



# Convention on the Conservation of Migratory Species of Wild Animals

*Secretariat provided by the United Nations Environment Programme*



## MEETING ON INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER THE CONVENTION ON MIGRATORY SPECIES

*Manila, Philippines, 10-12 February 2010*

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UNEP/CMS/MS3/REPORT

### REPORT OF THE MEETING

#### Agenda Item 1: Welcoming Remarks

1. Dr. Theresa Mundita Lim (Philippines) called the Meeting to order and welcomed the delegates to the Meeting. She thanked Mr. David Hogan (United States of America) for his work as Coordinator of the Drafting Group of the Conservation Plan and Chair of the Technical Meeting. She expressed the hope that the main meeting would be able to make progress on the negotiation of the Memorandum itself.
2. Dr. Lim then introduced two key guests, who had a key role to play in shark conservation. The first was Mr. Manuel Gerochi, Under Secretary, Department of Environment and Natural Resources, who was pleased to be hosting the present meeting and who stressed how important it was that all countries protected their wildlife, especially in the International Year of Biodiversity. Biodiversity was linked to poverty alleviation and was affected by climate change. All Range States had a duty to protect migratory species and CMS provided a forum for international cooperation to help achieve this aim. Unfortunately many species, including sharks, were in decline. The causes were many but the species often played an important role in their ecosystems. He hoped that the Meeting would be able to conclude the negotiations so that talk could start to turn into actions.
3. The second key guest was Mr. Arthur Yap, who had been appointed in August 2004 as Secretary at the Department of Agriculture, at 34 years old, the youngest ever. He welcomed delegates to the Philippines, wishing them "Mabuhay" and hoped that they would be able to see something of the country during their visit. He regretted that as Secretary for Agriculture he was often asked about the price of food commodities but rarely about more fundamental issues such as the fight against poverty. He informed that the Philippines was one of 55 countries on the UN list of those most at risk from climate change. The effects were already evident in the form of cyclones that had recently caused extensive floods and destroyed farmland and meant that one million tonnes of rice was left to rot in the fields, aggravating poverty further. He said it was a pleasure and honour for the Philippines to host the sharks meeting. The subject matter crossed different sectors and it had the same underlying incentive as the Coral Triangle initiative. Sustainability was high on the Philippine government's agenda, in part because the country's population is rising (91 million now compared with 84 million in 2004). He also stressed the importance of involving the private sector and not just government agencies and NGOs in conservation work.

4. CMS Executive Secretary, Ms. Elizabeth Mrema welcomed the delegates to the Third Shark Negotiation Meeting and hoped that similar good progress would be achieved as had been in the previous two days at the Technical Meeting. She thanked the Government of the Philippines for its hospitality. Recalling Ms. Sarah Fowler's presentation at the Technical Meeting, which had painted a gloomy picture of the conservation status of sharks worldwide because of targeted and non-targeted fisheries, Ms. Mrema said that the need for an international instrument to conserve these very migratory fish was all the more imperative. While there were other national, regional and international instruments that regulated fisheries, these were not enough and more needed to be done. An MoU under CMS could act as a conduit for further international cooperation and as a stimulus for national action. The presence of two key Government Secretaries at this opening session indicated the importance attached to our work and the need for cross-sectoral cooperation.

5. Dr. Lim then asked representatives of the countries and organisations that had supported the organisation of the meeting to address the audience.

6. Ms. Charlotte Gobin, representing France, one of the main sponsors of the meeting, thanked the hosts and organisers of the meeting. She recognised that many shark species were threatened and that France with its large Exclusive Economic Zone bore a great responsibility for their survival. France was implementing a national strategy for marine ecosystems, and shark conservation was a significant part of it. Targeted fishing for hammerhead sharks had been banned and France supported the listing of further species under CITES.

7. Mr. Oliver Schall, representing Germany, also one of the meeting sponsors, explained that his country was the Host Government of the CMS Secretariat and served as Depositary of the Convention. Germany was also politically committed to securing an instrument to conserve sharks. He thanked the hosts, the Secretariat and Spain, as holders of the EU Presidency, for all their work in preparing the meeting.

