



13th MEETING OF THE STANDING COMMITTEE
03 - 05 July 2018, The Hague, the Netherlands

DRAFT GUIDANCE ON AEWA'S PROVISIONS ON NON-NATIVE SPECIES

Introduction

AEWA's Agreement text and Action Plan contain provisions addressing not only the introduction of non-native species, but also the control and eradication of non-native species that have already been introduced. As such, the 6th Session of the Meeting of the Parties to AEWA requested the Technical Committee (through [Resolution 6.4](#)) to *contribute to the development of internationally-agreed standards and guidance for risk assessment with respect to non-native waterbirds, in order to facilitate the implementation of the Agreement*. As an extension of this task, the Technical Committee decided at its 13th Meeting in March 2016 to draft a guidance on how to deal with the naturalisation of non-native species.

In the course of the development of this guidance, its scope was extended so that its primary purpose is to provide overall guidance on the implications of the obligations under AEWA for Contracting Parties' domestic legislation – in particular, the classification of non-native species as “protected”. It additionally proposes definitions for the terminology used in AEWA's provisions on non-native species.

The document was considered by the Technical Committee and the resulting draft guidance was presented to and approved by the 14th Meeting of the AEWA Technical Committee in April 2018, subject to the incorporation of final comments. The TC reviewed the revised version following its 14th Meeting and approved it by correspondence for submission to StC13 and MOP7.

Action Requested from the Standing Committee

The Standing Committee is requested to review the draft guidance on AEWA's provisions on non-native species and to approve it for submission to the 7th Session of the Meeting of the Parties to AEWA in December 2018 for approval.

DRAFT GUIDANCE ON AEWA'S PROVISIONS ON NON-NATIVE SPECIES

Introduction

AEWA's Agreement text and Action Plan contain provisions addressing not only the introduction of non-native species, but also the control and eradication of non-native species that have already been introduced. The primary purpose of this document is to provide guidance on the implications of these obligations for Contracting Parties' domestic legislation – in particular, the classification of non-native species as “protected”. It additionally proposes definitions for the terminology used in AEWA's provisions on non-native species.

The document should be read alongside:

- the [AEWA Guidelines on Avoidance of Introductions of Non-Native Waterbird Species](#);
- the [AEWA Guidelines on National Legislation for the Protection of Species of Migratory Waterbirds and their Habitats](#) (part VII);
- [AEWA Resolution 5.15](#) on the Impact of Invasive Alien Aquatic Weeds on Waterbird Habitats in Africa; and
- [AEWA Resolution 6.4](#) on the Conservation and Sustainable Use of Migratory Waterbirds (paras 10-14).

Background

AEWA's Provisions on Non-native Species

Agreement text, Art. III(2)(g):

Parties shall “*prohibit the deliberate introduction of non-native waterbird species into the environment and take all appropriate measures to prevent the unintentional release of such species if this introduction or release would prejudice the conservation status of wild flora and fauna; when non-native waterbird species have already been introduced, the Parties shall take all appropriate measures to prevent these species from becoming a potential threat to indigenous species*”.

Action Plan, para. 2.5:

“*2.5.1 Parties shall prohibit the introduction into the environment of non-native species of animals and plants which may be detrimental to the populations listed in Table 1.*”

2.5.2 Parties shall require the taking of appropriate precautions to avoid the accidental escape of captive animals belonging to non-native species, which may be detrimental to the populations listed in Table 1.

2.5.3 Parties shall take measures to the extent feasible and appropriate, including taking, to ensure that when non-native species or hybrids thereof have already been introduced into their territory, those species or their hybrids do not pose a potential hazard to the populations listed in Table 1.”

Action Plan, para. 3.3:

“Parties shall endeavour to rehabilitate or restore, where feasible and appropriate, areas which were previously important for the populations listed in Table 1, including areas that suffer degradation as a result of the impacts of factors such as [...] spread of aquatic invasive non-native species [...].”

Action Plan, para. 4.3.10:

“Parties shall establish appropriate measures, ideally to eliminate or otherwise to mitigate the threat from non-native terrestrial predators to breeding migratory waterbirds on islands and islets. Measures should refer to contingency planning to prevent invasion, emergency responses to remove introduced predators, and restoration programmes for islands where predator populations are already established.”

