



Convention on the Conservation of Migratory Species of Wild Animals

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POTENTIAL FOR A NEW CMS AGREEMENT ON THE EUROPEAN EEL

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**Potential for a new Convention on Migratory Species
(CMS) Agreement on the European Eel**

**Background Paper for Workshop of European Eel
Range States**

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1. Introduction

The life of the European eel begins in the ocean, strongly believed to be in the Sargasso Sea.¹ It then migrates to the continental waters of Western Europe and Northern Africa, where it spends most of its life. The eel only returns to the sea to reproduce and die.²

The eel is believed to be **threatened**, *inter alia*, by:

- Changes in oceanic processes and conditions, including the currents of the Sargasso Sea, which are probably due to climate change,
- Overfishing,
- Pollution of oceans and lakes – both land-based and vessel pollution, including plastic particles,
- Parasites and diseases,
- Destruction of (parts of) its freshwater habitat through river channelling, draining of wetlands, and the construction of dams and power stations etc. which block access to certain rivers.³

The **aim** of this report is to describe how a new regulatory or other instrument for the protection of the European eel, concluded within the framework of the Convention on Migratory Species (CMS), might contribute to the improvement of the conservation status of the European eel, and to set out the types of measures that such an instrument might include.

To achieve this aim, an overview of various existing international regulatory instruments is provided first. These include:

1. United Nations Convention on the Law of the Sea (LOSC)
2. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
3. Convention on Biological Diversity (CBD)
4. Code of Conduct for Responsible Fisheries of Food and Agriculture Organization
5. European Union Eel Management Plans (EMP)
6. Habitats Directive of the European Union
7. Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)
8. Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)

The European eel is also placed on the Red List of Threatened Species of the International Union for the Conservation of Nature (IUCN). Species placed on this IUCN Red List – plants or animals – are

¹ In this report, the description of the Sargasso Sea adopted in the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea is followed. This means that the Sargasso Sea does not include the exclusive economic zone (EEZ) and territorial sea of Bermuda. It is likely that at least the USA and the Bahamas have a continental shelf beyond 200 nautical miles in the region, but this is not immediately relevant to the European eel. The Hamilton Declaration is a legally non-binding political statement, signed by the Governments of Bermuda (UK), Azores (Portugal), Monaco, UK, USA) on 11th of March 2014. The British Virgin Islands (UK) signed in January 2016 and Bahamas is expected to sign later in 2016. See the *Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea* (http://www.sargassoseacommission.org/storage/documents/Hamilton_Declaration_with_signatures_March_2016_revised.pdf).

² See the Species Fact Sheet of the *Anguilla anguilla*, prepared by the Food and Agriculture Organization of the United Nations (<http://www.fao.org/fishery/species/2203/en>).

³ See Gollock, *European eel briefing note for Sargasso Sea Alliance*, Sargasso Sea Alliance Science Report Series, No 3 (2011) (http://www.sargassoseacommission.org/storage/documents/No3_EuropeanEel_HI.pdf). See also *The Sargasso Sea as Ecologically or Biologically Significant Area (EBSA)* (<https://chm.cbd.int/database/record?documentID=200098>); and *Species Fact Sheets of the Anguilla anguilla (Linnaeus, 1758)* of the FAO (<http://www.fao.org/fishery/species/2203/en>).

either critically endangered, endangered or vulnerable.⁴ The difference between the three categories is measured by the size of the remaining population, (the threat of) its further reduction, the size of its geographic range, and the probability of extinction in the wild. A vulnerable species is considered to be facing a “high risk of extinction in the wild”, an endangered species is facing “a very high risk of extinction in the wild”, and a critically endangered species faces “an extremely high risk of extinction in the wild”. The European eel has been listed as “Critically Endangered” since 2008. The fact that the eel is listed as such has no (legal) consequences. The IUCN Red List does not itself come with a regulatory framework, indicating to States what action to undertake to protect the eel. Its purpose is to influence governments and urge them to make use of existing international and domestic environmental frameworks – for example the Convention on Biological Diversity - to protect these endangered species.⁵ Within these frameworks, the Red List can serve the purpose of an effective biodiversity indicator and a scientifically rigorous tool that may assist in determining the need for conservation.