8. Mr. Juan José Areces Maqueda (Spain) spoke on behalf of the European Union. He stressed the importance of conserving sharks and cited new European regulations and quotas, which included total bans on fishing the basking and great white shark. Sustainability and biodiversity were in the forefront of the political agenda because of the International Year of Biodiversity, and concluding an instrument for sharks would be a significant contribution to that campaign.

9. Mr. Peter Örn, representing Sweden, also one of the meeting sponsors, endorsed the sentiments expressed by the previous speakers. He pointed out that sharks had been on the Earth for millions of years but were now being threatened. Shark numbers had been reduced in Sweden's national waters but the problem was worldwide. He was confident that progress would be made at the meeting.

10. Dr. Sheila Vergara of the ASEAN Center for Biodiversity, an IGO based in Manila, explained her organisation's role in assisting member states of ASEAN in complying with MEAs. She highlighted the relevance of CMS to marine biodiversity conservation and hoped that the MOU when concluded would act as a spur for global action.

#### **Agenda Item 2: Election of officers**

11. Ms. Mrema (Executive Secretary, CMS) moved to item 2 on the agenda, the election of officers. She informed the meeting that the Heads of Delegation on the eve of the

Technical Meeting had met and by consensus agreed to propose that a representative of the Host Country, the Philippines, chair the main meeting. It had also been proposed that Australia be Vice-Chair. These proposals were both accepted.

12. The Heads of Delegation had also agreed to establish a Credentials Committee comprising three delegates taking into account regional and linguistic representation at the meeting. The three delegations making up the Credentials Committee were proposed to be Germany for Europe, Costa Rica for Latin America and Guinea for Africa. The Meeting agreed to this proposal and left it to the Committee to elect its own Chair.

### **Agenda Item 3: Adoption of the Rules of Procedure**

13. The Chair introduced UNEP/CMS/MS3/Doc.3 (Provisional Rules of Procedure) and called upon the Secretariat to give a more detailed explanation. Dr. Marco Barbieri (Agreements Officer, CMS Secretariat), said that the Heads of delegation had agreed to propose the same Rules of Procedure as had been applied at the second sharks meeting in Rome. These were basically the rules adopted by the 9<sup>th</sup> Meeting of the Conference of the Parties to CMS, to be applied *mutatis mutandis* and with some adaptations and amendments. One key difference was that no distinction was made between Parties and Non-Parties. Another important difference was that all decisions at the meeting had to be made by consensus. There were no comments or objections from the floor, so the Rules of Procedure were adopted.

### **Agenda Item 4: Adoption of the Agenda and Meeting Schedule**

14. The Chair introduced the Agenda (UNEP/CMS/MS3/Doc.1) and the Meeting Schedule (UNEP/CMS/MS3/Doc.2.1) and invited the Secretariat to explain them. It was intended that the Meeting would work between 09:00 and 18:00 breaking into working groups as necessary. Both documents were adopted as presented. The Agenda is attached as **Annex 1** and the List of Documents as **Annex 2** to this report.

### **Agenda Item 5: Meeting overview and objectives**

15. The Chair invited the Secretariat to set out the objectives of the Meeting. Dr. Barbieri said that the two days of the Technical Meeting had helped identify some of the main objectives. It was hoped that the main meeting would allow delegates to raise questions, which if satisfactorily answered, would clear the way for the negotiation of the Memorandum of Understanding to be concluded. The Conservation Plan could also be further advanced and brought to the stage where it could be adopted, if not at the present meeting, then at the First Meeting of the Signatories.

16. Following the second negotiation meeting held immediately after the last Conference of the Parties (COP9), the Secretariat had prepared a revised draft of the MoU taking into account comments made and had circulated it to all countries that had attended one or both of the two negotiation meetings. The latest draft was contained in UNEP/CMS/MS3/Doc.4. As with the Conservation Plan, the text contained bracketed texts where contentious and unresolved issues remained to be decided. Attempts had been made to soften the language where countries had requested it or where it seemed too prescriptive for a non-binding

instrument. Excessive detail had also been removed, with some useful provisions being placed in new Annexes so that they would not be lost and to reduce the size of the principal text.

