



CONVENTION ON MIGRATORY SPECIES

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MEETING TO IDENTIFY AND ELABORATE AN OPTION FOR
INTERNATIONAL COOPERATION ON MIGRATORY SHARKS
UNDER THE CONVENTION ON MIGRATORY SPECIES
Mahe, Seychelles, 11-13 December 2007

REPORT OF THE MEETING

Introduction

1. A meeting to Identify and Elaborate an Option for International Cooperation on Migratory Sharks under the Convention on Migratory Species (CMS) was held at the Plantation Club, Seychelles from the 11th to 13th December 2007. The meeting was co-organised and co-hosted by the CMS Secretariat, and the Governments of Seychelles, Australia, Germany and the United Kingdom.

Agenda Item 1: Welcoming Remarks

2. Mr. Selby Remie from the Seychelles Department of Environment welcomed all present and outlined the purpose of the meeting. He said that he hoped that the meeting will be a first step in giving the plight of sharks the international recognition that it deserves.

3. Mr. Bernard Sham-Laye, Seychelles Minister for Education, officially opened the meeting on behalf of Mr. Joel Morgan, the Seychelles Minister of Environment, who was attending the United Nations Climate Change Conference being held in Bali, Indonesia. In his opening remarks Mr. Sham-Laye said that the Seychelles regards CMS as one of the most important environmental conventions as it has achieved tangible results over the years, and cited the Indian Ocean - South East Asia (IOSEA) MoU on marine turtles, of which Seychelles is a signatory, as an example. In conclusion he expressed his hope that real commitment is made to have as strong an agreement as possible for the protection of migratory sharks.

4. Mr. Robert Hepworth, Executive Secretary of the CMS Secretariat welcomed all participants on behalf of the Convention and outlined the work of the CMS and the threats that are currently being faced by migratory sharks. He cited new trends showing sharp declines in shark populations and said that there was a case for international and inter-governmental action. Mr. Hepworth informed the meeting that six new agreements were negotiated under CMS in 2007. He also thanked the Species Survival Commission for having prepared the key meeting document: "Background Paper on the Conservation Status of Migratory Sharks and Possible Options for International Cooperation under CMS" (UNEP/CMS/MS/4), and Bangladesh and Yemen for documents they provided on shark conservation activities in those countries.

5. Remarks were invited from the sponsors of the meeting which included the Governments of the United Kingdom, Australia, Germany and the Seychelles. The delegate of the United

Kingdom said that the United Kingdom is pleased to contribute to the negotiations but that it cannot pledge any financial contribution at the moment as the government is still discussing its financial plans for the next three years.

6. The delegate of Australia outlined the strong support that Australia has shown in the protection of migratory sharks and cited the role of Australia at the 7th Conference of the Parties (COP) in nominating the Great White Shark for listing in the appendices of CMS and, at the 8th COP, along with the United Kingdom, in nominating the Basking Shark. Australia stated that it comes to this meeting with an open mind as to whether a legally binding agreement or a non-legally binding instrument is needed.

7. The delegate of Germany was not present at the opening of the meeting. The delegate of the Seychelles welcomed all representing delegations on behalf of the Seychelles government and outlined the history of Seychelles in the CMS and the role that Seychelles played at the 8th COP in calling for the development of an instrument for the conservation of migratory sharks. He said that earlier this year the Seychelles finalised its National Plan of Action (NPOA) for sharks which has been endorsed by the Cabinet of Ministers and is pending implementation.

Agenda Item 2: Meeting Overview

8. The Executive Secretary of the CMS gave an overview of CMS and the shark meeting. He said that the meeting should consider an appropriate instrument for the conservation of migratory sharks and made reference to Recommendation 8.16 adopted by the Conference of the Parties (COP) of CMS at its Eight Meeting in 2005 which called for the development of a global migratory shark instrument in accordance with Articles III and V of the Convention. He also referred to Resolution 8.5 adopted at the same meeting which endorses the development of the instrument. He noted that there are several conservation instruments already in place such as the *International Plan of Action (IPOA)* for the conservation and management of sharks, established under the Food and Agriculture Organization of the United Nations (FAO) and that the FAO and Regional Fisheries Management Organizations (RFMOs) are critical for shark management by virtue of their authority to influence fisheries development. Mr. Hepworth said that there are also many other bodies that are relevant to migratory shark conservation with special mention of CBD, CITES, UNCLOS, and various Regional Seas Agreements. On defending the need for having a CMS instrument for the protection of migratory sharks, Mr. Hepworth said that conservation of these species depends on a coordinated effort and further discussed the good track record of CMS in developing international agreements. It was noted that the instrument should be developed in cooperation with the fisheries sector to maximise synergies. Mr. Hepworth described the different conservation instruments that could be developed under CMS which included: (1) concerted action for species on CMS Appendix II; (2) Type II partnerships; (3) Legally binding agreements; (4) Non-legally binding instruments; and (5) Action Plans, and said that CMS is very flexible in this regard. He emphasized that all of these tools can be either regional or global and that at the moment most agreements under CMS are regional, with some being very large in scope.

9. The Executive Secretary of CMS also provided an overview of the CMS Scientific Council, noting that the Convention prides itself on being science based. The role of the Scientific Council was described as ensuring that listings of migratory species in the CMS are soundly based in science. Species listings proposed to a CMS COP are normally accepted by consensus. Research, data collection and the need to increase public awareness are among the key actions required to address threats to migratory sharks. In conclusion he stated that concrete coordinated action is essential, that actions in one part of the sharks range should not be undermined by

actions in another part, that fisheries regulations are critical to shark conservation, that any “instrument” under CMS must add value to existing efforts, and that what CMS can accomplish is determined by its priorities and resources.

Agenda Item 3: Election of Officers

10. The meeting elected Dr. Rolph Payet from the Seychelles as Chair and Ms. Amanda Lawrence of Australia as Vice-Chair.

Setting up of Meeting Bureau, Credentials Committee and Working Groups

11. The Chair proposed the setting up of a Meeting Bureau and a Credentials Committee. The Bureau comprised the Chairman from Seychelles, Vice-Chairman from Australia and four members from Costa Rica, Belgium, Nigeria and Philippines. IUCN also formed part of the Bureau as an observer and acted as the rapporteur.

