



Convention on the Conservation of Migratory Species of Wild Animals

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

Rome, Italy, 6-8 December 2008

UNEP/CMS/MS2/REPORT

REPORT OF THE MEETING

Opening of the meeting

1. The meeting was opened at 3 pm on Saturday, 6 December 2008, by Mr. Robert Hepworth, Executive Secretary of the Convention on the Conservation of Migratory Species of Wild Animals, who welcomed participants.

Agenda item 1: Welcoming remarks

2. Mr. Kevern Cochrane, Fisheries Management and Conservation Service, Food and Agriculture Organization of the United Nations (FAO), welcomed participants to FAO Headquarters on behalf of Mr. Jacques Diouf, Director-General of FAO, and Mr. Ichiro Nomura, Assistant Director-General, FAO Fisheries and Aquaculture Department. He emphasized that the FAO's primary mission was to contribute to food security, an aim that had become ever more challenging, and UNEP was equally committed to sustainable use, so there was every reason for FAO and UNEP to cooperate.

Agenda item 2: Meeting overview and objectives

3. The Executive Secretary thanked the FAO for its support and expressed the hope that it would provide major input to the meeting.

4. He recalled that it was the second meeting held for the purpose of negotiating an international instrument for the conservation of sharks and their habitats and its first decision should be whether a binding or non-binding instrument was desired. Once that had been decided, consideration would have to be given to what type of action plan should be adopted, how it would relate to other action plans and what species should be covered by the instrument. He concluded by thanking the members of the Intersessional Steering Group on Migratory Sharks (ISGMS) for their valuable comments and support during the intersessional period.

Agenda item 3: Adoption of the Rules of Procedure

5. The Executive Secretary introduced the draft rules of procedure contained in document UNEP/CMS/MS2/Doc/6, explaining that, as was customary, they were based on the rules of procedure for meetings of the Conference of the Parties, with a certain number of modifications, to which he drew attention.

6. Concern was expressed at the inclusion of rules on voting as CMS bodies generally adopted decisions by consensus and it was agreed that Part IV of the draft should provide for decision-making by consensus.

7. The rules of procedure, as amended, were adopted.

Agenda item 4: Election of officers

8. Following a proposal by the representative of Seychelles, seconded by other representatives, Ms. Nancy Céspedes (Chile) was elected as Chair.

9. Ms. Theresa Mundita Lim (Philippines), after being nominated by the representative of Belgium and seconded by other representatives, was elected as Vice-Chair.

Agenda item 5: Establishment of the Credentials Committee

10. The meeting elected the representatives of the following countries to serve as the Credentials Committee: Australia, Cameroon (Rapporteur), Republic of Congo, Ecuador, and the Syrian Arab Republic (Chair).

11. The representative of Cameroon, speaking as Rapporteur of the Credentials Committee, presented the Committee's final report, which showed that 28 credentials were in order, ten had been conditionally accepted with the provision that the original document was sent to the Secretariat, four had not been accepted and nine had not been submitted.

Agenda item 6: Adoption of the agenda and meeting schedule

12. The meeting adopted the agenda proposed in document UNEP/CMS/MS2/Doc/1/Rev.1, which is attached as annex I to the present report.

Agenda item 7: Outcome of the first meeting to identify and elaborate an option for international cooperation on migratory sharks under the Convention on Migratory Species (Mahé, Seychelles, 11-13 December 2007)

13. The Executive Secretary introduced the report of the first meeting (Sharks I) (UNEP/CMS/MS1/Report) and the revised draft memorandum of understanding and draft agreement prepared by the CMS Secretariat pursuant to the recommendation made at the first meeting and following consultations with the Intersessional Steering Group on Migratory Sharks (ISGMS) (UNEP/CMS/MS2/DOC/4/Rev.1).

14. A consensus had been reached at the first meeting that the scope of the instrument should be global, with a focus on the three species listed in the appendices to the CMS, but that there should be an enabling mechanism to allow Parties to add species. The three fundamental principles recommended were: the need to address the broad range of measures to deal with shark conservation and management; the ecosystem and precautionary approach; and the cooperation and engagement with stakeholders. As far as the institutional mechanism was concerned, the meeting had recommended the use of existing mechanisms where possible.