**Agenda Item 6: Review, further elaboration and adoption of the draft Memorandum of Understanding on the Conservation of Migratory Sharks**

17. The Chair sought guidance from the floor on the best way to proceed and suggested a line-by-line, paragraph-by-paragraph examination of the text.

18. The delegate of the EU offered the Chair his full cooperation. He would suggest some improvements to the text but expressed concerns that the previous meetings had not examined administrative and financial aspects in any detail.

19. The Philippines also expressed support for the idea of concluding an instrument to work alongside other forums. The three large species (Great White, Whale and Basking Sharks) should definitely be covered by the MoU, and concerns that had to be addressed included utilization, shark liver oil and game fishing. Providing resources both human and financial to implement the instrument also had to be considered.

20. Togo also supported the concept of an instrument that would assist the conservation of sharks in Togolese waters. Mauritius pleaded for a concise document, especially as some delegations wished to restore text concerning the Conservation Plan to the MoU. The representative of Argentina thanked the Government of the Philippines for hosting the meeting and the CMS Secretariat for enabling her to participate. She stressed that the proposed instrument was to be non-binding and that care should be exercised in the language used to ensure that potential signatories were not deterred.

21. The Secretariat pointed out two important issues, which still had to be resolved. The first was the taxonomic scope of the MoU (the species to be included in the annex) and the second was the definition of the term “Signatory” (whether it should be restricted to States and REIOs) and how then to deal with collaborating partners.

**Species**

22. New Zealand supported the development of the MoU but had concerns about its scope and complexity. New Zealand therefore suggested focusing on the Great White Shark, the Whale Shark and the Basking Shark. This would facilitate conservation gains and establish the MoU, which could then later build and add further species. Norway agreed and suggested that the MoU should only cover those species listed on the CMS Appendices. The European Commission pointed out that the CMS Convention text defined Appendix II species as those with an unfavourable conservation status and which would benefit from international cooperation. This did not seem to provide any justification for excluding from the MoU any of the seven species listed under the Convention. The MoU should also have the right to include further species, as it might prove a faster route to conservation than CMS. The number of species and the institutional relationship between CMS and the MoU were separate matters. Croatia and the United Kingdom supported the European Commission but Argentina, supported by Chile, expressed concerns about the MoU automatically following the lead set by CMS on species listing.

23. The United States of America recalled the discussion in Rome at the Second Meeting where diverse views on species coverage had been expressed. The United States of America favoured a broad approach and pointed out that more species than the seven under consideration were targeted by fisheries. Kenya supported the listing of all seven CMS species, pointing to the IOSEA MoU, which dealt with all marine turtles species. Liberia supported Kenya.

24. Australia had changed its position and now supported listing all seven species on the CMS Appendices. Australia also saw the logic of any future species listed by CMS also being included. Ghana however supported the listing of the initial three species, and the idea of the MoU developing step-by-step and was concerned that listing all seven would deter potential signatories. Ghana also hoped that the MoU might develop into a binding agreement in due course.

25. Germany recalled that COP9 in Rome immediately prior to the Second Negotiation Meeting had added a further four species to the CMS Appendices. Parties were called upon to negotiate instruments for Appendix II species. Germany was therefore in favour of including all CMS-listed species. The United Kingdom and Sweden both supported Germany's view. Guinea had been present at the previous two meetings. He recalled that the consensus at Rome was for a non-binding instrument, and was aware after Ms. Fowler's presentation at the Technical Meeting, that the Signatories faced a difficult task to reverse the species' decline. Colombia had an open mind on listing just three, all seven or even more species. Only one of the seven had a targeted fishery in national waters. Other forums were also dealing with fisheries issues. Mauritius favoured that MoU retaining autonomy of listing its own species and not automatically following CMS.