12. The Credentials Committee consisted of the CMS Secretariat, Chile, France and New Zealand acting as representatives from the different language groups.

13. The Chair proposed the setting up of two working groups to deal with specific issues regarding the institutional framework and the scope of the proposed instrument.

Agenda Item 4: Adoption of Agenda and Meeting Schedule

14. The agenda (UNEP/CMS/MS/1/Rev.1) was adopted with the modifications proposed by the CMS Secretariat, to adopt the agenda and meeting schedule before the election of officers, and is provided as **Annex 1** to this report.

15. The Secretariat introduced the meeting documents list (UNEP/CMS/MS/3/Rev.4). The final list of meeting documents is provided as **Annex 2** to this report.

16. The CMS Executive Secretary said that the meeting did not need to accept and use formal, rules of procedure however if delegates want formal rules they could use the CMS rules of procedure which are normally used for COP meetings. Proposed informal Rules of Procedure were read out by the CMS Secretariat (**Annex 3**).

17. They did not meet with any objection.

18. The CMS Executive Secretary added that the views of both Parties and non-Parties will be treated equally at the meeting.

Agenda Item 5: Conservation Status of sharks defined as migratory under CMS

19. The key presentation on shark conservation status was made by Dr. Sarah Fowler from the IUCN Species Survival Commission. She informed the meeting that her group has completed the global assessment for all oceanic migratory shark species, which was accomplished through a series of regional workshops. She said that both intrinsic and extrinsic factors were taken into consideration during the assessment. Dr. Fowler elaborated the importance of both CMS and CITES in shark conservation due to the threat posed by trade in the various species. The assessment revealed that nearly half of the migratory species assessed are threatened whereas one-

fourth are near threatened. The report also noted a higher extinction rate of migratory species when compared to non-migratory species.

20. The Chairman invited Range States to make short interventions.

21. The delegate of Bangladesh reported that shark fishery was newly introduced to Bangladesh and accounted for 0.8% of total fish landings. It was noted that sharks are caught for meat, skin and liver oil and are mostly exported. It was stated that it was a matter of urgency that harvest is regulated.

22. The delegate of Chile reported that Chile has completed its NPOA for sharks and is now in the stage of implementation.

23. The delegate of Costa Rica reported that Costa Rica has already taken action on banning shark finning in 2001 and has required that sharks should be landed with fins attached as of 2005. He said that Costa Rica is pushing for a global ban on shark finning.

24. The delegate of Australia reported that Australia places considerable importance on the conservation of migratory shark species. She said that at this meeting we should consider shark species that are already listed by CMS and that new species to be added should undergo extensive scientific scrutiny.

25. The delegate of the United States noted that while the United States is not a party to CMS, it is Signatory to some of its instruments such as the IOSEA turtle agreement. He further stated that the situation regarding sharks is not very good and cited a proposed UN General Assembly resolution which emphasizes that more is needed to be done for sharks. He also reflected on the added value that CMS can bring to shark conservation and made specific mention of a potential role for CMS in assisting with data collection, carrying out stock assessments, and as a vehicle to help developing countries with capacity building and developing standards for eco-tourism.

26. The delegate of India said that 80 species of elasmobranches have been added to the Environmental Protection Act and that the Government of India is eager to take action on shark conservation.

27. The delegate of Norway said that CMS Parties should comply with CMS decisions. He said that Norway is implementing a national ban on shark finning and that it is very supportive of this CMS initiative.

28. The delegate of New Zealand said that New Zealand is open to any type of arrangement that may come out of this meeting and that the focus should be on species already listed, with a view to extending the species list at a later date.

29. Observers were invited by the Chair to make their contributions.

30. The delegate of Eco-ocean noted that there is a lot of illegal, unreported and unregulated (IUU) fishing for whale sharks taking place and that a lot of whale sharks are also being legally fished. He said that Eco-ocean is involved in developing a standardised whale shark data collection protocol which could hopefully identify and protect critical habitats.

31. The representative of Shark Alliance and the Ocean Conservancy emphasized that even when the mandate is clear RFMOs may lack political will to act, that species not listed under CMS are unprotected in most Exclusive Economic Zones and in all international waters, that CMS is well poised to lead on shark conservation, and that a first step should be to develop a binding agreement.

32. The CMS Ambassador asked whether the proposed CMS instrument would be limited to the three species listed in the CMS Appendices or cover the wider context of migratory sharks in general, and requested the CMS legal officer to advise the meeting whether CMS can make agreements on species that are not listed in the CMS Appendices. The Secretariat agreed to provide clarification for participants. The Chair noted that Article IV, paragraph 4 of the CMS encouraged Parties to take action with a view to concluding agreements for any population of wild animals, but that he would like to leave the conservation and practicality considerations for the meeting to decide.

33. The CMS Executive Secretary made reference to a letter from the Director General of FAO apologising for the absence of FAO at this meeting and expressed the CMS Secretariat's disappointment. The letter said that FAO considers the theme of the meeting highly relevant to FAO's own efforts on the conservation of sharks. Though not present FAO said that it wanted to make a contribution and therefore had requested its staff to produce a document (**Annex 4**) to this report on its programs and activities on the conservation of sharks to be circulated at the meeting.

34. Seychelles said that it is the responsibility of the Parties to respect the CMS COP recommendation 8.16. Seychelles preferred a legally binding agreement. It recognises the opportunity to include other species in the CMS appendices but that this should not hinder progress with regards to species which are already listed.

35. Nigeria said that it belongs to two regional sub-associations that are both concerned with the conservation of marine ecosystems. It was pointed out that most commercial fishing is done by foreigners and that Nigeria has no capacity for this type of fishing and for enforcement of regulations. It stated that it needs more capacity for the enforcement of the existing rules for the conservation of sharks.

36. Yemen said that it has 2,500 km of coast and 150 islands in the Arabian and Red Sea and that include areas where there are feeding and nursery grounds for marine fishes, and that it has an abundance of pelagic fishes and high fisheries productivity with a potential annual fishery 2,400 metric tonnes. Yemen noted that sharks are targeted through traditional fishing, that there is increasing fishing pressure and that it needs scientific advice and a strategy for sustainability in fishing.

37. Netherlands said it is participating in this meeting to bring new life into global efforts for shark conservation. It said that the CMS option should really add value to existing instruments and that CMS can play a role in generating political will and public awareness with respect to shark conservation. Netherlands suggested that analysis of the reasons why current shark conservation efforts are not satisfactory is needed.

