# Working Group on the development of a review process for CMS

**Introduction by the Chair of the Working Group**

**Doc.22**

# Working Group deliberations

▶ Election of Australia as Chair and Uganda as Vice-Chair;

▶ Mandate of WG as provided in its Terms of reference:

 ➢ Discuss a comparative analysis of best practices of existing review mechanisms of MEAs, including the CMS Family agreements, taking into account their advantages, disadvantages and the cost involved;

 ➢ Discuss an assessment of the feasibility for an existing body within CMS to exercise the functions of a review process (e.g. Standing Committee);

 ➢ Prepare options for a CMS review process, including: determination of what parts of the instrument and its resolutions be part of the review process; cost analyses; and financial and institutional implications for CMS.

 ➢ All options will be considered under the principles of cost-efficiency and effectiveness as well as practicality and practicability for the Convention. The option of retaining the status quo ('zero option') will also be considered.

# Experiences of other Agreements

▶ AEWA (CMS African-Eurasian Waterbird Agreement)

▶ ACCOBAMS (CMS Agreement on the Conservation of Cetaceans in the Black Sea Mediterranean Sea and Contiguous Atlantic Area)

▶ CBD (Cartagena and Nagoya Protocols)

▶ Bern Convention

▶ Ramsar Convention

▶ CITES

▶ Aarhus Convention

▶ UNFCCC

# General overview of review mechanisms

Objectives:

- ▶ To provide a system that monitors how Parties implement their commitments;
- ▶ To provide an incentive system that ensures Parties implement their commitments.

Benefits:

- ▶ Provides transparency;
- ▶ Allows identification of specific challenges and solutions to a Party's implementation;
- ▶ Directs technical assistance;
- ▶ Allows identification of systemic implementation issues affecting more than one Party;
- ▶ Promotes credibility and the rule of law and governance.

# Best practices and lessons learned

## What are the benefits of a review process?

► An effective review process:

    ➢ allows for the identification of specific challenges faced by Parties with regard to the implementation of a Convention and of targeted actions to help resolve them;

    ➢ provides an early warning to all Parties on non-implementation of collective commitments;

    ➢ allows for the identification and addressing of systemic challenges and thus priorities for strategic actions;

    ➢ ensures transparency among Parties on the implementation of commitments;

    ➢ increases the credibility of a Convention.

► There are additional incentives of having a review process that can materialize even if the whole process is not fully followed through to the final outcome.

# Best practices and lessons learned – *continued*

## What should be the scope of a review process?

▶ Linking a review process to legally-binding Convention obligations draws attention to the most crucial issues and establishes clear and targeted cases for review;

▶ In the case of CMS, a review process should enhance the conservation of migratory species in a cost-efficient manner.

## What are proven valuable triggers for a review process?

▶ Other instruments have implemented various ways to trigger a review, including providing Parties, the COP and its subsidiary bodies, its Secretariat and/or Third Parties formally with the ability to trigger review;

▶ National reports form an important component when obtaining information for review as well as other sources on a case by case basis, as required;

▶ Establishing a dual system that is based both on the review of national reports and can also deal with cases of non-implementation that are raised intersessionally.

# Best practices and lessons learned – *continued*

## Who could run a review process?

▶ Mandating a subsidiary body with responsibility for operating a review process rather than the governing body, shields the governing body from potentially being inundated with cases and distracted from its regular business;

▶ There are good examples of review processes that use existing Convention bodies to review cases and make recommendations, including AEWA, using both its Technical and Standing Committees; and CITES, using both its Scientific Committees and Standing Committee;

▶ The CMS Scientific Council could provide necessary technical expertise both from its councillors and COP-appointed councillors;

▶ Exploring synergies, when appropriate, with other review processes as, for example, the joint field missions conducted by the Ramsar Convention together with AEWA and/or the Bern Convention. This can allow for sharing of resources across instruments, perhaps leading to a reduction in associated costs.

# Best practices and lessons learned – *continued*

## What are proven valuable modes of implementation of a review process?

▶ Establish a positive, problem-solving approach rather than a punitive, adversarial approach

▶ There are a range of options for establishing a review process that can be cost effective

▶ Establishing minimum thresholds for admitting cases for review in the form of a checklist and/or information sheet as well as a filtering system through technical experts;

▶ Building rules of cost-efficiency into the process

▶ Establishing a list of possible consequences following a review to maximise transparency and predictability for Parties;

▶ Secretariat can liaise with Party under review as a first step to attempt to resolve a matter

▶ Handling implementation reviews face-to-face within a small body that is representative allows for issues to be raised at a semi-public level and therefore increases trust among Parties;

▶ Involving other Partners in the review process, where appropriate, can save on costs and make maximum use of external expertise;

▶ Allowing third party comments and information within a specific timeframe can ensure access to a maximum of information when a case is under review;

▶ Provide for in-country fact-finding/advisory missions, on a case-by-case basis, when needed.

# Options of review processes for CMS

Understanding of the Working Group of basic elements, which should be part of any review process:

- ▶ Problem-solving, facilitative approach

- ▶ Clear scope of obligations for review

- ▶ Filtering of cases through establishment of administrative and technical thresholds

- ▶ Clear list of consequences of non-implementation/compliance

- ▶ Handling of review by other body than the Conference of Parties

# Fundamental Elements

Fundamental elements of a review mechanism:

▶ General principles (facilitative, consultative, efficient, cost effective)

▶ Scope of the review mechanism

▶ Basis for review

▶ Basic mechanics of a review process

▶ Sources of information to be used during an assessment

▶ Measures available to the administrative body to achieve implementation

# Variable Elements

- Who can submit initial information:
  - Parties
  - Secretariat
  - Review Body
  - Third Parties

- Administrative body:
  - Standing Committee
  - Sub-Committee of Standing Committee
  - Independent Implementation Committee

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- Parties to decide either:
  - Adopt a review process
  - Maintain zero option

- Two variable elements still require agreement:
  - Who can submit initial information
  - Administrative body