26. Congo recalled the debate at the Technical Meeting and pointed out that the Rome Meeting had decided on pursuing a non-binding instrument with an annex containing just the three original, larger species. The Democratic Republic of the Congo sought advice on whether the Gorilla Agreement set a precedent. It covered all four sub-species when the original CMS listing covered just one.

27. The European Commission pointed out that the original three species had been listed before COP9 and the other four had been added to Appendix II at Rome. Two species were now included on both CMS Appendices. The argument for excluding the four and thereby creating two classes of Appendix II species needed to be more clearly explained by those advocating the listing of just three species. It was also not clear how CMS Parties would be fulfilling their obligations under the Convention if the four were excluded.

28. Senegal supported the decisions at COP9 in Rome and advocated listing all seven species. The Human Society International had also attended all three Meetings. It supported Germany's views and pointed out that as the instrument was non-binding there should be little impediment to including all seven species.

29. The Chair proposed that a Working Group be established to consider the case for including just the original three or all seven species. It should consider what alternative arrangements could be made for the four species. Delegations volunteering to participate included Australia (Chair), Germany, Mauritius, the European Commission, New Zealand, the United States of America, Kenya, Argentina, Spain, Seychelles, Colombia and Chile. Eritrea sought clarification from the Secretariat about ramifications for only including the three original species. The Secretariat's understanding was that there was consensus on

including the three and the issue was how to deal with the four. CMS Parties had an obligation to establish instruments for Appendix II species. The MoU would however be non-binding and the current meeting provided an opportunity to discuss the issues and find an amiable solution. The current Meeting would also have to decide how further species might be added. The options were for the Meeting of the Signatories to be responsible or for the MoU to accept automatically the listings agreed by the CMS COP.

30. Norway suggested that the Working Group have open membership and pointed out that the current text of the MoU gave no guidance on listing procedures (e.g. whether listing would be decided by majority or consensus). Norway asked whether the MoU could list further shark species regardless of their status under CMS. The Secretariat confirmed that the MoU did not state how future listings would be achieved. Most of the other CMS MoUs dealt with one species or a restricted species group. The recent Birds of Prey (Raptors) MoU, however, covered a broad range of species. There had been some discussion about the consistency of listings between the parent Convention and the Agreements and MoUs, but it was generally accepted that the Conference of the Parties (COPs), Meeting of the Parties (MoPs) and Meeting of the Signatories respectively were the sovereign bodies of the Convention, Agreements and MoUs.

31. ECOCEAN also advocated that the MoU should cover all seven species. The Seychelles meeting had considered only three species, but since then CMS had added a further four species, and CMS Parties should take that into account.

32. Arrangements were made for the time when the Working Group could meet with simultaneous interpretation. It was agreed to convene a meeting at lunchtime on the second day.

33. Australia, Chair of the Species Working Group, reported that consensus had been reached on recommending that all seven species currently listed on the CMS appendices should be included on the MOU Annex. It was noted that in the past CMS instruments had usually listed all species covered by the parent Convention, and had even sometimes added more. However, support for automated linkage to the parent Convention's listings was limited, as it was recognised that not all Signatories would necessarily be CMS Parties and the MoU was a separate instrument, albeit negotiated under the auspices of CMS.

### **Preamble**

34. The Secretariat explained that the preamble had undergone only minor changes. The gerunds and adjectives had been changed to active verbs. Spain for the EU was confident that agreement could be reached but felt that the current draft was too long. The United Kingdom suggested that the Meeting should focus first on the operative part of the text and return to the preamble later.

35. Many editorial changes were proposed softening the language to be more consistent with a non-binding instrument and, where appropriate, to use similar wording as the CMS text and Resolutions. There was some debate on the merits of using "should" rather than "shall" or "will". The United Kingdom representative confirmed that "should" was appropriate for a non-binding instrument, as was "will". It was agreed that the use of "shall" was best avoided. References to the Conservation and Management Plan/Action Plan were changed to Conservation Plan in keeping with the preferred title. A proposal by Senegal to add a reference acknowledging the role of CMS in the conservation of sharks across their range was rejected. Inconsistencies between the language versions were also addressed.