38. Argentina said that it is working on the implementation of its NPOA for sharks and that it is aware that there are still much to be done. It pointed out that only a few countries have implemented their NPOAs and that capacity building is needed for countries that are still behind.

Argentina said that it has signed an MoU with CMS on the conservation of Grassland Birds and that the proposed instrument should facilitate shark conservation.

39. Indonesia said that its Government is putting a lot of effort into fisheries management and is giving special attention to the shark fishery. It expects that its NPOA for sharks will be completed soon. It also noted the problems that it has with regard to taxonomic identification of species, lack of historical and biological data on life history and a lack of capacity in research and management. It pointed out that several conservation and management programmes have been undertaken recently. Indonesia also said that sharks and rays were targeted species and that therefore it is important to conduct research on the socio-economic aspects. It said that it hopes that the meeting will be constructive and establishes strong linkages and partnerships.

Agenda Item 6: Existing International, Regional and other Initiatives to Improve the Conservation Status of Migratory Sharks, including lessons learned

40. The meeting was informed by the CMS Secretariat that there are instruments that have been in place since 1982 for the protection of sharks. Some of the main instruments are the FAO Code of Conduct for Responsible Fisheries and a series of resolutions and decisions under CMS and CITES, e.g. on white sharks (2002) and basking sharks (2005). It was also pointed out that CMS has the potential to generate political will for the protection of migratory sharks. The Secretariat referred to the Strengths, Weaknesses, Threats and Opportunities (SWOT) analysis that had been carried out the results of which are given in Document UNEP/CMS/MS/4 (**Annex 5**).

Agenda Item 7: Options for International Cooperation under CMS

41. Referring to the SWOT analysis of possible instruments under CMS, more detail was provided by the CMS Secretariat on the different types of agreement that could be reached. The first option was a partnership agreement as envisioned in the World Summit on Sustainable Development (WSSD) outcome. The second option was a stand-alone Action Plan which is the least costly option; however its disadvantage is that it is not legally binding. The third option was an Memorandum of Understanding (MoU). This is the commonest methodology chosen by parties, for example for the dugong, monk seal, and South American grassland birds. The disadvantage of the MoU is that it is soft law, not legally binding, and parties need to seek independent financing. It was pointed out that delegates needed to be mindful of the cost of the arrangements proposed and that cost will also depend on the institutional infrastructure established. The role of the Secretariat can be at the top of the pyramid providing an umbrella under the auspices of the United Nations. A fourth option of having a legally binding agreement was also outlined.

42. The UK representative said that he did not think that this is a straightforward decision for this meeting. He said that there is a great difficulty in producing an agreement that will add value to existing efforts, and that it is clear that any agreement without a means to involve RFMOs will be doomed to failure. He said that in terms of EU politics any agreement on sharks will require implementation through fisheries. For that reason he said that it is better to work towards a partnership agreement as it will help gather the political will and offers a viable way forward with potential for a wide range of partners.

43. The Australian representative said that it was supportive of the MoU or the legally binding agreement as they have the greatest capacity to ensure the conservation of the species currently listed under CMS. The partnership agreement and the Action Plan options were not supported as

Australia believes that they are not two legitimate options under the current CMS mandate. Efforts around an Action Plan should be targeted to add value to what has already been done. These views were also supported by the Seychelles. India voiced support for a non-binding MoU.

44. The European Commission (EC) and France supported the position of the UK. It was stated that the EC and France do not want an instrument that is constraining. The meeting was informed of a consultation document on an EU Action Plan on the conservation and management of sharks inside and outside community waters. The EC noted that on 28 November 2007 the EC proposed a ban on fishing basking sharks by European vessels in European and international waters.

45. Norway said that any decision that is reached will need to include engaging the RFMOs, noting that they are operational in the North Atlantic. Control and enforcement measures must be an integral part of any instrument developed, and Norway would support a non-legally binding instrument that does engage RFMOs.

46. The USA agreed the need to engage RFMOs, and suggested that some basic questions need to be answered, e.g. will the instrument be global or regional initially, the financial and logistical aspects, and what elements to include as CMS is not to become a fisheries management body. The USA said that a CMS instrument can be used to help the RFMOs and hence add value, for example in data collection and sharing, capacity building, assessments of sharks, and enforcement of rules already in place such as the finning bans which are weakly enforced due to lack of resources. The USA was of the opinion that the instrument must be a bridge to other organizations such as CBD, CITES and FAO. It was also stated that there is an International Plan of Action and that there is no need for a CMS stand alone Action Plan. The idea of identifying what needs to be achieved through a CMS instrument as brought forward by USA was supported by New Zealand and Nigeria. New Zealand noted that RFMOs are discussing means to improve performance including introducing performance review. Nigeria supported a non-legally binding instrument initially with the possibility of a legally binding one at a later date.

47. The Gambia, Chile and Kenya all supported a non-legally binding instrument. Chile noted that MoUs work in the areas of improving cooperation and information exchange. Kenya noted the importance of including all stakeholders and countries, defining conservation targets, and increasing political influence by going beyond an Action Plan only. Kenya suggested a legally binding instrument is time consuming to develop and species may be lost in the interim.

48. The Seychelles defended its support for a legally binding instrument saying that there are some informal actions with regards to shark fishery but that most are not working because the agreements are not legally binding. Seychelles felt that a formal agreement is needed to achieve tangible outcomes.

49. The International Union for Conservation of Nature (IUCN) said that the decisions of both RFMOs and CMS are implemented by governments, that all useful actions are implemented by governments, and that there therefore is a need to do a better job of linking government deliberations. Similarly for CMS and CBD. There is a need to improve the conservation of sharks by the Parties and these needs to be implemented by the Parties. IUCN was of the view that shark conservation will not benefit from a voluntary agreement due to its slow progress, that a binding agreement will make a difference in the water.

50. The International Commission for the Conservation of Atlantic Tunas (ICCAT) believes that developing another Action Plan will not change the shark conservation situation, what is needed is an option that increases political will, such as an MoU that will put sharks on top of the agenda. ICCAT noted that delegates should consider the progress made under ICCAT.

51. Australia said it appreciates the virtues of both legally and non-legally binding agreements, that political will must be increased, and that the issue of the nature of the agreement should be brought forward to the next meeting.

