines, *Compliance* means the fulfillment by the contracting parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement. *Implementation* refers to all relevant laws, regulations, policies, and other measures and initiatives that contracting parties adopt or take to meet their obligations under an MEA.

evaluate the effectiveness of the Protocol to support biodiversity in the Caribbean Region. Unfortunately, reporting by Parties has been lacking.

This lack of reporting may be less about accountability and political will than the convergence of a multitude of challenges faced by Parties, including capacity within implementing agencies; coordination between focal points and implementing agencies; focal point continuity; lack of knowledge about reporting requirements; hesitancy to share data that might reflect poorly on a country's implementation efforts; and inadequate implementing laws and regulations. These factors that require attention could emerge during country consultations in order to identify and address compliance challenges within the Protocol.

## Contracting Party Responsibilities Under the SPAW Protocol

Implementation of the Protocol is contingent upon adherence (compliance) to the general obligations expected from Contracting Parties upon ratification, and the more specific obligations outlined within the Articles of the agreement.

In general, Parties shall regulate and prohibit activities having adverse effects on protected areas and species, as well as managing species and implementing protective measures with the objective of preventing species from becoming endangered.<sup>4</sup>

More specifically, the following articles outline those obligations relating to reporting, monitoring, and other requirements to encourage implementation:

**Article 11(2) (reporting):** Article 11 requires cooperative measures to ensure the protection and recovery of endangered and threatened species of flora and fauna, including the prohibition of activities such as possession, killing, harvest, commercial trade, and disturbance of listed species in Annexes I and II.

Article 11(2) provides specific allowances, or exemptions, to these protective provisions that enable a Party to conduct activities that impact or jeopardize species protection for the purposes of scientific, education, or management purposes.<sup>5</sup>

Article 11(2) requires that Parties report their exemptions to the Secretariat ("the Organization") for the pertinence of the exemption to be assessed by the Scientific and Technical Advisory Committee (STAC).

A lengthy process spanning over a decade and at least four separate STACs and COPs resulted in the endorsement of both a process for reporting an exemption and an Exemptions Reporting Format to facilitate reporting by Parties.<sup>6</sup> During COP8 (Cartagena, 2014) the Parties approved the guidance document outlining the criteria and the evaluation process to assess exemptions under Article 11 (2)

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<sup>4</sup> SPAW Protocol, Article 3 (General obligations), Article 5 (Protective measures), Article 6 (Planning and management regimes for protected areas), and Article 10 (National measures for the protection of wild flora and fauna).

<sup>5</sup> Deliberations and decisions by the Parties concluded that an exemption report is voluntary and does not have to preemptively reported for permissions or review by the STAC in advance of the activity occurring but can be submitted for pertinence after the activity has occurred. However, the guidance emphasizes the importance of early reporting to obtain feedback, guidance, and technical support from Parties in advance of exempted activities occurring to enhance collaborative efforts to protect species.

<sup>6</sup> Exemptions Reporting Format, adopted at COP9 in French Guiana in 2017, can be [found here](#).

and according to Recommendation IV of STAC6 (Cartagena, 2014).<sup>7</sup> The original legal review of Article 11(2) upon which the guidance document was based was conducted in 2005.<sup>8</sup>

**Article 14 (reporting):** Like Article 11(2), the Protocol provides an exception to its protective provisions to species included in Annexes I and II, for traditional subsistence and cultural needs of local populations. It is important to note that these terms (traditional subsistence, cultural need) have not been defined nor articulated by Parties or a working group. Like Article 11(2) exemptions, Article 14 exemptions cannot endanger the maintenance of protected areas or cause a substantial risk to populations of protected species. Article 14 exemptions must be reported to the Organization, and unlike the requirements of Article 11(2), Article 14 does not mandate STAC review.

**Article 19 (reporting):** Article 19 speaks directly to reporting requirements for Contracting Parties. These requirements include, among other details, reporting on the status of protected areas and species, including legal status, change in status, management plans, threats, and research programs. These reports must be provided ‘periodically,’ with no designated timeframes articulated in the Article.<sup>9</sup>

**Article 22 of the Cartagena Convention (reporting):** Currently, Parties to the Cartagena Convention are requested to report country information on a biennial basis. Under Article 22 of the Convention, Contracting Parties are required to transmit information regarding the implementation of the Convention and its Protocols. These biennial country reports utilize a common reporting format that solicits information relevant to all three Protocols under the Cartagena Convention (SPAW, LBS, and Oil Spills). An updated reporting form was adopted at IGM18 in Roatan, Honduras.<sup>10</sup> This reporting format contains fields to report on exemptions (even though a separate exemptions reporting form exists for SPAW Parties), among other information relevant to the implementation of the Convention and its Protocols.