## **Section 1: Scope, definitions and Interpretation)**

36. The Secretariat said that many comments had been received on the definitions. Most of the other CMS MoUs had far shorter lists of key terms. The outstanding point to resolve was the definition of “Signatory” and whether a distinction was needed between State (and REIO) Signatories and collaborating organisations.

37. The second point was the title of the annexed “Conservation and Management” or “Action Plan”. After delegates assured themselves that conservation included the concept of sustainable use and doubts were raised about the suitability of the term “management” given that fisheries would not be controlled through the Plan, a consensus was reached on the term “Conservation Plan”.

38. Having received numerous conflicting comments on the term “Conservation status”, the Secretariat had decided to put forward a definition consistent with that used by the parent Convention. Chile raised the point that there was great uncertainty about the historic levels of population of the species and undertook to provide new wording. The US supported Chile, adding that historic population levels were more significant for fully protected species than for those for which some sustainable take was envisaged. The United Kingdom agreed that the MoU could adopt a separate definition, but CMS Parties needed to be aware of their commitments to Annex I species and asked that further wording to this effect, which the United Kingdom agreed to provide, be added after sub paragraphs (d) and (e).

39. The definition of National Plans of Action for the Conservation and Management of Sharks was thought to be redundant as there was only one reference to them in the text.

40. Argentina proposed a third alternative definition for RFMO. Of the two options contained in the draft MOU, the European Union felt that the first was more consistent with the FAO. The United States of America cited other examples of definitions taken from FAO’s port state measures. Mauritius from its experience of the IOTC, still preferred the first option presented but would not stand in the way of consensus. At the end of the discussion, Argentina made a statement concerning RFMOs, and requested its statement to be included in the report of the meeting. It was so agreed. The statement is attached to this report as **Annex 3** in its original language version.

41. Spain suggested new wording of the definition of “shark finning”. Chile generally supported the new proposal. The US saw difficulties with the inclusion of the words “on board a vessel”, as some shark finning was done with the shark being held against the side of the boat and questioned whether the reason for the finning was relevant. The United Kingdom said that the word “carcass” implied that the shark was dead, but often the finned animal was discarded alive.

42. The definition of “Signatories present and voting” was thought to be unnecessary in the MoU itself but could usefully be retained in the Rules of Procedure for the Meetings of the Signatories. The definition of “Signatory” was refined to include only States (and REIOs) and a separate definition of “collaborating partner” was added.

43. Cameroon pointed out that the definition of “taking” was rather circular as it included the word “taking”. This definition had been lifted directly from the parent Convention, so it was agreed not to amend it. Côte d’Ivoire suggested linking the definitions of “finning” and “taking”. The Philippines suggested adding “harvesting” to the list defining “taking”. Norway agreed that this was a commonly used synonym in the context of fisheries.

## **Section 2: Objective**

44. Some comments received since the previous meeting had been accepted. No further comments were raised from the floor.

## **Section 3: Fundamental Principles**

45. Some reordering of the paragraphs was discussed. References to CITES and CBD were added. Argentina requested that the reference to RFMOs be qualified by the words “as appropriate”. The list of stakeholders was reviewed, with tourism suggested for inclusion and local communities and fisheries more clearly separated. Senegal proposed adding a reference to Principle 15 of the Rio Declaration.

## **Section 4: Conservation Plan**

46. This section had been discussed during the Technical Meeting and the EU had provided revised text in the three working languages.

47. Spain had sought to restore some of the text in Annex III to the main body of the MoU. Colombia mentioned that the reference to observer schemes previously contained in paragraph 1 (m) of Annex III had been lost. Spain explained that it did not think that observer schemes were part of enforcement. Ghana suggested restructuring the paragraphs into a more logical order.

## **Section 5: Implementation, Reporting and Financing**

48. The Secretariat reported that many comments had been received and the draft text had undergone significant changes. Spain raised the general concern that the wording should remain consistent with a non-binding instrument and proposed the deletion of sub-paragraph 16 (c) and paragraphs 17 and 18. Paragraph 16 (c) could be replaced by the equivalent provision of the Raptor MOU (paragraph 20 of that instrument).<sup>1</sup> Chile pointed out that the wording needed to be adapted for the marine environment. The United States of America asked that the points relating to training and technical assistance contained in paragraphs 17 and 18 be retained. Senegal and the Seychelles agreed with the United States of America. Norway mentioned the funding facilities under the UN Fish Stock Agreements to allow participation in UN forums on migratory stocks.