52. Dr. Ramon Bonfil, an independent sharks expert from USA, stated that governments need to decide the species and scope for the agreement, but he would not favour a non-legally binding agreement.

53. The UK offered that it could support an agreement other than a partnership if RFMOs are engaged, but suggested that developing a legally binding agreement could be time consuming.

54. IUCN suggested that an MoU as a short term measure was acceptable with development of a legally binding instrument in parallel. The CMS Ambassador pointed out that for whale and basking sharks already listed on CMS Appendix I, there is a prohibition in Article III.5 on taking these species which is legally binding.

55. The CMS Secretariat thanked participants for the constructive debate, and said that there is consensus building that more needs to be done quickly for the conservation of certain species of sharks. He noted the growing support for an MoU, pointing out that an MoU has some legal status, is morally binding at a minimum, and that governments generally try to meet their obligations under an MoU. He suggested that it is not clear that a legally binding instrument always produces a better result. We need to look at which level this should be, either global or regional or a combination of the two.

56. The Netherlands reiterated the importance of engaging RFMOs and suggested that determining how to do this might lead to answers to many of the other questions raised by delegates. The Chair noted this applies to CITES as well. Netherlands requested, and it was agreed, that the Secretariat would obtain a legal opinion on involving RFMOs in the proposed CMS instrument.

57. The Chair then announced the creation of two working groups, Working Group 1 (WG1) to address institutional issues, and Working Group 2 (WG2) to consider the scope of the proposed instrument. Each group was given three issues to explore in depth, WG1 issues were the links to other organizations, e.g. RFMOs and CITES, value added and timeframes. WG2 issues were the geographic, species and legal scope of the instrument. WG1 was chaired by the UK, with Costa Rica acting as rapporteur. WG2 was chaired by Kenya, with Seychelles acting as rapporteur. These issues had originated from the earlier brain storming exercise in plenary that day. The working groups were asked to be open and to discuss issues freely. The meeting Chair said that the ultimate aim of the meeting is to have as strong an agreement as possible to protect migratory sharks and asked the WG Chairs to be flexible in the discussions to allow for free exchange and exploration of issues and options. The working groups were to report to plenary at the end of the day. The reports of Working Group 1 and 2 to plenary are provided in **Annex 6** and **Annex 7** respectively.

58. In discussions on the report of Working Group 1, it was reiterated that the involvement of the RFMOs in the instrument is necessary as their non-involvement will restrict the effectiveness of the instrument that is finally adopted. Further discussion on RFMOs led to a request from Netherlands that the CMS Secretariat investigate how RFMOs could be involved, recognizing that Secretariats cannot make binding commitments on behalf of their memberships, and agreement that the CMS Secretariat would invite RFMOs to enter into a working relationship. South Africa concurred with the need to seek agreement with RFMOs. The US called for consideration of means of engagement with other bodies, e.g. CBD, as well. Argentina noted the limitations created by RFMOs current competence. The Chair of WG1 reflected that RFMOs may wish to expand their area of competence, adding that the CMS Secretariat may wish to bring the current discussions to the attention of RFMOs and make RFMOs reaction available to the meeting participants, but emphasized that the work to develop a CMS instrument should not be held up pending reaction from RFMOs.

59. Netherlands cited information in document UNEP/CMS/MS/4 suggesting why current shark conservation initiatives have not been satisfactorily implemented – e.g. lack of time and resources, low level of interest and that these are areas where CMS could add value. The Chair of WG1 reflected on the extent to which CMS could influence political will. Ocean Conservancy/Shark Alliance noted that some RFMOs do not see sharks as part of their remit, and that RFMOs should be queried as to how they view sharks, what priority is placed on shark conservation, and whether and when they plan to change their mandate. The Chair of WG1 suggested a less open question about target and by-catch issues within RFMOs respective territories. The representative of Ocean Conservancy/Shark Alliance suggested that if RFMOs were to look at these aspects they might later be criticized by their Parties if sharks are not their remit. The US noted that habitat and ecotourism are not being addressed within RFMOs and are areas where a CMS instrument could add value, with the Chair of WG1 suggesting that improving habitat is not easily achieved especially away from shorelines. South Africa and Netherlands suggested including data analysis as a value-added area. The Chair of WG1 cautioned that this meeting should not give the impression that research should precede concluding an agreement, but rather that the agreement should cover research needs. Seychelles cited the value of obtaining by-catch data from RFMOs since the latter do not necessarily analyze this data, with the Chair noting that this data is not collected by all RFMOs. Ocean Conservancy/Shark Alliance suggested that research is needed on habitat preferences and use, where tagging programs play a role. South Africa proposed that a scientific committee would be needed under a CMS instrument to engage in exchange of information, but not to develop a research program. The Chair of WG1 then turned to timeframe issues, questioning what would be a reasonable time to have an instrument ready for approval, suggesting 3 to 6 months. The meeting Chair suggested the main elements of the instrument need to be worked out before the nature of the agreement is decided.

60. The Chair closed the first day of deliberations by stressing that there is a constituency that wishes to see this meeting make substantial progress on shark conservation and management and to be seen to be making progress. Delegates later enjoyed an evening reception and banquet hosted by the Save Our Seas Foundation.

61. **Day 2 of the meeting** was opened by the Chair in plenary by reiterating his charge to the Working Groups, and addressed the mandate of the meeting with regard to shark species. The Bureau meeting had concluded that the mandate of the meeting was to discuss the three species listed in the CMS appendices and that it has no mandate to discuss new species. The likelihood that certain countries will be proposing new species for listing under CMS was noted.

62. The Secretariat informed the meeting that there is a plan to circulate a Questionnaire (**Annex 8**) to get delegates views with regards to the proposed instrument. The aim was to get an indication of the various perspectives on the main issues of concern.

63. The representative from Australia said that they have just received instructions from headquarters and would like to make an addition to their opening statement for inclusion in the meeting record.

64. The Chairman of the Indian Ocean Tuna Commission (IOTC), Mr. Rolph Payet of Seychelles, asked members of IOTC present at this meeting to comment on the role of IOTC with regard to the protection of migratory shark species. He said that IOTC has been mandated by its members to ensure that sharks are protected and that IOTC does not see any problem with the CMS initiative. He went on to read resolution 0.5 05/05 paragraph 7 of the IOTC regarding release of incidental catch of sharks. He stated that there is willingness by IOTC and its members to protect sharks and that IOTC gives its full support to the deliberations of the meeting.