Annual reporting remains low, with just five of 26 Parties having submitted annual reports for the last biennium. In the biennium prior (2019-2020), just seven countries submitted reports.<sup>11</sup> Discussions held during various meetings of the Parties considered and recommended the creation of an online reporting tool/format to address these reporting challenges. In fact, reporting obligations and acknowledgement of the tremendous need to harmonize reporting across MEAs and the burdens placed upon Parties to report national outcomes within various agreements to which they are party was recognized at the very first SPAW STAC meeting in Havana, Cuba in 2001.<sup>12</sup>

## Other Contracting Party Obligations

Beyond the specific reporting obligations identified in the Articles of the SPAW Protocol identified above, the Protocol also seeks adherence to other obligations to support implementation.

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<sup>7</sup> SPAW STAC6 Report of the Meeting can be [found here](#).

<sup>8</sup> This legal review can be [found here](#).

<sup>9</sup> In the absence of specific timeframes for reporting noted in Article 19, it might be prudent and practical to consider the required Cartagena Convention Biennial reporting forms as the appropriate vehicle for such detailed reporting.

<sup>10</sup> National reporting format under the Cartagena Convention and its Protocols [can be found here](#). UNEP (DEPI)/CAR WG.32/INF.9/Rev. 3

<sup>11</sup> UNEP(DEPI)/CAR IG.45/6. Page 10. Available [here](#).

<sup>12</sup> At this meeting, a comparison of reporting requirements and formats across several MEAs was presented to inform national reporting formats for SPAW Contracting Parties. The document [can be found here](#).

**Article 10 (national measures):** Article 10 requires each Party to identify endangered or threatened species within their jurisdictions and protect them through national laws and regulations prohibiting all forms of destruction and disturbance.

**Article 13 (environmental impact assessments):** Article 13 can work in tandem with Article 11(2) by encouraging Parties to evaluate the environmental impact of projects and activities and seek assistance and guidance from the STAC to conduct these assessments of cumulative impacts on species and protected areas.

**Article 16 (protected areas):** Article 16 requires each Party to publicise the establishment and boundaries of protected areas and listing of species, raise awareness, and inform and engage the public regarding their significance and value.

**Article 17 and 18 (monitoring, research, training):** Articles 17 and 18 obligate Parties to develop scientific, technical, and management-oriented research, training, and environmental education programs on protected areas and species, and to consult with other Parties, undertake and coordinate monitoring programs, and standardize procedures for reporting, archiving, and analyzing scientific and technical information. Such efforts shall include coordination with the Organization.

**Contributions to the Caribbean Trust Fund (CTF):** The Caribbean Trust Fund was established in 1983 to provide financial support for the common costs and activities associated with the implementation of the CEP Action plan and later extended to support the activities associated with implementation of the Cartagena Convention. The financial rules of the Convention were outlined in June 2012 at the first meeting of the LBS STAC.<sup>13</sup> According to these rules, Contracting Parties agree to pay voluntary contributions on an annual basis to support the Trust Fund.

## Decisions of the Parties Requiring Action

Beyond the obligations and requirements articulated in the language and interpretations of the Protocol, the Decisions of the Parties adopted at previous COPs themselves have required certain activities, including reporting and the passage of national legislation, to remedy non-compliance or enhance implementation.

**Species Protection.** Over the course of nearly 15 years, the issue of the persistence of hunting of certain protected species in the region, including cetaceans and sea turtles, was carefully raised within the context of the Marine Mammal Action Plan (drafted in 2005, adopted in 2008, and revised version adopted at COP12 in 2023).<sup>14</sup>

Through the concern of Contracting Parties, the issue of effective implementation of the Protocol was raised through the course of multiple biennia and the most egregious example of non-compliance—the hunting of Annex II species was pointed at several times.<sup>15</sup>

<sup>13</sup> Financial rules for the Convention for the Protection and Development of the Marine Environment of The Wider Caribbean Region. April 17, 2012. Available [here](#).

<sup>14</sup> UNEP. (2023). Update of the Action Plan for the Conservation of Marine Mammals in the Wider Caribbean Region: 5 Year Action Plan. UNEP(DEPI)/CAR WG.43/INF.31/Rev.1. 55 pp.

<sup>15</sup> UNEP(DEPI)/CAR WG.36/8. At SPAW STAC6 in Cartagena, Colombia (2014), the Netherlands Antilles noted that “some of the concerned islands were Parties to the SPAW Protocol, which requires full protection of sea turtles, and therefore were not in compliance.” Paragraph 110 under Agenda Item 9.

Supported by the data contained within an assessment of cetacean hunting<sup>16</sup> in the Region presented to SPAW COP10 in Roatan, Honduras in 2019, Decision 9 was agreed by Parties and seeks compliance to the Protocol by encouraging the enactment of legislation to prohibit the hunting of cetaceans in national waters.

*COP10 Decision 9 reads verbatim<sup>17</sup>:*

Call upon all Parties to the SPAW Protocol of the Wider Caribbean region in regards to small 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;
- iii. Improve collaboration with the Secretariat, Scientific and Technical Advisory Committee (STAC), other parties and experts to identify research needs and opportunities to collect and share data relating to the distribution and status of cetaceans in the Region;
- iv. Reinstate the experts working group on marine mammals and charge it with overseeing the assessment of populations of exploited small cetacean species in the Wider Caribbean.