49. The United States of America observed that the MoU did not contain any provisions regarding a budget, except in the vaguest terms. The First Meeting of the Signatories would have to give consideration to how the Secretariat would be funded. Argentina confirmed that it was content to agree to a non-binding instrument, but had some concerns that some of the elements might lead to commitments to finance the activities.

## **Section 6: Meeting of the Signatories**

50. This section had also undergone significant changes with some of the provisions previously contained within it transferred to the Annex. The new draft MoU also placed the

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<sup>1</sup> Raptor MOU paragraph 20: “The Signatories will endeavour to finance from national and other sources the implementation in their territory of the measures necessary for the conservation of birds of prey. In addition, they will endeavour to assist each other in the implementation and financing of key points of the Action Plan, and seek assistance from other sources for the financing and implementation of their strategies or equivalent measures.”

tasks of the Meeting of the Signatories, previously contained in a separate section, in a separate Annex. The best solution however could be to incorporate in more concise form all the provisions in a single document and dispense with separate Annexes.

51. Spain suggested that the First Meeting of the Signatories should be held “as soon as possible” rather than “not later than one year after the MoU came into effect” and that the Meeting of the Signatories be linked to the CMS COP. Spain also thought that paragraphs 23-29 could be recast to reduce the text. This would need a small drafting group.

52. Argentina stressed that some collaborative mechanism should be established, but clearly within the framework of a simple, yet comprehensive, non-binding arrangement. Norway raised the timing of the First Meeting of Signatories citing other instruments, which waited until a certain number of Parties had submitted an initial report. The Meeting of the Signatories should also be responsible for amendments to the species annex, and clearer guidance on what national reports should contain was required.

53. The United States of America advocated restoring the language of Annex IV into Section 6. The United States of America also questioned linking the MoU Meetings of the Signatories to the CMS COP, which ran on a triennial cycle. The next COP was nearly two years away and in the vent of the CMS COP adding further shark species, non-CMS Parties like the United States of America would want time to consider the consequences for the MoU listing. Ms. Mrema highlighted potential logistical problems of holding MoU Meetings of the Signatories alongside the CMS COP. The United Kingdom felt that the advantages of back-to-back meetings outweighed the disadvantages.

54. The United States of America proposed replacing “relevant international conventions” with “relevant international instruments”, as the latter was less restrictive. Argentina asked for the word “international” to be deleted. Norway asked for paragraphs 21, 22 and 23 to be redrafted and for the missing words “the Meeting of the Signatories” to be added to beginning of paragraphs 25 and 26.

55. Senegal asked whether the Focal Point designated under Section 5 should be the delegate to the Meeting of the Signatories. It was agreed that such decisions rested with each Signatory States and should not be prescribed in the text of the MoU. Norway stated that the wording seemed to imply that attendance at the Meeting of the Signatories was compulsory and also raised the question of setting a quorum. The United Kingdom felt that the question of a quorum should be addressed, if anywhere, in the rules of procedure foreseen in paragraph 20. Spain felt that Annex IV containing outline functions of the Meeting of the Signatories could be discarded. The United States of America was less convinced feeling some of the guidelines could usefully be restored to the main text. Croatia wanted the procedure for amendment of the annexes to be entrenched in the MoU itself. Reporting back from the Working Group, the United Kingdom stated that it was recommended that the Species Annex be amended by consensus.

## **Section 7: Advisory Committee**

56. The original proposal had foreseen an Advisory Committee on which all Signatories would be represented, a system mirroring that used for the composition of the Convention’s Scientific Council, which also currently included eight collectively appointed experts. To keep the overall size of the Advisory Committee in check, the Secretariat suggested that

consideration be given to having regional and/or thematic representation. Norway agreed that there were precedents for this where all countries could contribute to the debate but only the regional representatives could vote at the meetings.