65. In discussions of the report of Working Group 2, the Chair of WG2 sought guidance on limiting the scope to the 3 species listed in CMS Appendices versus including the 3 species and a mechanism to add other species. The meeting Chair advised WG2 to consider the latter keeping in mind that no decision is to be taken at this time.

66. The relevance of the three species to RFMO engagement was questioned by the Netherlands, which commented that it does not believe that the three species or wider coverage is irrelevant for RFMOs and FAO and that it feels that there should be consultation with the RFMOs and FAO as otherwise these issues may come back to haunt us.

67. The Shark Alliance/Ocean Conservancy representative advised that copies of the European Commission's consultation document on the EU Action Plan on the conservation and management of sharks inside and outside community waters were available for review. Copies were distributed at the meeting.

68. The Chair said that the Bureau Meeting proposed that regional groups meet to discuss their positions, as this would allow the meeting to get an idea of the global concerns. Meetings in small groups might be more fruitful. The Chairs of the regional meetings should present to Plenary what was discussed in their groups. The Secretariat asked the five members of the Bureau to act as convenors of the regional meetings - Australia for Oceania, Costa Rica for the Americas, Belgium for Europe, and Thailand for Asia and Nigeria for Africa.

69. Guidance was provided as to what was required of the regional meetings, in particular they should discuss if there are any regional issues to be considered in the instrument to be developed, identify gaps in terms of management and research, the needs of the countries to have regional agreements for migratory sharks, and opportunities and value added issues for migratory sharks.

70. Delegates again turned their attention to RFMOs, and resumed discussions from day 1 on linkages with and engagement of RFMOs, FAO and other organisations. Norway said that the purpose of the discussion was to decide how to engage the RFMOs, whether that should be done formally, and at what stage of the process they should be engaged. It was asked whether they should be presented with a finish product or should they be involved with the elaboration of the product. Should they be engaged through a memorandum of cooperation between the secretariats,

and can the secretariats do this on their own? There was wide agreement that the RFMOs must be involved, that some will be involved from the start and some at a later stage.

71. The Chair said that he was informed that there was a meeting of RFMOs coming up in January 2008 and asked if anyone was aware of that meeting. Norway indicated it was not aware of such a meeting. Columbia said that it is important to coordinate the work done with the RFMOs to ensure that there are no overlaps since many countries already belong to RFMOs.

72. Seychelles said that it had information that there was a joint meeting of the five tuna RFMOs in January 2007 but that no date has been set as yet for 2008. The Chair said that he felt that this is important as it gives the CMS an opportunity to interact with this group of RFMOs in a much more coordinated way. ICCAT confirmed that the information that was tabled by Seychelles is completely accurate and that the 2007 meeting was actually held. He confirmed that indeed there will be another joint tuna RFMOs meeting but that a date is yet to be set.

73. The Chair asked ICCAT what its views were with regard to the interaction between CMS and the RFMOs at a joint meeting. ICCAT said that it is very important that the RFMOs are involved in the CMS process from the beginning and that they do agree that the joint meeting of the tuna RFMOs will be a good opportunity for CMS to present whatever proposals come out of this meeting.

74. The Chair asked about the structure of the meeting. ICCAT responded that each RFMO has its own convention, own membership and own mandates, but that the joint RFMO meeting does not have any mandate to make decisions that could be imposed on RFMOs. He said that these meetings are more coordination rather than decision making meetings. Some decisions are important, for example those relating to the RFMOs' performance review. He said that some guidelines for the review have been set. ICCAT is beginning a review of its performance early next year and that was the basis of the joint RFMOs meeting held in January 2007.

75. Columbia said that the RFMOs cannot agree what they are going to do about the main resource that they are managing, which is tuna, having a need for an extraordinary meeting next year. If these RFMOs cannot agree on this, he does not understand how they are going to deal with issues such as by-catch and incidental catch of sharks and turtles.

76. Costa Rica supported Columbia's comments and made reference to Sarah Fowler's presentation where she expressed her frustration regarding RFMOs. He said that he has been working with sea turtles conservation for many years and it is difficult to get action through RFMOs.

77. Norway said that FAO has a normative function and sets rules, but has no power of enforcement. They already have the IPOA sharks which is excellent and requires that each State follows up. FAO has to be on board but more in an advisory capacity, but actions need to be taken by Governments. He suggested that it will be easy to engage Governments in smaller fora like RFMOs where they are directly concerned with fisheries than through the FAO Committee on Fisheries (FAO/COFI).

78. The Chair asked if CMS was involved in the production of the FAO-IPOA for sharks. CMS responded that it was not involved, but said that it is important to see how that relationship can grow, that it is in the interest of CMS or any other instrument developed.

79. Morocco said that there is one way to have cooperation between CMS and FAO and cited one initiative between CITES and FAO where there was an MoU signed last year which gave a mandate to FAO to make expertise available on all aquatic species listed on the annex of CITES. He said that there is a possibility to have a similar MoU between CMS and FAO.

80. IOTC proposed that one way to further cooperation is to have the Executive Secretary of CMS to write to the RFMOs over the next couple of months to ask them to put the issues raised at this meeting on their agenda for deliberation at their next meeting. An IOTC meeting is planned for May or June 2008. There is next week a South West Indian Ocean Fisheries Commission (SWIOFC) meeting that will look at coastal issues and this will be attended by an FAO representative who could be consulted regarding discussion of the issues raised at this meeting.

81. Columbia said that the relationship between CMS and the RFMOs should also be assessed in terms of the fishing methods that are being used in which the major by-catch is shark. At the last Inter-American Tropical Tuna Commission (ATTTC) meeting, one of the points of discussion was the use of aggregating devices in which many sharks were being caught. In that sense maybe the discussion should address which fishing method is most damaging for sharks.

82. New Zealand commented on how CMS is adding value to the existing instruments. He said that it is evident that CMS could reinforce the political will to act on shark conservation issues. Listing the three species on the CMS Appendices has had the effect of forcing a consistent approach to the management of those species within New Zealand. He believed this is how a CMS instrument could add value and weight by putting some moral pressure on parties to make sure that their delegates in RFMOs have consistent views on conservation of sharks.

