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STRATEGIC ISSUES ON THE REVIEW AND DEVELOPMENT OF CMS AGREEMENTS ALREADY IN FORCE

(Note by the Executive Secretary)

Introduction

1. Agreements made under Article IV/V of the Convention are now a major tool of CMS. This is despite a slow start: the first Agreement on Wadden Sea (WS) seals was concluded in 1990, 11 years after the parent Convention came into force. As recently as October 1999 (shortly before CMS COP6) just five Agreements, all with a strong European focus - ASCOBANS, EUROBATS, Siberian Crane MoU, and the Slender Billed Curlew in addition to WS - were in effect. In the seven years since then, the pace has quickened: there are now a total of 13 agreements in force. The geographical spread has also widened – recent Agreements cover turtles in Africa and Asia, albatrosses in the southern oceans, and deer in Asia. A further four Agreements are likely to be finalised at CoP8 or shortly afterwards.

Categories of Agreement

2. Each instrument is unique, but those negotiated so far fall into two broad categories. The first comprises those Agreements, which have legally binding texts and autonomous arrangements including separate secretariats, a separate MOP, and separate inter-sessional bodies such as technical, advisory, scientific and standing committees. With the exception of ACAP, instruments in this category belong to the “first wave” of Agreements negotiated in the 1980s and early 1990s.

3. The second category covers agreements in the form of legally non-binding Memoranda of Understanding (MoUs). This is evolving to become the standard model used under the Convention to formalize action for the conservation, management and sustainable use of migratory species. Most of the agreements in the pipeline, and recommended in the draft CMS Strategic Plan, are likely to take this form, although this is ultimately a decision for the Range States in each case.

CMS Role

4. CMS retains an umbrella role for its agreements. For some – especially those in the form of MoUs - there is a direct or even umbilical connection as the Agreement’s secretariat responsibilities are carried out by the CMS Secretariat, who increasingly outsource day to day co-ordination work within the area covered by the MoU. The arrangements already in effect for the

MoUs on Siberian Cranes and the Aquatic Warbler, and those to be announced in October/November 2005 for the existing MoU on African Atlantic marine turtles and the new MoU on West African elephants all follow this approach.

5. For the legally binding Agreements, which have their own Secretariats and formal MoPs, the role and influence of CMS' role is looser and less direct. At a minimum, these Agreements are required to table reports at each CMS Conference of Parties (Article V (1)(d)), and have the option to send their chief officer to participate as an observer (Article VII (8)). For those Agreements with UNEP Secretariats which are co-located with CMS in Bonn, there is a much closer working relationship, which has been strengthened since August 2004 with the institution of regular meetings of all the professional officers in the "CMS Family of Agreements". Close relations have also been established between CMS and the IOSEA MoU (whose chief officer performs part of his duties as the CMS Secretariat's Senior Adviser for Asia) and ACCOBAMS (through a 3-way co-operation deal between UNEP, CMS and the Agreement finalised in 2004-5).

6. Since August 2004, the CMS Executive Secretary has convened two special brainstorm events in Bonn to which the Secretariats of the principal Agreements have been invited. These have focused on common or cross-cutting themes, such as the 2010 biodiversity targets, protected areas, attracting sponsors and partners, exchanging best practice from COPs/MOPs, and CMS engagement in the conservation of marine mammals. Other joint initiatives included the creation of a joint Outreach, Communications and Information Taskforce, to maximize expertise and available manpower in the above area within Secretariats.

Relevant Provisions in the Convention

7. There are seven specific provisions in the text of the Convention which cover the relationship between CMS and *existing* Agreements (i.e. excluding those provisions relating to the role of CMS in developing and promoting *new* Agreements):

- (i) Article V (4)(d) – Agreements are required to prepare reports for the CMS CoP;
- (ii) Article VII (5)(d) – CMS COP to consider reports prepared by any "standing body" of an Agreement;
- (iii) **Article VII (5)(e) - CMS COP to review progress being made under Agreements;**
- (iv) Article 8 – Agreements are entitled to send observers to the CMS COP;
- (v) **Article VIII (5)(a) - CMS Scientific Council to provide advice at request of CMS CoP to any Agreement;**
- (vi) Article IX (4)(b) - CMS Secretariat to maintain and promote liaison with and between Agreements;
- (vii) Article IX 4 h - CMS Secretariat to maintain list of Agreements and if required by CMS CoP provide information on Agreements.