57. Spain suggested that paragraph 30 be reduced and that the possibility of the Committee working through electronic means and virtual meetings be emphasised. Virtual meetings would enable all signatories to be fully involved, although Guinea pointed out that some countries did not have universally reliable access to the Internet or e-mail. Chile added that some issues were best discussed face-to-face and the value of physical meetings should not be dismissed. New Zealand spoke in favour of virtual meetings, which reduce the necessity to travel long distances. Argentina thought that establishing an Advisory Committee might run counter to the non-binding nature of the instrument, but agreed with suggestions to keep the size of the Committee, and the burdens of supporting it, under control. The United States of America understood Argentina's concerns but felt that given the highly technical nature of the MoU's work, such a committee would be invaluable. The United States of America also asked when the Advisory Committee would meet, and how its meetings would be scheduled in relation to the Meeting of the Signatories. Spain suggested that the Chair of the Advisory Committee should attend the Meeting of the Signatories.

58. The Working Group on the Advisory Committee (Spain, Norway and Argentina) reported on its deliberations. The Group suggested adopting the same regions as used for the CMS Standing Committee (Africa, Asia, Europe, North America, Oceania and South & Central America & the Caribbean, with 2, 2, 2, 1, 1 and 2 members respectively). The Secretariat explained the rationale for the choice of regions, number of representatives on the CMS Standing Committee and the election process. The IUCN supported the idea of a small, regional membership but felt that Ocean basins rather than continental geography would be a better basis. The United Kingdom questioned the rationale of restricting membership but then allowing unlimited observers.

## **Section 8: Secretariat**

59. The Secretariat explained that much of the detail in the previous draft had been moved to Annex V describing possible functions of the Secretariat.

60. Spain believed that initially it would be appropriate for the CMS Secretariat to provide the services required and that it should be left to the first Meeting of the Signatories to make the definitive decision. The United States of America suggested that Annex V be used as a document for the First Meeting of the Signatories. It was proposed that Section 8 be retained as it appeared in the draft text with the exception that sub-paragraph (c) should be deleted.

61. Germany reminded the Meeting of the "Future Shape" process being conducted to review the structure of CMS and the CMS Family. The United Kingdom said that bearing this process in mind, it seemed appropriate to make interim arrangements now and allow the First Meeting of the Signatories to make permanent arrangements when the outcome of "Future Shape" would be clearer. The United States of America however felt that the chances of the United States of America committing resources to the MoU would be greater if the proposed secretariat arrangements were agreed sooner rather than later. The United States of America, as a non-Party to CMS, strongly opposed formalising any linkage to the "Future Shape" process in the MoU text. Despite the misgivings of some delegates that the wording was becoming rather vague, it was agreed that the text should refer to the establishment of a permanent secretariat "as soon as possible" with the understanding that this would allow the "Future Shape" process to run its course.

62. Argentina reiterated its concerns about the text imposing legal and financial commitments on Signatories.

### **Section 9: Cooperation with other bodies**

63. The Secretariat described the two options proposed in the draft. The choice lay between four detailed paragraphs or one simple summary of two and a half lines. Spain suggested retaining the reference to CITES and CBD and moving the text to Section 3, paragraph 6, which listed organisations with which the MoU was to engage.

### **Section 10: Final Provisions**

64. The Final Provisions had undergone minor changes since the last meeting; most notably the number of original languages had been increased to five (English, French, Spanish, German and Russian). Questions were raised from the floor as to why the Convention was deviating from its own three official languages (English, French and Spanish) and why German was being added while two official UN languages (Arabic and Chinese) were not included. These five languages were the ones cited in Article XX of the parent Convention. This Article however did not bestow any special status on any one of the languages, and doubts were raised from the floor about the English version being considered the “authoritative” one. Ghana felt that in the event of any dispute over interpretation, having an authoritative version would be helpful. Norway pointed out that the MoU was not binding and the United States of America agreed that the likelihood of any disputes arising was remote. Germany suggested adding Arabic, given the number of States where this was the official language. Having Arabic texts might encourage greater participation from that region, represented only by Egypt and Saudi Arabia at the meeting. Colombia suggested that Chinese should also be considered, as China was an important market of shark products.

