



## Clarifications to the Record

### Twenty-Second Annual Stetson International Environmental Moot Court Competition - 2017–2018 Surana & Surana India National Rounds



Please note that this document does not contain responses to all of the requests for clarification that were received. The answers to some requests are already contained within the Record, and other requests were beyond the scope of the legal issues that should be the focus of your arguments in the memorials and during the oral rounds of the competition. The arguments should largely focus on the conferences, conventions, agreements, documents, and legal principles that are mentioned in the Record.

### **Clarifications regarding international environmental law, international law, and procedural matters**

- Q1. Have Aves and Renac entered into any bilateral or multilateral regional agreements?  
A1. No.
- Q2. In Paragraph 8 of the Record, what does the phrase “attended and fully participated” mean?  
A2. It means that Aves and Renac were part of the consensus of any documents adopted at those conferences.
- Q3. When did Aves and Renac sign the VCLT, CBD, CMS, AEWA, and Ramsar Convention?  
A3. Aves and Renac signed in the first year in which the conventions or agreements were opened for signature.
- Q4. When did Aves and Renac become members of the United Nations, FAO, and OIE?  
A4. Aves and Renac became members during the first year in which the organizations were open for membership.
- Q5. Is it safe to assume that Aves and Renac attended all of the Conferences or Meetings of the Parties related to the conventions or agreements to which they are parties?  
A5. Yes.
- Q6. Are Aves and Renac members of the World Trade Organization (WTO)?  
A6. No.
- Q7. May WTO/GATT decisions be used as subsidiary sources?  
A7. Yes, but as noted above, the arguments should largely focus on the conferences, conventions, agreements, documents, and legal principles that are mentioned in the Record.
- Q8. In Paragraph 13 of the Record, is the blue-crowned crane purposefully listed on both Appendices I and II of CMS?  
A8. Yes.

- Q9. Is a particular population of the blue-crowned crane listed on CMS, or are all populations listed?  
A9. All populations of the blue-crowned crane are listed on Appendices I and II of CMS.
- Q10. Did Renac inform the CMS Secretariat of its plans to invoke the exception in CMS Article III(5) to cull wild waterbirds?  
A10. Yes, pursuant to CMS Article III(7), Renac informed the CMS Secretariat that it planned to invoke the exception in Article III(5).
- Q11. Did Renac inform the AEWa Secretariat of its intention to grant an exemption under AEWa Annex 3, Section 2.1.3(b) to cull wild waterbirds?  
A11. Yes, pursuant to AEWa Annex 3, Section 2.1.3, Renac informed the AEWa Secretariat of its intention to grant an exemption under Section 2.1.3(b).
- Q12. Was there discussion of the proposed delisting of the Adeguri Marsh at a Ramsar Conference of Parties?  
A12. No.
- Q13. Has Renac attempted to list the Adeguri Marsh on the Ramsar Convention's Montreux Record?  
A13. No.
- Q14. Did Renac request a Ramsar Advisory Mission (RAM) or assistance from the Ramsar Scientific and Technical Review Panel (STRP)?  
A14. No.
- Q15. Given that the average numbers of wild waterbirds in the Adeguri Marsh have decreased by a third, does the Adeguri Marsh still fulfill Ramsar Criteria 2, 4, 5, and 6?  
A15. Yes.
- Q16. Did Aves and Renac designate any Ramsar Sites other than the Adeguri Marsh?  
A16. Yes, before designating the Adeguri Marsh, Aves and Renac each previously designated one other Ramsar Site in their respective territories.
- Q17. Are Aves and Renac parties to the Espoo Convention?  
A17. No.
- Q18. Should the culling of wild waterbirds and the dispensing of disinfectants be considered state actions of the Republic of Renac?  
A18. Yes, the culling of wild waterbirds and the dispensing of disinfectants were state actions of Renac. You should not argue about whether the actions are attributable to Renac and should instead focus on whether Renac's actions violated international law.
- Q19. Did Aves or Renac report any of the highly pathogenic avian influenza outbreaks to the OIE or other international organizations?  
A19. Yes, Aves and Renac reported all of the highly pathogenic avian influenza outbreaks to the relevant international organizations.

Q20. Would it be appropriate to assume that Aves is the Applicant and Renac is the Respondent for the purposes of this competition?

A20. Yes.

Q21. Should the diplomatic notes be considered aspersions or facts?

A21. The facts referenced in the diplomatic notes should be taken as true, but the legal assertions in the diplomatic notes may be debated.