To date, no reporting of specific numbers of cetaceans taken in hunts has been reported to the Organization.

Similarly, Recommendation VI at STAC6 calls on Parties that are allowing the take of sea turtles to stop these activities because they are in noncompliance with the Protocol or enter the process of reporting an exemption to the STAC so that it can assess pertinence.<sup>18</sup>

**Article 11(2) Exemptions.** Since the adoption of the Exemption Reporting Format at COP9 in 2017<sup>19</sup>, the Secretariat has made repeated calls to Parties to report their exemptions to the Organization for STAC review and assessment of pertinence. So have Contracting Parties.

Both COP10 and COP11 adopted decisions calling on Contracting Parties to comply with the provisions of the Protocol and if taking of any species listed under Annex II of the Protocol is not prohibited, then an exemption report be submitted to the STAC to demonstrate the pertinence of such take.

Decision 12 of COP10 (Roatan, 2019) calls on Parties to report exemptions in a format in which all relevant information be included—even if it is not the reporting format that was produced by the Exemptions Working Group endorsed by Parties at COP9 (French Guiana, 2017).<sup>20</sup>

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<sup>16</sup> The assessment of cetacean hunting in the Caribbean Region [can be found here](#).

<sup>17</sup> SPAW COP10 Decisions of the Meeting can be [found here](#).

<sup>18</sup> Recommendation IV, STAC 6, in [UNEP\(DEPI\)/CAR WG.36/8](#)

<sup>19</sup> Exemptions Reporting Format, adopted at COP9 in French Guiana in 2017, can be [found here](#).

<sup>20</sup> SPAW COP10 Decisions of the Meeting can be [found here](#).

COP10 noted that ‘...the reporting of exemptions is a critical component of the SPAW Protocol which enables Parties to confirm their compliance with the obligations they have taken on as Parties to the SPAW Protocol.’”

Decision XI of COP11 (virtual, 2021), urges countries to continue their efforts to meet their commitments to protect species and ecosystems and to report exceptions (exemptions) to the protection of species in compliance with the Protocol.<sup>21</sup>

At COP12 (Aruba, 2023), the Parties adopted STAC10 Recommendation V stating, “the Secretariat and SPAW-RAC support capacity building for improved reporting of exemptions through peer-to-peer exchanges and assessments of Contracting Parties’ needs.”<sup>22</sup>

**Voluntary Contributions.** Decision II of COP11 urges all Contracting Parties to increase voluntary contributions to the CTF for implementation of the CEP Action Plan and SPAW Protocol. This Decision echoes past decisions for compliance to the financial rules of the Convention, including Cartagena COP16 which noted the severe impact that continued nonpayment of annual contributions and outstanding contributions has on the viability of the Secretariat and implementation.<sup>23</sup>

**Implementation of the Protocol.** Decision IV of COP12 calls on Parties to increase ratification of the SPAW Protocol and *implementation of its obligations*.

## Challenges in Ensuring Full Compliance

1. **Submissions of Biennial Country Reports (reporting):** Last Biennium, only five of 26 parties to the Cartagena Convention submitted their biennial reports (less than 20 percent of Contracting Parties). This represented just four SPAW Parties (less than 25%) of 18 parties to the Protocol at that time .
2. **Insufficiently developed or enforced national legal frameworks (national measures):** Both the protection of species and the protection of special areas (protected areas) require national legislation that regulates or prohibits certain activities (i.e., dumping and discharge of wastes, shipping, hunting and fishing, introduction of non-native species, exploitation of the seabed, degradation of watersheds, tourism and recreational activities, trade in species, etc.).<sup>24</sup>
3. **Challenges in effectively applying protection measures required under Article 11(1) for SPAW-listed species (protection measures):** According to Article 11 of the SPAW Protocol, Parties have the obligation to adopt cooperative measures to ensure the protection and recovery of endangered and threatened species listed in the SPAW Annexes I (Flora), II (Fauna), and III (species of Flora and Fauna that can be sustainably utilised). Under this Article, all capture, killing, hunting and fishing and all actions likely to cause local disappearance or disturbance of tranquility of species included in Annexes I and II are

<sup>21</sup> <https://gefcrew.org/carrcu/SPAWCOP12/IG.45-6-en.pdf>

<sup>22</sup> UNEP(DEPI)/CAR IG.46/3. [Available here.](#)

<sup>23</sup> *Id.*, Annex IV, Page 2.

<sup>24</sup> These protection measures necessary for implementation of the Protocol are outlined in Article 5 of the SPAW Protocol.



prohibited. While each of the SPAW Signatory Parties has a responsibility to implement sustainable management measures for the Annex III listed species, they are also managed through regional and international management organizations and environmental treaties. The continued hunting of cetaceans and sea turtles by multiple Parties in the Region, or the destruction of listed coral species for a pier construction project, are examples of potentially noncompliant activities that violate the SPAW Protocol.