Agenda item 8: Update on the conservation status of migratory sharks

15. Ms. Sarah Fowler, Co-Chair of the IUCN Species Survival Commission, Sharks Specialist Group, provided an update on the conservation status of migratory sharks. After explaining the methodology used to prepare the update, she drew attention to the intrinsic vulnerability of migratory sharks because of their low rate of population growth, late maturity and long gestation period, as well as many species' tendency to aggregate in large schools, making them vulnerable to exploitation. There was considerable variation in demography between species and even between populations. Extrinsic factors linked to the decline of shark populations globally included over-exploitation, habitat degradation and loss, depletion of prey species, as well as a lack of coordinated management and reliable data. The IUCN Red List species assessments for 2007 showed that 20 per cent of all the shark species that had been assessed were threatened at the global level. In the case of pelagic sharks, many of which are highly migratory, the figure rose to 58 per cent worldwide. The primary threats to migratory sharks were target fisheries and utilized bycatch for over 90 per cent of the species, while habitat destruction and incidental catch discards were the main secondary threats. Target fisheries and utilized bycatch were notably the primary threats to oceanic and coastal species, while for freshwater species habitat destruction was considered a primary threat in addition to target fisheries. Overexploitation through target fisheries and bycatch was also the main threat for the species on CMS Appendices. Secondary threats for these species included habitat degradation, depletion of prey, and boat strikes.

16. The analysis undertaken by IUCN for CMS had identified about 140 species of Chondrichthyans as migratory or potentially migratory. However, data on movements were still lacking for many species, and many more species might therefore prove to be migratory in the future.

17. Ms. Fowler added that the Shark Specialist Group included experts from over 70 countries, many of whom worked for scientific fisheries bodies or in conservation of biodiversity. In response to a question, she said that lack of data was not restricted to any particular geographical area; worldwide there were pockets where data were deficient just as there were others where data availability was good.

Agenda item 9: Internationally agreed principles and procedures for the conservation and management of sharks

9.1 The FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) and related issues (presentation by FAO)

18. Mr. Cochrane (FAO) introduced the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), drawing attention to the general vulnerability of sharks because of their slow growth, late maturity and low fecundity. Sharks were often taken as bycatch and, except in the case of shark fins, they were of little economic importance. The difficulty of identifying species meant that some might become rare or even disappear without warning. Information on amount of catch and discarded catch, as well as the type of gear used was inadequate and there was little or no trade-related information.

19. After providing an overview of the relevant international instruments, he gave a more detailed presentation of the IPOA-Sharks. He said that the objective of IPOA-Sharks was to ensure the conservation and management of sharks and their long-term sustainable use. The

programme was voluntary and had been elaborated within the framework of the Code of Conduct for Responsible Fisheries.. The guiding principles of the programme were that states that contributed to fishing mortality of a stock or species should participate in its management and that total fishing mortality for each stock should be kept within sustainable levels by applying the precautionary approach. It was recognized that in some countries shark catches represented an important source of food and income and had to be managed sustainably so that they could continue to play that role. States were encouraged to adopt their own national shark plans and to cooperate through regional and sub-regional fisheries organizations or arrangements.

20. Implementation was hampered by the low priority given to the programme when allocating resources and by lack of expertise. To remedy that, the potential of Regional Fisheries Management Organisations (RFMOs) and international organisations could be tapped and industry encouraged to support the management of elasmobranch fisheries. It was a fact that most shark fisheries were currently not managed and FAO had taken a number of measures to meet the growing concern about the possible impact of illegal unreported and unregulated shark catch. The key to progress was to adopt the ecosystem approach to fisheries and to ensure that natural resources did not decrease below their level of maximum productivity. Fisheries should be managed in such a way as to minimize their impact on the ecosystem, and the ecological relationships between the different species within the food web including those that are harvested had to be maintained. Because the understanding of ecosystem functioning was incomplete, it was important to follow the precautionary approach.

21. During the ensuing discussion, it was pointed out that the fact that it was not legally binding was a weakness of the IPOA-Sharks. However, the ecosystem approach meant that sharks should not be managed as a separate species so a binding agreement was not necessarily the best approach. Moreover, as fisheries had to be involved in the conservation effort, a non-binding instrument would be more likely to attract signatures.

22. Several representatives said that countries might be taking measures to protect sharks even if they did not have a national plan of action. The important role played by regional and subregional fishing commissions was also mentioned.

Agenda item 10: Options for international cooperation under CMS

23. The Executive Secretary introduced document UNEP/CMS/MS2/Doc/7 containing the comments of the ISGMS.

24. Mr. Marco Barbieri, Agreements Officer, CMS, explained that the ISGMS, comprising Australia, Chile, Costa Rica, the European Commission, New Zealand, Seychelles, and the United States of America, had considered first drafts of both legally and non-legally binding instruments, prepared by the CMS Secretariat. The members of the group had sent in their comments on the proposed drafts and those had been incorporated into the revised drafts to be discussed under agenda item 10.2. Some members of the ISGMS had commented on the revised drafts and their comments were included in document UNEP/CMS/MS2/Doc/7.