8. Experience during the last 15 years, as Agreements have begun to be implemented, shows that the majority of these provisions (i.e. (i), (ii) (iv), (vi) and (vii)) are regularly observed; this is again evident in several papers and agenda items at COP8. However provision (iii) has not yet been applied in a global, strategic and critical manner – i.e. to consider whether the progress being made under Agreements meets the Convention's overall objectives. This is particularly true for the legally-binding Agreements. In part this is because there were only a few Agreements in operation before 2000. Provision (v) has been occasionally applied e.g. for the Slender Billed

Curlew and turtles, but in the case of legally binding Agreements has been superceded by the creation of separate scientific bodies for the Agreements reporting to their own MoPs, which appears not to have been a model envisaged at the time the Convention was negotiated.

Proposals to Strengthen Review Role of the Convention for Agreements in Operation

9. Through CMS Parties can assess the collective impact of Agreements, and their efficiency and effectiveness in delivering conservation. This is of increasing importance in view of the need to monitor progress towards the 2010 Biodiversity targets (see documents UNEP/CMS/Conf 8.6 and UNEP/CMS/Res 8.7) and the Convention's proposed Strategic Plan 2006-2011 (see document UNEP/CMS/Res 8.2). A more incisive and critical approach is necessary to ensure that scarce resources are used in the most effective way possible, particularly in view of the pressures on the CMS budget (see document UNEP/CMS/Conf 8.19).

10. This issue has already been considered by the Strategic Plan Working Group. In addition to the references in the text of the proposed Strategic Plan (Paras 34-35 of Annex to UNP/CMS/Res 8.2) the Plan table includes two milestones under Target 2.5 for Appendix II species: to review existing arrangements for (A) birds by ScC 15 and CoP9 (2008) and (B) for marine mammals by ScC 17 and COP10 (2011), and to make recommendations to Parties. These are intended to be the first two of an iterative series of reviews, which will cover the whole range of Article IV Agreements implemented under CMS. This process will strengthen the Convention's observance of Article VII (5)(e) (and also Article VIII (5)(a)). There will be resource implications eg the use of independent experts for review as well as involvement by CMS Secretariat officers and the Scientific Council. For the next triennium it is envisaged that the review of bird Agreements can be carried within budget Scenario 3/4.

Process for Considering Extension of Existing Agreements.

11. Several Agreements, which have been in force for several years, are extending their activities on the ground. Some have understandably had to consider changes to their species or geographical coverage. Examples in the former category included the decisions by EUROBATs' Parties to amend the Agreement by adding an Appendix covering all species occurring in the Agreement area according to up to date scientific findings (45 species now instead of 29 before) since it came into force in 1994, and the extensive changes to the species tables made at the 2nd AEWa MoP in 2002. In the latter category, the 4th Meeting of the Parties to ASCOBANS in 2003, agreed to extend the Agreement area further west to cover parts of the North Atlantic and to incorporate waters adjacent to Ireland, Portugal and Spain. Once this amendment to the Agreement enters into force, the extension will close the gap for some species of small cetaceans between the Agreement areas of ASCOBANS and its sister agreement, ACCOBAMS.

12. A second example is the process for negotiation of an agreement covering the Central Asian Flyway (CAF). At times, the processes followed have led to some confusion between the rights, responsibilities and roles of different actors. In particular the CAF negotiations to date have revealed that when arrangements are being considered for species to be covered by a CMS Agreement in a region which adjoins another region where such an Agreement already exists, the CMS and Agreement Secretariats need to ensure that the respective roles, responsibilities and rights of (i) the Range States and prospective Parties in the new region, (ii) the Parties to the existing Agreement(s) and (iii) Parties to the mother Convention are fully respected in a way consistent with normal standards of intergovernmental negotiations.

13. In particular these key principles should be followed:

(a) First, the initiative in the new region must formally rest with the Range States and the mother Convention. If the existing Agreement has an independent decision-making process, its member States need to decide whether they would be willing to accept a

geographical expansion, in the light of the conservation and resource implications on which the Agreement Secretariat in consultation with the CMS Secretariat should advise them.

- (b) Second, the CMS Secretariat must ensure that where an option to extending an existing Agreement is available and practical, this option is considered by Range States in the new region alongside any alternatives, including a freestanding Agreement. The CMS Secretariat should advise the Range States of the new region of the conservation and resource implications of all the options
- (c) Third, the final, formal decision must be taken on basis of available options by range States of the new region at a properly constituted intergovernmental meeting, at which country delegates have appropriate credentials and powers to finalize the text of an agreement or MoU on behalf of their Governments, having considered advice given to them by CMS Secretariat on behalf of the CMS COP.

Action requested:

Parties are invited to

- (a) Note the paper; and
- (b) Endorse the principles in paragraph 13 for future negotiation of the geographical extension of existing CMS Agreements.