4. **Limited submissions of exemptions reports to be assessed by the STAC as required by Article 11(2) (reporting):** The discussion of exemptions is at the center of compliance with the Protocol's protective provisions. The very heart of the SPAW Protocol is to regulate and, where necessary, prohibit activities having adverse effects on threatened and endangered species in the Wider Caribbean Region that are listed in Annexes of the Protocol.

While the SPAW Programme does not take the issue of compliance lightly, only three Parties, Curaçao<sup>25</sup>, Bonaire, and the U.S. have ever submitted a formatted Exemptions Reports under Article 11(2).<sup>26</sup>

5. **Limited submissions of exemptions reports to inform the Organization as required by Article 14 (reporting):** To date, only Saint Vincent and the Grenadines has informed the organization about an exemption granted under Article 14's category of exception for activities to meet the traditional subsistence and cultural needs of local communities. It is not clear whether this Article requires an elaboration of a process and definitions of key words included in the Article, like the process surrounding Article 11(2) exemptions.

**Limited contributions to the Caribbean Trust Fund (CTF) (fiscal contribution):** Despite various COPs and IGMs reminding Parties of their fiscal obligations, which directly support the operations of the Organization/Secretariat, Party contributions are lacking and incomplete. Currently, contributions over the last six years have been insufficient to cover the work of the Convention, and more is being spent than earned. COP16 (virtual, 2021) to the Cartagena Convention noted that the financial situation of the CTF threatens the sustainability of the Secretariat.<sup>27</sup> Parties have also considered the restriction of funding for Parties to participate in meeting or projects of the Convention if they do not commit to pay and contribute funds to the CTF.<sup>28</sup>

## Existing Mechanisms to Encourage Reporting and Implementation

<sup>25</sup> Netherlands Antilles presented exemptions to the Organization for discussion before the reporting format was adopted. While Curaçao was formerly a part of the Netherlands Antilles, and part of its original exemption report for the Curaçao dolphinarium at [STAC1 \(Havana, 2001\)](#) and import of bottlenose dolphins from Cuba in 2007, after dissolution of the Netherlands Antilles in 2010, Curaçao submitted an [Exemption Report in September 2016](#) for corals as a newly autonomous territory of the Kingdom of the Netherlands. Curaçao submitted a second Exemption Report in April 2024.

<sup>26</sup> Note that The Bahamas informed STAC6 (Cartagena, 2014) of an exemption under Article 11(2) for two species, the Bahama Parrot (*Amazona leucocephala*) and Bahamian Rock Iguana (*Cyclura cychlura*) for display on the property of Baha Mar for educational purposes. Both this report, and the Netherlands Antilles dolphin exemption report in 2001 and 2007, preceded the existence of a reporting format. See paragraph 111, Agenda Item 9. [In UNEP\(DEPI\)/CARWG.36/8](#)

<sup>27</sup> Decision II of Cartagena COP16. UNEP(DEPI)/CAR IG.45/6, Annex IV, Page 4.

<sup>28</sup> UNEP (DEPI)/CAR IG.45/6. Available here. <https://gefcrew.org/carrcu/SPAWCOP12/IG.45-6-en.pdf>



As noted above, while most major environmental agreements have a process to review compliance and implementation within their frameworks and often include some form of enforcement (punitive) mechanisms for noncompliance, the SPAW Protocol does not. In addition, other agreements treat decisions of the parties and recommendations from technical and scientific committees or expert working groups as binding, requiring that they be implemented by parties (see Appendix I).

The mechanisms that currently exist within the Protocol to encourage compliance and implementation include:

- ***Diplomatic communications from the Secretariat:*** The Secretariat conducts bilateral outreach with countries whose activities violate the protective provisions of the Protocol. For example, the UNEP Cartagena Convention Secretariat has sent multiple letters to governments regarding the hunting of marine mammal species (all included in Annex II of the Protocol).
- ***Decisions of the Parties:*** While Decisions of the Parties reaffirm the collective positions of countries regarding implementation issues and obligations, there is no compliance or enforcement mechanism within the SPAW Protocol to advance or reinforce these decisions.
- ***Biennial reporting requirements:*** As noted above, less than a quarter of Contracting Parties submit their Cartagena Convention Biennial Reports. The reporting form seeks information relating to national implementation for all three Protocols.
- ***Monitoring Committee:*** At the 19<sup>th</sup> IGM meeting (held virtually July 28-30, 2021), Agenda Item 8 considered the continuation of a Monitoring Committee that had been established to support the work of the Convention, the Bureau, and implementation of the Convention on an *ad hoc* basis, despite it not being a requirement of the Convention or its Protocols. Since there was no consensus on the establishment of a Monitoring Committee, this committee has not been reestablished.
- ***Ad hoc working group recommendations:*** Working groups established by the STAC operate under specific mandates to provide recommendations on key issues under the SPAW Protocol, typically at the request of the STAC itself. For example, technical experts have been convened to assess species or protected areas proposed for listing under the SPAW Protocol, review exemption requests to be evaluated by the STAC, and provide management recommendations on species and Sargassum management. The recommendations issued by these working groups are intended to inform decisions of the Conference of the Parties (COP) and support the effective implementation of the Protocol.