### **Clarifications regarding the Adeguri Marsh and the coastal salt marsh**

Q22. What does “ad hoc, informal basis” in Paragraph 9 of the Record mean?

A22. For some Transboundary Ramsar Sites, there may be a formal structure and consultation process for managing the site. There was no formal structure for managing the Adeguri Marsh; Aves and Renac exchanged information as needed and on a collaborative basis.

Q23. Is the Adeguri Marsh a natural wetland?

A23. Yes.

Q24. Is the Adeguri Marsh an inland or a coastal wetland?

A24. The Adeguri Marsh is an inland wetland.

Q25. Is the Adeguri Marsh connected to the sea or ocean?

A25. No.

Q26. Is the Adeguri Marsh used as a source of drinking water in Aves or Renac?

A26. Yes, people in Aves and Renac use the Adeguri Marsh as a source of drinking water.

Q27. Does Renac have other wetlands similar to the Adeguri Marsh in its territory?

A27. There are various wetlands throughout Renac, including five small (approximately 100 hectares each) shallow freshwater wetlands. These shallow freshwater wetlands are on privately owned land and currently do not provide significant habitat to migratory waterbirds.

Q28. In Paragraph 29 of the Record, Renac proposed to enhance and preserve a coastal salt marsh. Is the coastal salt marsh located in Aves or Renac?

A28. The coastal salt marsh is located in Renac.

Q29. Did Renac officially offer the coastal salt marsh as compensation? Was the coastal salt marsh actually preserved as a protected area?

A29. Renac officially offered the coastal salt marsh as compensation. It is not currently a protected area, but Renac proposed to preserve it as such. You should not argue that Renac has somehow violated international law because it has not yet preserved the coastal salt marsh. Instead, you should discuss whether the compensation as proposed is appropriate. Assume Renac will implement the proposed compensation if the ICJ rules in its favor.

Q30. Is the coastal salt marsh located in the same drainage basin/watershed/catchment area as the Adeguri Marsh?

A30. No.

- Q31. How does Renac plan to enhance and preserve the 17,000-hectare coastal salt marsh?  
A31. Renac plans to enhance the marsh by removing invasive species and to preserve it by declaring it as a protected area.
- Q32. Which criteria for identifying Wetlands of International Importance under the Ramsar Convention would the coastal salt marsh satisfy?  
A32. Only Criteria 2, 4, and 9. The coastal salt marsh supports many plant and animal species, including, among others, a small population of the critically endangered Kleinmann's tortoise (*Testudo kleinmanni*) and an endangered subspecies (endemic to Renac) of salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- Q33. Paragraph 29 of the Record states that the coastal salt marsh that Renac proposed to enhance and preserve as compensation has an area of 17,000 *hectares*, while Paragraph 31 states that the coastal salt marsh is 17,000 *acres*. What is the correct unit of measurement of the area of the coastal salt marsh?  
A33. The coastal salt marsh is 17,000 hectares.

#### **Clarifications regarding the blue-crowned crane and other waterbirds**

- Q34. Are all of the characteristics of the blue-crowned crane (*Balearica azulia*) the same as the grey-crowned crane (*Balearica regulorum*)?  
A34. Although the two species are classified as distinct, they are physically and genetically similar. You may refer to information about grey-crowned cranes by analogy, but any specific discussion about blue-crowned cranes must be based on the Record or Clarifications.
- Q35. Does the blue-crowned crane resemble the grey-crowned crane in its migratory behavior?  
A35. No. Unlike the grey-crowned crane, the blue-crowned crane is migratory.
- Q36. Are the blue-crowned cranes in the Adeguri March natural hosts/carriers to the LPAI (low pathogenic avian influenza) type "A" virus or HPAI (highly pathogenic avian influenza) virus?  
A36. Blue-crowned cranes are natural hosts for low pathogenic avian influenza (LPAI) type "A" virus, and it is assumed that they are capable of being hosts for highly pathogenic avian influenza virus, although whether they could be 'carriers' is not known (i.e., it is not known whether they could survive infection and spread it further).
- Q37. Paragraph 13 of the Record states that "[a]round 2,250 blue-crowned cranes remain in the wild." In what year was that the estimated total population of blue-crowned cranes in the wild?  
A37. 2012.
- Q38. What date was used as a reference point to arrive at the conclusion in Paragraph 25 of the Record that the average numbers of wild waterbirds at the Adeguri Marsh had decreased since February 2015 by a third?  
A38. June 2017.