83. UK summarised the discussions on WG1's work and said that the points brought out include to engage the RFMOs with a letter; to look at anything that can be done for habitat preservation and to look at secondary threats mentioned in SSC paper (document UNEP/CMS/MS/4). On data collection and monitoring, UK said that it was agreed that the RFMOs will be engaged to increase data collection. It was agreed that there should be cooperation in data sharing, greater access to data between Range States, and standardised data collection for better understating of the situation on a regional and global scale. South Africa brought out the point that some form of a scientific committee should be tied to the instrument developed to ensure the use of data collected by the RFMOs.

84. Seychelles reiterated that there has already been agreement with IOTC for the sharing of data with respect to shark and cetaceans, statistics that are being captured in their log book as a result of their observer system. But this has to be done within each RFMO by discussion with parties concerned because this data is sensitive data that has been paid for by different organisations and so there are constraints in accessing it. In the experience of Seychelles there seem to be a willingness to go forward provided that it can be shown that there is a good and valid reason behind these approaches. Seychelles added that it had amended the log book to include collection of data on shark. This has now been adopted by IOTC at the last Scientific Committee meeting which took place in November this year. There is now a standard log book for the long line fishery with the requirement to submit data on sharks.

85. IOTC confirmed the information that was provided by Seychelles and said that IOTC is aware that there is a wealth of shark information collected in log book in fisheries but the problem is that fisheries scientist are concerned about fisheries issues and that sharks data are put aside and not analysed. This is a deficiency with a lot of RFMOs dealing with fisheries. While there is a lot

of ancillary data collected these are not properly compiled and analysed. Maybe that is something that CMS could take up with the RFMOs and ask them to compile shark data that they have and ask someone to analyse it to determine the trends, the species being caught and the species being observed as well. IOTC realised that it is substantial work but believe that the CMS can take the initiative in that direction and assist some of the RFMOs in strengthening their shark policies and resolutions that they have passed.

86. The Chair requested additional clarification on the form of agreement within IOTC. Seychelles stated that as a party of IOTC it has to submit data as per the requirement of IOTC after a certain period of time. As part of the reporting mechanism, IOTC is adopting an ecosystem approach to the by-catch issue. This request was formally put forward by Seychelles for the cetaceans and pelagic whale shark data which was positively received by the Scientific Committee and then recommended onwards.

87. Eco-ocean said that it is important to raise awareness amongst the fishermen and data collectors to ensure that data collected is robust and worthwhile which could encourage greater education of the data collectors of its importance and use at the local, regional and global scales.

88. Sri Lanka said that they are a member of IOTC but only report on shark data related to the tuna fishery as by catch. She said that she is aware of many countries which have small scale fishery targeted for sharks but which are not reported anywhere. The coastal developing countries have a lot of problem in species identification and data collection and said that there is a need to get some support to improve data collection system especially concerning shark data.

89. ICCAT informed the meeting that the collection of shark data in ICCAT is mandatory and that the commission has several recommendations which do not only establish that obligation but reiterate the need for parties to provide shark data. On the basis of the data that has been provided the first stock assessments of Blue and Mako sharks were done in 2004. In 2005 the Standing Committee on Research and Statistics of ICCAT created a specific group to deal with elasmobranchs as species and held a preparatory meeting for a second stock assessment planned for next year. The collection of data for scientific purpose and stock assessment is very clear in the ICCAT Convention. Another important aspect is to work on education of fishermen. One of the challenges that ICCAT has is to have an accurate identification of species. One of the initiatives that ICCAT is starting is to prepare educational materials to be distributed among fishermen so as to have more accurate identification of the shark species being caught by the fishing vessels operating in the convention area. The Chair asked whether there were any trade data issues which should also be looked at.

90. Costa Rica said that RFMOs should be queried on how they view their shark priorities. There are many resolutions about sharks calling on shark finning bans and collection of information but what is the priority. Will shark ever become a priority and are the RFMOs willing to change their mandate so that in the near future shark will be considered as a priority? The example used is that the IATTC in June 2005 issued a resolution banning shark finning, however in a recent meeting in Cancun the Scientific Committee of the IATTC acknowledged that at least 15,000 sharks are being finned in the eastern Pacific Ocean by IATTC boats, that this is a violation of the resolution and asked what they are going to do about this situation. As long as it is not a priority there is going to be large amounts of data but nothing will trickle down to any actions if they do not acknowledge it as a priority. How can we make sure that under their mandate it becomes a higher priority to look at sharks and not just collect data?

91. Eco-ocean said that they are particularly concerned about Whale Sharks and data collection on catches and trade data for that species. Whale sharks are protected under CITES and subject to regulations when traded between international boundaries. It is not so clear domestically the number of sharks that are taken in certain countries. Eco-ocean believes that to gain greater understanding of global numbers and change in numbers it is extremely important to get trade and catch data from these different countries, which is not as freely available as one would hope. Maybe there could be a recommendation from CMS to strengthen collection and release of data to be used to get better understanding of these species globally.

92. New Zealand said that some countries that have important whale shark habitat and fisheries have excluded their archipelagic areas from RFMOs so in terms of data collection unless archipelagic waters of these countries are included in some form of reporting requirement there will be a gap in the most important part of the fishery.

93. IOTC commented on the mandate of tuna RFMOs and said that the commissions are made up of individual members. He said that it is they that have to make representations at the commissions' meetings regarding the initiatives of CMS on sharks. It was said that IOTC will be going through a review process starting in February 2008 where they will be reviewed in terms of their management, conservation, data collection, scientific research, etc. to see if it is performing according to its mandate. There was a meeting held in Japan earlier this year where all of the tuna RFMOs met to come up with a common goal. There will be another such meeting around February 2009. There is also a meeting of RFMO chairs which will be held at the end of January 2008. It is proposed that the CMS Executive Secretary writes to the RFMOs to see how some of the shark issues can be raised so that they may be taken seriously by the commissions. Member countries need to raise the awareness about sharks within the RFMOs. IOTC thinks that the members need to come together to ensure that the fisheries are controlled.

94. The Chair said that we should look at a CMS instrument that narrows the gap between conservation and the management of the resources to ensure better management of species.

95. The Chair asked how long it will take to conclude an MoU. Australia wanted to make it known that they are not willing to commit to anything at this meeting which was also the view point of many countries. There were also discussions as to how long and at what time we should engage the RFMOs to ensure their involvement.