## Recommendations to Encourage Reporting and Compliance

Given the inherent need for cooperation and concerted action of Parties to facilitate the conservation and effective management of listed species of flora and fauna, the SPAW Protocol may benefit from a process to provide support to those Parties experiencing difficulties implementing the Convention.

Latitude to address compliance issues may reside implicitly within Article 16 of the broader Cartagena Convention, which allows Contracting Parties to “consider and undertake any other

action that may be required for the achievement of the purposes of this Convention and its Protocols.”<sup>29</sup>

- **Conduct listening sessions:** Interventions from Parties have focused on concerns relating to reporting, implementation, and assessments of the effectiveness of the Protocol. STAC10 Recommendation V called for improved reporting through the assessment of Contracting Parties’ needs. Decisions IV and VII of COP12 urge the Secretariat to facilitate the collaboration of the SPAW COP, LBS COP and the Cartagena Convention COP Bureaus to work efficiently to the benefit of increased implementation of the Protocols and their subprogrammes. In addition, while not adopted as an official decision of COP12, Parties requested that the Secretariat develop a SPAW Focal Point Toolkit to assist focal points with a better understanding of their reporting and implementation obligations.

As a result of these concerns and recommendations, the Secretariat recommended that an information session be conducted with SPAW Focal Points focused on the issue of exemptions and barriers to reporting, and overall implementation of the Protocol.

The Secretariat and SPAW-RAC, with participation from the OSPAR Commission and Barcelona Conventions, conducted a listening session webinar during the biennial intersession on February 11, 2025 to provide an overview of contracting party obligations under the Protocol and extend an opportunity for focal points to share challenges and barriers to implementation of Protocol requirements.

As a next step, the possibility of organizing follow-up sessions will be explored to enhance dialogue and cooperation among Contracting Parties on compliance issues.

- **Establish an Implementation Review or Compliance Mechanism:** The establishment of a compliance mechanism (e.g., a compliance committee) or implementation working group could define a compliance procedure to review issues of non-compliance brought by other Parties or observers to the Protocol. Such a committee or advisory body could recommend actions and offer support to the non-complying Party in a supportive capacity. The committee could identify other mechanisms to pursue if non-compliance persists. The committee could bring issues of non-compliance to the STAC for discussion and potential recommendations to the COP to assist in formulating an approach or position or even suggest an independent verification mechanism through advisory bodies<sup>30</sup>. A formal compliance framework could also assist the Secretariat in evaluating and reviewing national reports for potential implementation issues (e.g., country working groups within the OSPAR Convention review national implementation reports and report back the Secretariat; Barcelona Convention Compliance Committee conducts similar review of national reports).<sup>31</sup> If Parties are averse to establishing a separate committee, the STAC could serve as the compliance review or advisory committee under Article 20 of the Protocol.<sup>32</sup>

<sup>29</sup> Article 16 (2)(g) of the [Cartagena Convention](#)

<sup>30</sup> World Heritage Convention. (2023). Operational Guidelines. 182 pp.

<sup>31</sup> UNEP(DEC)/MED WG.260/Inf.1, Implementation and Compliance under the OSPAR Convention, October 2004.

<sup>32</sup> Article 20 states that the STAC is responsible for providing advice on, among many other things, “any other matters relating to the implementation of the Protocol, including those matters referred to it by the meetings of the Parties.”

- Extend the mandate of the Exemptions Working Group to include compliance issues:** Because the reporting of exceptions (exemptions) to the protective provisions of the Protocol is a significant portion of compliance concerns, instead of establishing a new working group to work on compliance issues, the mandate of the existing Exemptions Working Group could be expanded to include other reporting, compliance, and implementation issues, including the development of a compliance procedure or mechanism if directed by the STAC and Decisions of Parties.
- Capacity building workshops:** Contracting Parties are sometimes challenged by a lack of resources, lack of human capital, and access to information to support implementation of the Protocol. Trainings that offer to assist Parties with understanding their obligations under the Protocol, including reporting, development of national legislation, and existence of cooperative programs to protect species and specially protected areas may help to encourage compliance and implementation. The CaMPAM Training of Trainers program for marine protected areas is an example that could be expanded or reconfigured to assist with increasing capacity, and thereby implementation, of the Protocol.<sup>33</sup> Capacity building workshops might be informed by a National Capacities Survey (see below)
- Increased outreach with Parties.** The Secretariat has extended bilateral communications with Parties when activities are known to infringe on the spirit of the Protocol. Enhanced and regular communication with all Parties regarding their reporting and implementation obligations should be a priority. Through this outreach, the Secretariat can seek a progress report or compliance update regarding how Parties are responding to meeting decisions that require action or develop individual compliance action plans.
- National capacities survey:** A survey focused on identifying national legislation to protect marine mammals was sent to Parties in 2020 to inventory national capacities to implement the SPAW Marine Mammal Action Plan. Such a survey could be revised to focus on collecting information to assess implementation challenges while identifying those countries who currently lack adequate implementing legislation to fulfill SPAW mandates.
- Exemptions Working Group recommendations:** COP12 adopted the full set of recommendations of the Exemptions Working Group from STAC10.<sup>34</sup> These recommendations contain a suite of actions that could encourage increased reporting and compliance to the Protocol. These recommendations include, e.g., the development of an online reporting tool<sup>35</sup>, active solicitation of reports through bilateral outreach, establishment of an Exemptions database, creation of an inventory of activities undertaken by Parties that require an exemption