25. After the Chair had called for general comments on the future instrument, several representatives spoke in favour of a non-binding instrument, which would be easier to

implement, but felt that the proposed Memorandum of Understanding (MOU) was too detailed and certain elements could be moved to the Action Plan.

26. Other representatives preferred a legally-binding agreement but in order to speed up adoption they could accept an MOU, provided that serious consideration was given to how it would be implemented.

27. A number of suggestions for inclusion in the MOU were made including a reference to regional and subregional cooperation, technical and financial support for developing countries and synergy with other frameworks. Finally, concern was expressed at the lack of reliable data on shark population and fisheries to guide policy.

28. Following the general round of comments, the Executive Secretary drew attention to the second draft of proposed legally and non-legally-binding instruments on migratory sharks (document UNEP/CMS/MS2/Doc/4/Rev.1), highlighting some salient features. The substantive provisions of the two proposed instruments were very similar, but some basic issues had to be decided: for example, what would be the relationship to the IPOA-sharks, what species would be covered, and most crucially how the operation of the new instrument would be financed because CMS would be unable to cover those costs within its current budget.

29. During the ensuing discussion, a clear preference for an MOU emerged and the Chair asked participants to focus on the draft MOU proposed by the Secretariat.

30. Several divergent views were expressed concerning the species to be covered by the proposed MOU. Some representatives were in favour of limiting the scope of the MOU to the three species originally listed on Appendix II (Whale shark (*Rhincodon typus*), Basking shark (*Cetorhinus maximus*), Great white shark (*Carcharodon carcharias*)), at least in an initial phase. Other representatives considered that the four species added to Appendix II at the Ninth Meeting of the Conference of the Parties (Shortfin mako shark (*Isurus oxyrinchus*), Longfin mako shark (*Isurus paucus*), Porbeagle (*Lamna nasus*), Northern hemisphere populations of Spiny dogfish (*Squalus acanthias*)), should also be covered by the MOU. The issue was raised several times during the meeting, but no consensus could be reached on this point.

31. Representatives also discussed whether it was desired to maintain a link between the *Condriichthyes* species listed in the Appendices to the Convention and the species covered by the MOU. Some delegates foresaw a close link, whereby species listed on CMS Appendices would automatically be added to the MoU Annex. This was however seen as a severe problem for some non-CMS Parties, which openly stated that it would discourage them to sign the MoU in the first place. States that were not a member of CMS tended therefore to favour an independence between the CMS Appendices and the MOU Annex, the decision on the inclusion of species in the Annex to the MOU having to remain the exclusive prerogative of the Signatories to the MOU. A possible compromise between these two diverging positions was suggested, that would leave the prerogative to amend the annex to the MOU to the Meeting of the Signatories, which would however agree to consider any species listed on CMS Appendices by the CMS COP. No consensus was reached on this matter.

32. The Chair suggested that the meeting have a first reading of the text proposed by the Secretariat, taking it up section by section.

Preamble

33. Differing views were expressed as to whether the Preamble contained in paragraphs 1 to 6 of the draft was necessary, some representatives speaking in favour of its deletion while others wished to see it retained because it highlighted the plight of sharks.

Objective

34. A number of amendments were proposed to the objective contained in paragraph 7 of the draft with some representatives preferring the first alternative and others the second.

Fundamental Principles

35. Turning to the Fundamental Principles in paragraphs 8 to 17 of the draft, it was proposed that some of the paragraphs either be moved to the Action Plan or be deleted.

36. The Chair proposed that a contact group comprising the representatives of Argentina, Australia, Guinea-Bissau, the European Community and the United States of America be set up to discuss the Fundamental Principles.

37. The representative of the CMS Secretariat presented the report of the contact group on the Fundamental Principles, stating that there had been consensus on many of the elements.

38. The meeting could not reach consensus on whether the Fundamental Principles were needed, although there was general support for including them. After several representatives had said that they would need to consult their capitals before agreeing on any text, the meeting decided to place the text in square brackets and return to it at the next meeting.

Conservation and management measures

39. Some delegations expressed the view that the list of measures contained in paragraphs 18 and 19 of the draft was too ambitious and too detailed. The importance of not duplicating the efforts made by other organizations was also underlined. Moreover, States should not be asked to undertake commitments which they would be unable to fulfil. It was doubtful whether the CMS had the expertise to implement some of the measures proposed.

40. The Chair proposed that a contact group be set up to discuss paragraphs 18 and 19.

41. The representative of the United States of America presented the report of the contact group, stating that it was proposed that all the elements contained therein should be used as a framework for the Action Plan to be annexed to the MOU. An intersessional group should be asked to look at the text in order to determine which elements should be retained. The meeting discussed participation in the proposed intersessional group and agreed that it should be open to all range states and representatives of interested organizations.