96. It was agreed that there should be two types of MoUs one between FAO and CMS for cooperation and the other one for the parties of CMS on how to protect sharks.

97. Seychelles reiterated that it can accept the option of looking at a MoU but that this option should be rapidly concluded. The country felt that this meeting had taken so long to organise and with so much funding that unless we come up with something positive at this meeting, the whole issue of shark conservation will not move forward. Seychelles wanted the outcome of the meeting to be more than an agreement on the organisation of another meeting.

98. Eco-ocean supported Seychelles comments and said that if nothing comes out of this meeting it will lose its strength in the future and the interest of parties to engage in a future meeting. New Zealand considered that a strong output from this meeting was needed to maintain interest in developing the CMS instrument.

99. Norway said that one problem is that there was no meeting document outlining a proposed instrument, therefore it is difficult to reach agreement on what needs to be done and by whom to improve shark conservation. A concrete statement of what this meeting wants in an instrument in terms of element and form would be a great step in the right direction and is as far as we can go at this meeting. This meeting should agree a package that can be presented at the next CMS COP in 2008, a full package with a plan of action and various elements including whom to engage and the views of the different RFMOs on what their contributions could be. Eco-Ocean suggested the meeting develop half a dozen bullet points and have agreement on them before the end of the meeting. Further to the statement by Norway, the Netherlands subsequently provided the CMS Secretariat with some suggestions for FAO and RFMO engagement. Time constraints did not allow for discussion and endorsement of the Netherlands contribution in the plenary, and it is therefore annexed (**Annex 9**) to the meeting report as an information item only.

100. Chile said that there is a need to settle what we want to achieve at this meeting, noted that a list of elements to include in an instrument is needed, and suggested that the meeting almost had agreement to develop an MoU so why don't we continue to work toward that.

101. The representative of Norway provided what he believes was the elements for the package, including data collection, harmful fishing methods, catch limitation schemes, and enforcement and control. There is a need to address who should be engaged on the different issues, describing the role of each of the different actors and how we can wrap these elements up in an instrument.

102. The Chair then called for the formation of two new Working Groups, with the broad objective of outlining the main elements for a global agreement. Working Group 3 (WG3), to be chaired by South Africa, was tasked with proposing the objective, scope, structure and broad articles of an agreement. Working Group 4 (WG4), to be chaired by Seychelles, was asked to consider mechanisms for engagement, the institutional structure, and priority issues. The Working Groups were to report to plenary the next day, the final day of the meeting.

103. The chair, at the conclusion of the second day of the meeting, also called for the production of two formal Conference Statements (CS), one on the purpose and process of the meeting, sections of which were to be drafted by IUCN, Australia, Norway and Belgium, and another on the outcome of the meeting as agreed by the participants, which was to be drafted by the Secretariat. These statements are given in **Annex 10 and Annex 11**, designated UNEP/CMS/MS/CS.1 and UNEP/CMS/MS/CS.2 respectively.

Agenda Item 8: Elaboration of an Option

104. The final day of the meeting opened with the presentation by the CMS Secretariat on the results of the questionnaire, which was answered by at least half of the participants. A copy of the questionnaire is **Annex 8** to this report.

105. The CMS Secretariat reported that 21 completed questionnaires were received from governmental representatives and 8 from non-governmental representatives. Question 1 was about what form the CMS instrument should take. It was found that among the government representative 17 wanted a non-binding instrument. Some representative wanted to begin with a non-binding instrument and then move on to develop a binding instrument. The majority of the non-governmental representatives favoured a binding instrument. On species coverage, 15 of the 21 government respondents supported the option of initially covering the three listed species but

having the list expandable later on. For the non-governmental representatives there was a split between listing only 3 species and having more than 3 species listed. On question 3, on the option of a global versus a regional instrument, 16 of the governments were in favour of a global instrument. Seven (7) of the NGO respondents were also in favour of this option. Question 5 on the connection with FAO and RFMOs produced fairly high support for establishing the FAO – IPOA as the global action plan for the instrument, perhaps supplemented by CMS regional species work plans. There was also quite a high number of representatives favouring a technical advisory body for the instrument on which the RFMOs would be invited to take full membership. There was very little support for any of the other actions. The NGOs were very much in favour of NGOs sitting on the technical and advisory body. Among the NGOs there was no support to use the IPOA and the Global Action Plan.

106. The Government representatives were in clear favour of a global non-binding CMS MoU initially covering three species but expandable later, with the FAO-IPOA Sharks as the global action plan and having RFMOs as members of a dedicated scientific advisory body. The non-governmental bodies also believed in a large majority that there should be a global agreement and FAO-IPOA Sharks should be the action plan and that the RFMOs should be on the dedicated advisory body.

107. Answers to question 4 on key elements of the agreement indicated that the highest level of support was for capacity building in developing countries. The next priority elements were the development of the shared shark database, identification and protection of critical habitats, stock assessment and related research, and cooperation with the fisheries industry. High seas protected area and migratory corridors also received a high level of support as well as finning bans and the promotion and regulation of eco-tourism. Three others attracted medium level of support. These include action plans for particular species and regions, implementations of rules and resolutions from other fora, and the global promotion of shark conservation and wise use. Attracting lower support was behaviour and aggregation studies, user and community education, and quotas and prohibition. As an additional element delegates wished to include by-catch and precautionary catch levels.

108. The meeting then considered the presentation of the regional reports.

109. African Regional Group Report: There were initially differences of opinion in the African group. However, they were able to resolve these differences and came up with a common front. It was decided that if the species is to be limited to the 3 species in the appendix of the CMS then they would opt for a legally binding instrument, but if other species are to be added then they would opt for a non-legally binding MoU.

110. Whichever option is eventually adopted the African group would like to see more use of research which should include capacity building as most countries in the African region do not even know the species that are available in their waters. The issue of sustainable use should also be considered. The issue of poverty alleviation, which could be addressed by sustainable use of the species, should also be considered.