### **Clarifications regarding the environmental impact assessment (EIA)**

Q39. Should the EIA be regarded as a dispute?

A39. No. As noted in Footnote 2 of the Record, Aves and Renac agree that the EIA process was sufficient.

Q40. During the EIA process regarding the potential delisting of the Adeguri Marsh did Renac consider its proposed compensation for delisting the Adeguri Marsh?

A40. Yes, Renac considered its proposed compensation as part of the EIA process. These and other requests for clarification focus on the process and contents of the environmental impact assessment, but the arguments should not focus on the process or contents of the environmental impact assessment. As noted above, the arguments should largely focus on the conferences, conventions, agreements, documents, and legal principles that are mentioned in the Record, as well as the facts in the Record.

Q41. Did Renac conduct an EIA before culling the migratory wild waterbirds?

A41. No, but whether Renac should have conducted an EIA before culling the wild waterbirds should not be the focus of your arguments.

### **Clarifications regarding culling and disinfectants**

Q42. What method of culling was used? Were the wild waterbirds shot, euthanized, beheaded, asphyxiated, etc.?

A42. Most of the wild waterbirds were shot, with some trapped using nets and then asphyxiation (using the carbon dioxide chambers that are used for poultry culling).

Q43. Were any major or unprecedented deaths or reductions in the numbers of wild waterbirds at the Adeguri Marsh reported prior to 2015?

A43. No.

Q44. Did Renac ever cull wild waterbirds before 2014?

A44. No.

Q45. Was the reduction in the average numbers of wild waterbirds reported only in Aves's portion of the Adeguri Marsh?

A45. The wild waterbirds, including the blue-crowned cranes, at the Adeguri Marsh use the wetland in both countries; the waterbirds are not isolated or restricted to one country's portion of the marsh.

Q46. What types, forms, and amounts/concentrations of disinfectants did Renac dispense into the Adeguri Marsh (Paragraph 24 of the Record)?

A46. Some 300,000 litres/80,000 US gallons/66,000 imperial gallons (i.e., 10 tankers-full) of bleach (0.5% sodium hypochlorite solution, which is a 'strong chlorine solution') was used.

### **Clarifications regarding the virus, outbreaks, and biosecurity**

Q47. Are the disease characteristics/properties of H5NX the same as those of H5N1?

A47. Yes, the characteristics are similar.

Q48. Does the reference to “H5NX” in Paragraph 15 of the Record imply that multiple forms of the virus were present in Renac?

A48. No, there was just one form of the virus, which is termed H5NX.

Q49. Who were the four people (Paragraph 19 of the Record) and eight people (Paragraph 24 of the Record) reported with highly pathogenic avian influenza virus infections? Did they work at the poultry facilities or farms?

A49. Half of the people worked at poultry facilities near the Adeguri Marsh, and half of the people worked at subsistence poultry farms near the Adeguri Marsh.

Q50. Were the four people (Paragraph 19 of the Record) and eight people (Paragraph 24 of the Record) who were infected by the highly pathogenic avian influenza virus involved in culling the birds?

A50. No.

Q51. Did the people who recovered from the highly pathogenic avian influenza virus infection receive any special treatment that was different from what was received by those who died as a result of the virus?

A51. No.

Q52. Is there any vaccine available for the highly pathogenic avian influenza virus (H5NX) involved in the outbreaks at the Adeguri Marsh?

A52. No.

Q53. Was the Adeguri Marsh open to the public during the course of the highly pathogenic avian influenza outbreaks? Did ecotourism and birdwatching stop during the outbreaks in Aves and Renac?

A53. The Adeguri Marsh remained open to the public, but people chose to stay away during the course of the outbreaks.

Q54. Has Aves objected to the belief that the virus originated from its poultry facilities?

A54. No.

Q55. Paragraph 26 of the Record states that “Renac began to consider delisting the wetland as a Ramsar Site to give Renac more flexibility (e.g., possibly draining areas near farms, putting up bird scarers, etc.)” Does Renac contemplate draining and filling its entire portion of the Adeguri Marsh?

A55. No. Renac has not suggested draining the entire wetland. Renac has contemplated draining for the purpose of filling portions of the Adeguri Marsh near farms in its territory.

Q56. Are the poultry in Aves and Renac kept in covered facilities (e.g., coops) or open areas?

A56. The poultry in Aves and Renac are kept in mostly open, uncovered areas.