Action Plan, para. 4.3.11:

“Parties are urged to establish appropriate measures to tackle threats to migratory waterbirds from aquaculture, including environmental assessment for developments that threaten wetlands of importance for waterbirds, especially when dealing with new or enlargement of existing installations, and involving issues such as [...] introduction of non- native and potentially invasive species”.

In determining the implications of these provisions, a clear distinction needs to be drawn between the following three issues:

- (1) The species’ **biological status** (indigenous or non-native).
- (2) The **consequences** which follow a non-native species’ introduction.
- (3) Appropriate **policy responses**.

Biological Status

For the purposes of interpreting AEWA's provisions on non-native species, the following definitions should be applied:

“Indigenous species”: *A species, subspecies or lower taxon, occurring within its natural range (past or present).*

“Non-native species”: *A species, subspecies or lower taxon, introduced outside its natural past or present distribution. This includes any part, gametes, seeds, eggs or propagules of such species that might survive and subsequently reproduce. This further includes any species that naturally spreads to a country outside of its natural range after having been introduced in the territory of another country.*

“Introduction”: *Movement, by human agency (whether direct or indirect), of a species outside of its natural range (past or present). This movement can be either within a country or between countries. It does not include natural range extensions in response to changing ecological conditions and climate change.*

“Invasive non-native species”: *A non-native species whose introduction and/or spread threaten biological diversity.*

These definitions, and the legal obligations which they inform, are not qualified by temporal parameters. Whether a species is indigenous or non-native is a factual biological attribute, irrespective of the time that has elapsed since its introduction. Governments and other competent authorities are strongly discouraged from defining a factually non-native species as indigenous in their country's legislative or other reference species lists.

Consequences

The central concern of AEWA's provisions on non-native species is these species' potential impact upon the indigenous waterbird populations listed on Table 1 to the Agreement. Not every introduction of a non-native species will be to the detriment of Table 1 populations. Importantly, however, the occurrence of a time lag between a species' introduction and the first indication of its harmful impacts is a common ecological aspect across many non-native species. It is therefore possible for the consequences of a non-native species' introduction to change over time.

Policy Responses

The precautionary principle

Policy responses in respect of non-native species that have already been introduced, or that have spread to another country after being introduced, should depend largely on the consequences of their introduction (i.e. their actual or potential impacts on Table 1 populations). However, given the difficulty in accurately predicting the impacts of non-native species and the delay that may occur between a species' introduction and the first indication of its harmful impacts, the precautionary principle¹ should always be applied when determining appropriate policy responses.

¹ Per Article II.2 of the Agreement text, the precautionary principle is a fundamental principle which Contracting Parties should take into account when implementing AEWA's provisions.

It follows that unless and until there is reasonable indication that a non-native species (or hybrid thereof) is not, and will not become, a threat to indigenous populations of migratory waterbirds, the species should be treated as such a threat for management purposes.²

The need to minimize undesired effects on non-target species

Policy responses to non-native species should not undermine conservation measures in respect of the waterbird populations listed in AEWA's Table 1 – for instance, by causing significant disturbance to, or accidental taking of, birds belonging to Column A populations.³ To this end, measures to control or (where feasible) eradicate non-native species should be conducted in a manner that is systematic, organized and supervised.

Legislative basis for control and eradication measures

AEWA's provisions on non-native species are largely result-oriented, and legislative approaches for achieving these results may vary considerably from one state to the next. Contracting Parties therefore have discretion regarding the precise legislative mechanisms used to satisfy their AEWA commitments. Nevertheless, domestic laws should provide a clear legislative basis for control and eradication measures.

A wealth of guidance already exists on developing legislation which facilitates control and eradication by, for instance, equipping authorities with necessary powers and introducing appropriate prohibitions, restrictions, responsibilities and incentives. Key guidance documents are listed in the *Appendix* hereto, and Contracting Parties are urged to consider these documents when developing or reviewing legislation on non-native species.

Some states' domestic legislation affords non-native species protected status. This can, for instance, happen inadvertently by attaching protections to a taxon higher than species without distinguishing between indigenous and non-native taxa, or through the use of reverse listing, whereby all species are protected unless explicitly listed as "hunnable" or "pests".