111. Asia Regional Group Report: The Asian group consisted of participants from Bangladesh, China, India, Indonesia, Sri Lanka and Thailand. Since each country has approximately more than 100 species of sharks they focused on the 3 species in the CMS appendix. It was concluded that (a) whale shark, basking shark and white shark are found in China while the other countries only have whale shark; (b) more than 100 species of sharks are landed in each country; (c) recent

studies in East Indonesia found that there are at least 200 species of sharks identified; (d) laws and regulation for whale shark are in place in India and Thailand; (e) in most of the countries sharks are caught as by-catch except in Bangladesh and Indonesia where there is artisanal shark fishery; (f) National Plans of Action for Sharks is not in place yet in all countries; (g) the main issues for the countries are lack of biological information, lack of knowledge on migration patterns, lack of data on catch and effort and on species composition, as well as a lack of capability for research on assessment and management.

112. The recommendations from the Asian group are: (a) improvement of capability in research and data collection; (b) besides National Plans of Action, Regional Plans of Action for highly migratory shark species should also be prepared jointly among Asian countries; and (c) there is unanimity among all countries for a non-legally binding MoU.

113. Americas Regional Group Report: The Americas Regional Group consisted of Argentina, Chile, Columbia, Costa Rica and USA. The first and major question was how can CMS work with FAO and other bodies such as CITES and RFMOs. It was agreed: (a) to work through the member states and through the instrument that comes out of the meeting to introduce the issues onto the RFMO's agendas; (b) that it is important for major fishing countries and FAO to be involved in the present and future CMS meeting related to this issue; and (c) that there is a common feeling that there is a major problem of vessels fishing in the region which are registered elsewhere. Foreign flag vessels often operate in violation of local laws.

114. It was questioned whether the CMS could help with enforcement issues at domestic landing sites and how coastal states can deal with this problem. Perhaps CMS can help with funding for surveillance at the local ports. CMS should also be present at the Tuna commissions meetings. There is one planned in 2009 where the five tuna commissions will be meeting. CMS must be there to present the instrument to them. The notion must be supported to call for a certain portion of observers on the RFMO vessels in the region to be independent in order to guarantee a balance between the observers.

115. Oceania Regional Group Report: Oceania was represented by Australia, New Zealand and the Philippines. The group discussed the various domestic initiatives and measures which are underway in the countries to address the conservation of the three CMS listed species. It was noted that of the three countries present one had a completed NPOA-Sharks in place and two had substantially progressed drafts. It was identified that there was a very strong need for increasing and formalising the collection and exchange of data for these three species. It noted that there are some existing measures and projects underway by countries and between some countries bilaterally. It was also noted that there was a regional need to increase the collection and exchange of species specific data. It also acknowledges the need for effective engagement of the relevant fisheries organisation to extend the protection of these species.

116. European Regional Group Report: The European region discussion can be summarised in four points. It was noted that the first draft of the European Plan of Action for sharks is now available and the Group would like to thank the European Union for the plan at the moment as it is relevant to the discussion at this meeting. The provisional draft is now open for stakeholder consultation. The Group invited all parties to comment on this plan. Secondly the plan should be analysed to see which elements could be integrated into the instrument that is now being developed. The record of the present meeting should be sent to the European Commission so that they are well informed of what happened in Seychelles. It was also pointed out that at an early stage we should discuss on how to engage the RFMOS in this process and in this respect we

should reflect on the mandate of the RFMOs to regulate shark fisheries and what kind of cooperation models are possible between Secretariats. Whatever kind of agreement that we come out with it is important to include Regional Economic Integration Organisations to ensure that EC is fully involved. One of the most important value-added issues is raising political awareness in existing instruments to ensure that we have a strong impact on what is being done in the region and on many targeted fisheries.

117. The meeting then received and discussed the reports of Working Groups 3 (**Annex 12**) and 4 (**Annex 13**). Regarding the scope of any future agreement, the CMS COP-appointed Councillor for Fish pointed out that CMS Scientific Council believes there are 35 other species of sharks that potentially meet the criteria for listing in the CMS Appendices. The CMS Secretariat noted that nominations to Scientific Council for possible listing must occur by mid-2008, and any new species that are listed could be incorporated into a CMS sharks agreement. A suggestion to reference these 35 species in the agreement was viewed as potentially creating an open-ended instrument, however the possibility of other species being added to the CMS Appendices in the near future was recognized. The CMS Secretariat noted that it would be unprecedented for a non-binding instrument to change its species base without approval by CMS Scientific Council, Standing Committee and COP.

118. Guided by the deliberations of the four working groups and the five regional groups, and the responses to the Secretariat's questionnaire, the meeting turned its attention to outlining what had been agreed over the past two days. The ensuing discussion was wide-ranging addressing the question of RFMO engagement, data collection FAO-CMS linkages, measures needed to be taken to further shark conservation and management, cooperation on control and enforcement, timeframes, species of concern, a mechanism to add species, the need for a follow-up meeting to move the proposed instrument forward, and inter-sessional work.

119. The Chair called for final statements from delegates. The US made further reference to the UN General Assembly preparing to adopt (today) a resolution on sustainable fisheries, which the US viewed as an important step toward improved shark conservation and management in US waters, improving capacity building in other countries and working through RFMOs. ICCAT reiterated its commitment to work with CMS on a sharks agreement. Seychelles acknowledged the progress made at this meeting, the need to keep the momentum going, the importance of delegates providing text to the CMS Secretariat for the proposed instrument, and thanked sponsors, delegates and observers for their contributions to this meeting.

Agenda Item 9: Any other business

120. The CMS Secretariat suggested that, resources permitting, a second meeting could be held, possibly in Bonn, Germany, and that the Secretariat would be prepared to share the cost of the meeting up to about 50%.

121. The Netherlands suggested that the CMS Secretariat should develop a paper giving the relevant key milestones, dates and events over the next two years to assist in planning the development and implementation of the CMS instrument.

Agenda Item 10: Closure of the meeting

122. Seychelles thanked all the participants of the meeting for the fruitful outcome. The List of Participants is provided as **Annex 14** to this report.

123. The meeting was closed with remarks from the Chair and the Executive Secretary of CMS. The CMS Secretariat was encouraged that steps toward a CMS instrument had been agreed, that a follow-up meeting in 2008 was supported and thanked organizers, sponsors, participants and the meeting Chair for their contributions. The Chair emphasized that we are putting our own welfare in jeopardy through environmental degradation, that we need to get others involved in the sharks initiative, that we need to move beyond voluntary measures, and that senior level involvement and commitment is essential to our success.