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<sup>33</sup> The CaMPAM Training of Trainers courses meet each year, alternating between English and Spanish speaking locations. The trainings contain eight modules including MPA planning, management, research, monitoring and regional policy. [See here](#) for more information. A critical assessment of CaMPAM can be found [here](#).

<sup>34</sup> UNEP(DEPI)/CAR WG.43/INF.33 Report and recommendations of the SPAW STAC Exemptions Working Group can be [found here](#).

<sup>35</sup> See, for instance, the [Barcelona Convention Reporting System](#).

report, and clarification regarding how Parties wish to address non-compliance within the Protocol.

## **Appendix I.**

### **Compliance Mechanisms of Other Conventions**

With the goal of any compliance procedure and mechanism being to encourage Parties to honor their responsibilities to comply with the guidelines, mandates and obligations of environmental treaties, a supportive and non-adversarial approach is often the most productive.

Approaches can range from a ‘carrots and sticks’ method, where a compliance body reviews issues of non-compliance, makes recommendations, and then offers support, to a peer-review approach that encourages self-reporting by Parties and involves periodic reviews by a council of peers that evaluates performance and produces an outcome report that is presented to members and observers.

#### ***Barcelona Convention***

Most similar to the Cartagena Convention as one of the regional seas conventions and multilateral legal frameworks for the protection of a sea, the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) has multiple protocols (such as one for specially protected areas) and a nearly two-decade old compliance process. Like the Cartagena Convention, SPAW Protocol, and Caribbean Environment Programme, the Barcelona Convention is under the auspices of UNEP.

In 2004, as the result of increasing attention and commitment to Article 26 (submission of national reports) and the establishment of a preliminary working group of legal and technical experts on compliance issues at COP13 (Catania, Italy, 2003), the first meeting of the Working Group on Implementation and Compliance under the Barcelona Convention was convened.<sup>36</sup>

During this first meeting of the Working Group, a draft road map of options for the elaboration of a compliance mechanism was presented; it addressed questions related to the composition, function, and procedural rules for a compliance body and treatment of Parties in non-compliance. The Working Group recommended that the “compliance mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, oriented in the direction of helping parties to implement the provisions of the international agreement. It shall pay particular

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<sup>36</sup> UNEP(DEC)/MED WG.260/3, Athens, Greece, November 2004

attention to the special needs of developing countries and countries with economies in transition and shall be intended to promote cooperation between all parties.”<sup>37</sup>

After this first Working Group Meeting in 2004, including the presentation of implementation and compliance comparisons in other Conventions<sup>38</sup> (e.g., peer review of implementation reports in the OSPAR Convention), three additional working group meetings were held between 2004 and 2007.<sup>39</sup> Through a Decision of the Parties, procedures and mechanisms on compliance were adopted in 2008<sup>40</sup>, formally establishing the Compliance Committee, its membership, and its remit. The rules of procedure for the Committee were adopted in 2009.<sup>41</sup> The Committee consists of seven members who are nominated by Parties and meets at least annually.

Contracting Parties are obligated to report<sup>42</sup> on measures taken to implement the Barcelona Convention and its Protocols as well as the recommendations adopted by their meetings. National implementation reports serve as the basis for the Meetings of Contracting Parties to assess compliance with the Barcelona Convention and its Protocols.