While in general governments are discouraged from designating non-native species as protected under their domestic legislation, certain elements of this approach might present opportunities. When combined with appropriate licencing/derogation provisions, the approach might, for instance, provide a means of ensuring that non-native species are managed in a systematic, organized and supervised manner.

On the other hand, the inclusion of non-native species on lists of protected taxa can have various disadvantages. Contracting Parties should ensure that such inclusion does not result in a non-native species attracting conservation priority in the same manner as indigenous species (or, for that matter, being afforded higher conservation priority than any indigenous species) and in general should avoid a requirement for maintaining the population in a favourable conservation status, as this may result in the diversion of attention and resources from the conservation needs of indigenous species. Regardless of a Contracting Party's motivation for including a non-native species on its lists of protected taxa, it should further be ensured that this approach will not delay (or entirely preclude) the implementation of control/eradication strategies if these become necessary. To this end, Contracting Parties are urged to consider the following recommendations:

² On this point, see also the *AEWA Guidelines on Avoidance of Introductions of Non-Native Waterbird Species*: "there is a general consensus that, according to the precautionary principle, wherever possible, [non-native] species should be controlled".

³ See paragraph 2.1.1 of the AEWA Action Plan.

- Non-native species should have a legal status that is compatible with measures that are, or might become, necessary to mitigate or eliminate the threats posed thereby. A non-native species' legal status therefore should not impede rapid response measures should it become a threat to indigenous populations of migratory waterbirds. If such a species is legally protected, a highly responsive licensing/derogation system should be in place (involving, for instance, streamlined authorization processes or emergency orders) to allow rapid response to occur. In addition, contingency plans should be prepared, which work through and prepare for responses ahead of time. These should include arrangements for surveillance to detect the arrival of high risk non-natives; arrangements for rapid responses to eradicate recently detected species including organizational and other responsibilities, and planning for practical needs as appropriate. A good summary of contingency planning is given by DEFRA (2008).⁴

- If inclusion in a Contracting Party's protected species lists renders control measures legally impossible or prevents rapid responses, then such lists should be reviewed with the aim of removing protection from non-native species that pose a potential hazard to the populations listed in Table 1. This includes situations in which non-native species are automatically protected through laws which apply to all species belonging to a particular taxonomic group (in such instances, the law should make reference to “indigenous” species).

⁴ DEFRA, 2008. [*The Invasive Non-Native Species Framework Strategy for Great Britain*](#), Department for Environment, Food and Rural Affairs, United Kingdom. 42 pp.

Appendix

Guidance on developing legislation to support the control and eradication of non-native species

Bern Convention [Recommendation No. 57 \(1997\)](#) on the introduction of organisms belonging to non-native species into the environment.

Piero Genovesi, 2000. [Guidelines for Eradication of Terrestrial Vertebrates: a European Contribution to the Invasive Alien Species Issue](#), Bern Convention doc.T-PVS (2000) 65 rev2.

Piero Genovesi and Clare Shine, 2004. [European Strategy on Invasive Alien Species](#). (Endorsed by [Bern Convention Recommendation No. 99 \(2003\)](#).)

Jeffrey A. McNeely, Harold A. Mooney, Laurie E. Neville, Peter Johan Schei and Jeffrey K. Waage (eds), 2001. [Global Strategy on Invasive Alien Species](#), GISP.

Myrfyn Owen, Des Callaghan and Jeff Kirby, 2006. [Guidelines on Avoidance of Introductions of Non-native Waterbird Species](#), AEW Technical Series No.12.

Clare Shine, Nattley Williams and Lothar Gündling, 2000. [A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species](#), IUCN Environmental Policy and Law Paper No. 40 (a contribution to the GISP).

Clare Shine, 2008. [A Toolkit for Developing Legal and Institutional Frameworks for Invasive Alien Species](#), GISP.

Lydia Slobodian, Melissa Lewis and Catherine Lehmann, 2015 (2nd edition). [Guidelines on National Legislation for the Protection of Species of Migratory Waterbirds and their Habitats](#).

Rüdiger Wittenberg and Matthew J.W. Cock (eds), 2001. [Invasive Alien Species: A Toolkit of Best Prevention and Management Practices](#), GISP.

Tomme Rosanne Young, 2006. [National and Regional Legislation for Promotion and Support to the Prevention, Control, and Eradication of Invasive Species](#), The World Bank Environment Department Biodiversity Series Paper No. 108.