65. The United States of America suggested that the term “take effect” with respect to the MoU was more appropriate for a binding instrument and suggested “commence” instead. Mauritius suggested deleting paragraph 42, as the role of the Convention Secretariat was mentioned in paragraph 44. Alternatively the reference in paragraph 44 could be omitted.

### **Agenda Item 7: Consideration and adoption of the draft Conservation and Management Plan for Migratory Sharks**

66. Mr. David Hogan who had chaired the Technical Meeting conceded that there were probably too many changes still to be addressed for the Conservation Plan to be finalised at the present meeting. His preference would be to take more time to complete the draft properly. There was still more work to be done to reconcile the Plan with Section 4. The United Kingdom said that the MOU needed to set out a procedure for adopting the Conservation Plan and agreed to provide suitable wording, while the United States of America was confident that by liaising closely over the coming months, a near final draft could be presented to the First Meeting of the Signatories for adoption there.

67. Spain suggested that the First Meeting of the Signatories should adopt the Plan by consensus reached by Signatories and observer states. The United States of America questioned the procedural legitimacy of formally allowing observer states a say, but agreed that the views of observer states could be taken into consideration. The Chair asked that the exhortation that the First Meeting of the Signatories should adopt as open an approach as possible should be recorded.

68. Further discrepancies between the language versions and some editorial comments were addressed. Senegal pointed out that there was no mention of training to help identify species and Colombia insisted that if observer scheme were not mentioned specifically in the MoU, there should be a specific reference to them in the Conservation Plan.

**Agenda Item 8: Institutional and financial matters, including options for Secretariat arrangements**

69. It was decided to defer consideration of institutional and financial matters until the First Meeting of the Signatories.

**Agenda Item 9: Opening of the Memorandum of Understanding on the Conservation of Migratory Sharks for signature**

70. The negotiation of the draft text having been concluded successfully, Ms. Mrema announced that the Memorandum would be open for signature at 18:00 that evening after the Secretariat had had time to prepare final versions in the three official languages. The final version of the MoU is attached to this report as Annex 4

**Agenda Item 10: Date and venue of First Meeting of the Signatories to the MoU**

71. No decision was taken on setting a date for the First Meeting of the Signatories. The Secretariat would liaise with Signatories in due course.

**Agenda Item 11: Any other business**

Report of the Credentials Committee

72. Mr. Oliver Schall (Germany) as Chair of the Credentials Committee reported on its findings. The other members of the committee had been Costa Rica and Guinea, and Dr. Marco Barbieri (Secretariat) had provided support.

73. Of the 41 national and REIO delegations present, thirty-nine had submitted credentials. Thirty-seven were found to be entirely in order in terms of enabling the delegation to participate in the negotiations and fourteen expressly allowed the representative to sign the final Memorandum.

International Workshop in Brisbane

74. The United States of America drew attention to an international workshop being held in Brisbane from 23-26 June 2010, the purpose of which will be to provide advice to Tuna Fisheries on how to reduce bycatch of turtle, sharks, and juveniles of target species.

**Agenda Item 12: Closure of the meeting**

75. After the customary exchange of courtesies to the hosts, organisers, the Secretariat, the interpreters and all who had contributed to the success of the meeting, the Chair declared the meeting closed. The List of Participants is provided as Annex 5 to this report.

### Signing Ceremony

76. After thanking Mr. David Hogan for Chairing the Technical Meeting and congratulating all involved in the third negotiation meeting, Ms. Mrema called upon those delegates ready to do so, to sign the Memorandum.

77. The representative of Palau had signed the MoU earlier as he had to leave. At the ceremony, the representatives of the following countries added their signature: Congo; Costa Rica; Ghana; Guinea; Liberia; the Philippines; Senegal; Togo and the United States of America; The representative of Kenya signed on the same day but later.

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