Implementation, reporting and financing

42. The Executive Secretary introduced the section contained in paragraphs 25 to 32 of the draft, explaining that the question of whether an existing body should be used to provide

secretariat services to the MOU or a new one created had been left open. The text was flexible and because the CMS Secretariat would be unable to finance the MOU fully, Signatories would have to bear much of the cost. The Indian Ocean – South-East Asian Marine Turtle (IOSEA) MOU was quoted as a successful example of such a non-binding instrument, which was however facing a major problem as regards financing because the text of the MOU did not make proper provision for its funding.

43. With regard to financing, it was emphasized that every effort should be made to implement cost-effective measures and whatever arrangements were made should utilize as few resources as possible so that more could be devoted to implementation itself. It was agreed that the IOSEA MOU provided an important lesson and the effectiveness of an MOU obviously depended on resources being available to implement it.

Meeting of the Signatories

44. The Executive Secretary introduced the relevant section in paragraphs 33 to 46 of the draft, which had been simplified and contained some new text with regard to observers and to the link between the MOU and the CMS.

Advisory Committee

45. Introducing the text contained in paragraph 47 of the draft, the Executive Secretary said that very few changes had been made to the original text submitted at Sharks I.

46. During discussion of the text, concern was expressed that the creation of another body would have financial implications.

47. In response to a question on what kind of emergency was envisaged and whether any emergency plan for sharks already existed, the Executive Secretary said that, to his knowledge, there was no emergency plan for sharks at the global level and it was the intention to allow the Advisory Committee to request the convening of a Meeting of the Signatories concerned by a particular emergency so that they could take the urgent action needed.

Secretariat

48. The meeting considered the question of the establishment of a Secretariat as provided in paragraphs 48 and 49 of the draft. It was emphasized that the balance sought was to establish a Secretariat that was sufficient to comply with the requirements of the MOU while at the same time was as cost-effective as possible. One representative considered that the creation of a Secretariat, or even an advisory body, was contrary to what should be contained in a non-binding instrument because it had financial implications.

Cooperation with other bodies

49. In considering the cooperation described in paragraphs 50 to 53 of the report, it was proposed that UNEP be added to the list of secretariats with which the MOU secretariat would consult and cooperate on matters of common interest.

Effect of this agreement on international conventions and legislation

50. When the meeting took up paragraphs 54 and 55 of the draft, one representative said that it would reserve its position on the effect of the agreement until it had had an opportunity to consult its department of legal affairs.

Other provisions

51. The meeting discussed paragraphs 56 to 63 of the draft, including the number of range states that would have to sign the MOU before it could come into effect and whether the MOU should be open to non-range states.

52. In response, the Executive Secretary said that in his view ten range states constituted the minimum.

53. It was suggested that the clause on termination be made more explicit, stating to whom notice of termination should be sent.

Outcome of the meeting

54. The Secretariat undertook to produce a revised draft of the MOU taking into account the comments made at the meeting. The revised draft MoU is attached to this report as Annex II.

55. Following the first reading of the text, it was emphasized that much work remained to be done and it was necessary to decide on the intersessional procedure immediately. In order to assist work at the next negotiating meeting, the Executive Secretary introduced a draft statement on the outcome of the meeting, which set out the consensus reached at the meeting and made provision for an open-ended Inter-Sessional Drafting Group, to be chaired by the United States of America, to prepare a draft Conservation and Management Plan by the end of July 2009. It also reaffirmed that the common objective was to complete an instrument on migratory sharks, which could be open for signature before the end of 2009.

56. The meeting discussed the draft statement in detail and made a number of oral amendments. The final text is attached as Annex III to the present report.

57. One representative expressed disappointment that more rapid progress had not been made and another said that the MOU had lost many of the elements agreed at Sharks I and had been weakened. There was a need for an instrument that would not have to be renegotiated within a couple of years and consideration should be given to a more rapid mechanism capable of saving those shark species that had unfavourable conservation status.

Agenda item 11: Any other business

58. Mr. Roy Bikram Jit, Scientific Officer, Marine Fisheries Survey Unit, Bangladesh, made a presentation on the present status of shark fisheries in Bangladesh.

59. The representative of India described the programme for the conservation of the Whale shark on the west coast of India, emphasizing that all stakeholders had been made aware of the need to protect sharks.

Agenda item 11: Closure of the meeting

60. The representative of the Philippines expressed an interest in hosting the third meeting on International Cooperation on Migratory Sharks under the Convention on Migratory Species (Sharks III), which was tentatively scheduled for winter 2009/2010.

61. Following the customary exchange of courtesies, the Chair declared the meeting closed at 5.45 p.m. on Monday, 8 December 2008.