The compliance procedure is triggered by a Party making its own submission of non-compliance, by another Party, by the Secretariat, or by the Committee itself. Observers to the Protocol can also raise compliance issues.<sup>43</sup>

The Report of the Meeting for the 23<sup>rd</sup> Meeting of Contracting Parties to the Barcelona Convention includes both an activity report and a program of work for the compliance committee for the biennium 2022-2023.<sup>44</sup> The activity report covers specific submissions under the compliance mechanisms of the protocol, general issues of compliance, the functioning of the compliance committee, and cooperation with other compliance procedures and mechanisms of MEAs.<sup>45</sup>

The programme of work details activities like consideration of specific situations of actual or potential non-compliance by individual Parties, facilitation of assistance to address non-compliance situations, and development of follow-up mechanisms for the implementation of the decisions of the Compliance Committee, along with implementers of these activities (typically the Compliance Committee itself) and desired timetables.<sup>46</sup>

### ***Convention on Migratory Species***

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<sup>37</sup> *Id.*

<sup>38</sup> UNEP(DEC)/MED WG.260/Inf.3, Non-compliance Regimes in Multilateral Environmental Agreements

<sup>39</sup> [UNEP\(DEPI\)/MED IG.17/10 Annex V, pg. 21](#)

<sup>40</sup> [Decision IG 17/2](#), Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols. The mechanism was amended in 2012 and 2013.

<sup>41</sup> Barcelona Convention Compliance Committee [Rules of Procedure](#)

<sup>42</sup> The [Barcelona Convention Reporting System \(BCRS\)](#) allows compliance reporting data related to implementation of the Barcelona Convention and its Protocols.

<sup>43</sup> <https://www.unep.org/unepmap/who-we-are/governing-and-subsidiary-bodies/compliance-committee>

<sup>44</sup> UNEP/MED IG.26/22, Portoroz, Slovenia, December 2023, <https://wedocs.unep.org/20.500.11822/44528> at Annex II, p. 93-98, and Annex III, p. 99-100.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

In 2017, the Conference of the Parties adopted decisions to establish a Review Mechanism to ensure long-term compliance with the Convention on Migratory Species (CMS).<sup>47</sup> Through a non-adversarial and cooperative approach, Parties engage in a constructive system that encourages Parties to identify and address their challenges in fulfilling CMS goals. The review process is initiated by a Party or the Secretariat, usually resulting from information submitted in National Reports.

The Secretariat enlists the Scientific Council, informs the Party, and provides an opportunity to respond to the issue of concern. If the matter cannot be resolved through direct engagement and dialogue with the Party, the Secretariat elevates the issue to the Standing Committee, which serves as the Review Body for the Convention. The Standing Committee can take any number of implementation measures outlined in Resolution 12.9 of the Convention<sup>48</sup>, including the provision of further advice or assistance, written warnings, and requests for implementation plans.

In addition, CMS has a National Legislation Programme to facilitate long-term compliance with and implementation of the convention through national legislation and support, as needed, in developing or improving relevant national legislation.<sup>49</sup> To facilitate the process of obtaining information on the Parties' legislation and other domestic measures, the CMS Secretariat has provided an inventory of the Secretariat's present information on Parties' current legislation in relation to CMS Article III.5 (the "take" prohibition), and a questionnaire to enable Parties to identify whether they have in place adequate legislation relating to implementation of Article III.4 a) and b) and III.5 (protection of Appendix I migratory species). So far, 50 parties have submitted the completed questionnaire to the Secretariat.<sup>50</sup> CMS also provides a legislative development step-by-step guide.

### ***Montreal Protocol***

Under the Montreal Protocol on Substances that Deplete the Ozone Layer, an Implementation Committee (a sub-set of ten Parties) addresses issues of non-compliance brought to its attention in three ways: by the non-complying Party itself; by another Party; or by the Secretariat. The Committee may offer to provide technical or financial assistance, issue warnings, suspend specific rights or privileges (such as access to funding from the Protocol's Multilateral Fund), and require data and reporting.<sup>51</sup> The Meeting of the Parties may request the Implementation Committee make recommendations to assist with their deliberations, or they may make interim recommendations directly. The Compliance Procedure does not provide for interventions from observers or non-parties.

### ***Convention on International Trade in Endangered Species of Wild Fauna and Flora***

Within the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Standing Committee addresses issues of noncompliance, which are brought to its attention by Parties or the Secretariat. Issues of non-compliance cover a wide range of activities,

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<sup>47</sup> CMS' Review Mechanism is provided in more detail [here](#).

<sup>48</sup> [https://www.cms.int/sites/default/files/document/cms\\_cop12\\_res.12.9\\_review-mechanism\\_e\\_0.pdf](https://www.cms.int/sites/default/files/document/cms_cop12_res.12.9_review-mechanism_e_0.pdf)

<sup>49</sup> See CMS National Legislation Programme: An Overview, <https://www.cms.int/en/activities/national-legislation-programme>.

<sup>50</sup> *Id.*

<sup>51</sup> See Montreal Protocol's Compliance Procedure [here](#)

including failure to submit reports, failure to adopt implementing legislation, and failure to implement CITES requirements for specific species.<sup>52</sup>

When the Secretariat becomes aware of non-compliance issues, it first communicates directly with the Party concerned, and advises and assists the Party in meeting its obligations under the Convention. If this does not resolve the matter, the CITES Secretariat refers the issue to the Standing Committee, which may recommend a host of responses, including: providing advice and capacity-building support; requesting special reporting by the Party; issuing a written warning and requesting a response; sending a public notification to all Parties that a satisfactory response has not been received; and requesting a compliance action plan be submitted by the Party to the Standing Committee.

