An Overview on the Legal Framework on Antarctic Specially Protected Species and Its Application

An Overview on the Legal Framework on Antarctic Specially Protected Species and Its Application

Working Paper submitted by the Delegation of China

***Summary***

Antarctic Specially Protected Species (hereinafter as “ASPS”) is a key mechanism to provide additional or special protection to a category of species in comparison with other native Antarctic flora and fauna. This working paper reviewed the legal framework on ASPS and its application within the ATCM and the CEP with the scientific advice from SCAR, with a view to providing useful guidance on future designation of ASPS. As the result of the review, this working paper recommend the ATCM and the CEP to: 1) re-confirm the importance of designating SPS in consistent with Annex II to the Protocol and the *Guidelines for CEP Consideration of Proposals for New and Revised Designations of Antarctic Specially Protected Species under Annex II of the Protocol* (hereinafter as “the *Guidelines”*) adopted in 2005, particularly the conservation status of *Vulnerable* or higher as the threshold for the consideration of the potential designation, and the procedure for consideration of SPS proposals; 2) align the future designation of ASPS with the previous the ATCM and the CEP practices, particularly on the application of criteria and approach on the basis of adequate scientific information: 3) encourage SCAR to assess the risk of extinction of the species, using the most up-to-date IUCN criteria in consistent with its previous practice; 4) review and harmonize the inconsistency between the Guidelines and the Annex II to the Protocol.

***Background***

As per Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (hereinafter as “the Protocol”), ASPS are a category of species that require special protection in comparison with other native Antarctic fauna and flora (Article 3 (4), Annex II). The ASPS was first devised in the 1964 Agreed Measures for the Conservation of the Antarctic Flora and Fauna (the *Agreed Measures*) and then incorporated in 1991 into Annex II to the Protocol. Since then, the *Guidelines* was adopted in 2005, de-designation of Fur Seals and Ross Seals and designation of Southern Giant Petrel were considered from 2005 to 2007, and Annex II to the Protocol was revised in 2009. These discussion and practices offer precious opportunities to test the application of the rules. Some general agreements have been reached and are worth highlighting for the current discussion on Emperor Penguins.

**Observations**

By reviewing the legal framework and examining the ATCM and the CEP practices (see IP44), taking into the scientific advice from SCAR, **the following observations** **on the practices, *inter alia*, are evident:**

(a) the conservation status of *Vulnerable* or higher using the most up-to-date IUCN criteria is a threshold for potential designation on which basis the ATCM and the CEP will consider listing or de-listing a species as an Antarctic ASPS, e.g. proposal to de-list Fur Seals, proposal to list Southern Giant Petrel.

(b) being or not being listed as *Vulnerable* (or higher) in the IUCN Red List is a prerequisite but not a sufficient condition to list or de-list a species as ASPS. A species would not be automatically listed as an ASPS because it is been categorized as *Vulnerable* in the IUCN Red List (e.g. Southern Giant Petrel), or be de-listed because it has been categorized as *Lower Risk/Least Concern* (e.g. Ross Seal). The ATCM and the CEP decision-making and consultation process is independent from IUCN and will consider more scientific and management elements (e.g. both species above), as well as the interest of other organizations.

(c) the effects of long-term climate change have been considered in the threat analysis, but has not been considered a sufficient condition or determining elements to list or de-list a species (e.g. Fur Seals and the Southern Giant Petrel). In the past practices, only the observed population trends and the threats from human activities (e.g. commercial exploitation of Fur Seals) have been used as the determining condition for listing or de-listing species.

(d) Special Protection for a species is normally used as a temporary designation to allow for special measures for the recovery of the population under threat, once the species is no longer endangered or threatened the designation is removed (e.g. Fur Seals).

(e) the general protection already afforded by Annex II to the Protocol, and/or by other Annexes of the Protocol or international treaties, is a legitimate consideration for listing or de-listing ASPS.

(f) the ASPS category should be applied for the whole Antarctic population of any species, in which case a thorough assessment at the regional level (Antarctica) on sound scientific evidence is critical. Any change in a species’ protection status should only take place where sufficient data are available on which to base such a decision (e.g. Ross Seal); monitoring schemes should be established for those species evaluated as Near Threatened (e.g. Southern Giant Petrel), and new research efforts should be triggered for data deficient species, in order to provide early warning by obtaining necessary data and information.

(g) Species facing different level of threat (vulnerable, endangered, or critically endangered) are likely to require different measures for management or protection. To quantify and reduce threats, a potential action-focused Species’ Recovery Plan would better to consider the following elements: 1) identify causes of decline and possible measures to reverse such declines; 2) increased restrictions on taking or harmful interference as the level of endangerment increases; 3) more intensive review of the ASPS status as the level of endangerment increases.

**Recommendations**

**It is recommended that the ATCM and the CEP to:**

1) re-confirm the importance of designating ASPS in consistent with Annex II to the Protocol and the *Guidelines,* particularly the conservation status of *Vulnerable* or higher as the threshold for the consideration of the potential designation, and the procedure for consideration of ASPS proposals, including the consultation procedure with other related organizations:

2) align the future designation of ASPS with the previous the ATCM and the CEP practices, particularly on the application of criteria and approach on the basis of adequate scientific information;

3) encourage SCAR to assess the risk of extinction of the species that have the potential to be designated as ASPS, using the most up-to-date IUCN criteria in consistent with its previous practice;

4) review and harmonize the inconsistency between the *Guidelines* and the Annex II to the Protocol.

**Reference:**

Argentina, Annex II: Reasons for a Review, ATCM XXV/WP7, 2002.

Argentina, Final Report of the Inter-sessional Contact Group on Specially Protected Species in Antarctica, ATCM XXV /WP38, 2002.

SCAR, De-listing Antarctic Specially Protected Species, ATCM XXVIII/WP33, 2005.

SCAR, Proposal to List a Species as a Specially Protected Species under Annex II, ATCM XXVIII/WP34, 2005.

SCAR, Proposal to List Southern Giant Petrel as a Specially Protected Species under Annex II, ATCM XXIX/WP38, 2006.

SCAR, Proposal to De-list Antarctic Fur Seals as Specially Protected Species, ATCM XXIX/WP39, 2006.

SCAR, Current Status of the Ross Seal (*Ommatophoca rossii*): A Specially Protected Species under Annex II, ATCMXXX/WP27, 2007.

IUCN Red List website, at <www.iucnredlist.org/species/15269/45228952>, visited on April 5, 2022.