While all these responses serve more as ‘carrots’, rather than ‘sticks’, CITES does have a trade suspension mechanism which allows the Standing Committee to recommend that Parties ultimately suspend trade with the non-compliant Party.<sup>53</sup>

One example of this compliance process is illustrated by Mexico’s failure to control illegal fishing and trade that is endangering the vaquita porpoise and totoaba fish. At the 75<sup>th</sup> meeting of the Standing Committee in November 2022, the CITES Secretariat introduced a summary of concerns identified during its second mission to Mexico to evaluate progress on the implementation of Decision 18.293 to “take immediate and effective actions in response to the threats to totoaba and vaquita posed by illegal trade.”<sup>54</sup> As a result of the discussion that ensued at this meeting, CITES Parties directed Mexico to prepare and submit to the Secretariat, by February 28, 2023, a compliance action plan, or face sanctions.<sup>55</sup> After submitting a draft plan and receiving feedback from the Secretariat, Mexico submitted a final compliance action plan on February 27, 2023.<sup>56</sup> On March 27, 2023, the Secretariat found that plan inadequate and recommended that Parties suspend all commercial trade with Mexico in CITES-listed species<sup>57</sup> (e.g., reptile skins, artificially propagated plants, timber/wood products)—trade worth millions of dollars annually.<sup>58</sup>

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<sup>52</sup> See [CITES Compliance Procedures](#), and [CITES Resolution Conf. 14.3](#)

<sup>53</sup> UNEP/CMS/COP11/Doc.18.3/Rev.1, October 14, 2014. Enhancing the effectiveness of the Convention through a process to review implementation.

<sup>54</sup> CITES Seventy-fifth meeting of the Standing Committee, Panama City (Panama), 13 Nov. 2022, Summary Record at p. 15, <https://cites.org/sites/default/files/eng/com/sc/75/E-SC75-SR.pdf>; CITES Decisions 18.292 (Rev. CoP19) to 18.295 (Rev. CoP19) & 19.74 to 19.76 Totoabas (Totoaba macdonaldi), <https://cites.org/eng/dec/index.php/44375>.

<sup>55</sup> CITES Seventy-fifth meeting of the Standing Committee, Panama City (Panama), 13 Nov. 2022, Summary Record at p. 16, <https://cites.org/sites/default/files/eng/com/sc/75/E-SC75-SR.pdf>.

<sup>56</sup> CITES Notification to the Parties No. 2023/037 Concerning Compliance action plan of Mexico on Totoaba (*Totoaba macdonaldi*), 27 Mar. 2023, <https://cites.org/sites/default/files/notifications/E-Notif-2023-037.pdf>.

<sup>57</sup> *Id.*

<sup>58</sup> In response to the suspension, a delegation of Mexican officials engaged in talks with the Secretariat. On April 13, 2023, the recommended trade suspension was withdrawn after Mexico submitted a revised plan that was provisionally approved by the Secretariat. Mexico then had six months to implement this plan or potentially face sanctions again when the Standing Committee reconvened in November 2023. At that meeting, compliance matters dominated the Standing Committee’s discussion. For the illegal trade in totoaba, the Secretariat acknowledged that while Mexico had made some progress, concern remained. The Standing Committee directed Mexico to continue to report on implementation of its Compliance Action Plan, and asked the Secretariat to conduct missions to Mexico, the United States, and China (the latter of which are transit and destination countries) to review efforts to combat illegal take and trade. The Standing Committee will revisit the issue at its next meeting in February 2025.



Finally, CITES' National Legislation Project (NLP) helps to drive compliance by Parties.<sup>59</sup> Under the CITES NLP, in consultation with concerned Parties, national legislation is analysed by the Secretariat, asking whether the national laws allow the respective country to:

- i. Designate at least one Management Authority and one Scientific Authority;
- ii. Prohibit trade in specimens in violation of CITES;
- iii. Penalize such trade;
- iv. Confiscate specimens illegally traded or possessed.

Following this analysis, the legislation is placed into one of three categories:

Category 1: legislation that is believed generally to meet the requirements for implementation of CITES;

Category 2: legislation that is believed generally not to meet all of the requirements for the implementation of CITES;

Category 3: legislation that is believed generally not to meet the requirements for the implementation of CITES.

The Secretariat maintains a legislative status table which summarizes Parties' legislative progress, including the category in which their legislation has been placed and whether they have been identified by the Standing Committee as requiring attention as a priority.<sup>60</sup>

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<sup>59</sup> CITES National Legislation Project, [https://cites.org/eng/legislation/National\\_Legislation](https://cites.org/eng/legislation/National_Legislation).

<sup>60</sup> *Id.* Belize is the only Caribbean nation currently included on the Standing Committee's list of Parties requiring priority attention.