After having provided an overview of various existing international regulatory instruments, the report then turns to the legal framework of the Convention on Migratory Species (CMS), and sets out the types of instruments that may be appropriate for the protection of the European eel. There are three types of instruments to choose from:

- a) Agreements,
- b) Memoranda of Understanding,
- c) Special Initiatives and Action Plans.

This report does not look at options of developing new (legal) instruments outside the framework of the CMS.

This report shows that there is certainly no lack of legal instruments seeking to protect the European eel and its habitat. The problem is not so much a lack of legal instruments, but a lack of a critical assessment of the effectiveness of all these partly overlapping and sometimes contradicting regulations, involving different maritime and freshwater areas, different States, and different degrees of legal obligation. All this contributes to a complicated patchwork of regulations. When making proposals for a new agreement in the final section of this report, the urgent need for integration and a unified approach has been taken into account.

In 2007 the Joint Working Group on Eels, set-up by the European Inland Fisheries and Aquaculture Advisory Commission (EIFAAC), the General Fisheries Commission for the Mediterranean (GFCM) and the International Council for the Exploration of the Sea (ICES), suggested the creation of a European Eel Quality Database because they regarded the coordinated and integrated monitoring of the health of the *total* eel population and its *entire* habitat as a key measure. At the moment, each State or commission monitors its own part of the European eel’s habitat or population, based on its own criteria and methodology, but this needs to be done in an integrated fashion.⁶

2. *The current range of measures in place to ensure the conservation and sustainable management of the European eel (*Anguilla anguilla*)*

This section provides an overview of the international instruments **outside** the Convention on Migratory Species, which are – or could be - applicable to the European eel. It sets out the range of measures available under each instrument.

1. *United Nations Convention on the Law of the Sea (LOSC)*

⁴ Species are assessed under the IUCN criteria and assigned one of nine categories. See *The IUCN Red List of Threatened Species* (<http://www.iucnredlist.org/technical-documents/categories-and-criteria>) for the full list of categories.

⁵ The goal of the Red List is to “catalogue and highlight those plants and animals that are facing a higher risk of global extinction” (<http://www.iucnredlist.org/about/introduction>).

⁶ It is for this reason that the Joint Working Group on Eels, set-up by the European Inland Fisheries and Aquaculture Advisory Commission (EIFAAC), the General Fisheries Commission for the Mediterranean (GFCM) and the International Council for the Exploration of the Sea (ICES), suggested the creation of a European Eel Quality Database in 2007.

Article 67 LOSC applies to all catadromous species, *i.e.* species that spawn in the ocean, then move to freshwater, and return to the ocean to reproduce. Article 67(1) puts primary responsibility for the conservation and management in the hands of the State “in whose waters catadromous species spend the greater part of their life cycle”. For the European eel, this group of States includes both European and (North) African States. They are responsible “for the management of those species and shall ensure the ingress and egress of migrating fish”. In other words, they must mitigate threats that impact the habitat of the eel, and regulate the harvesting of the species.⁷

Other States, whose waters – territorial waters, contiguous zones, EEZ - the eel uses to get to the waters in which it spends most of its life – these can be fresh, but also brackish and salt waters⁸ - are allowed to harvest the eel, but only after concluding an agreement with the States in whose waters catadromous species spend the greater part of their life cycle (67(3) LOSC). As far as can be established, no agreement in accordance with Art. 67(3) LOSC has been concluded specifically for the European eel.

All States to which article 67 is applicable also have to apply the other relevant provisions of the LOSC, in particular Articles 61, 62 and 63 (on the conservation and utilization of living resources in a State’s exclusive economic zone). Fishing for European eels on the high seas is in any case prohibited.

Article 197 LOSC calls upon States to:

Co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

This provision should not be read as an obligation for States with common interests in protecting a particular marine environment to conclude a legally binding agreement, but as an obligation to take appropriate action, taking into account the other obligations of States Parties in relation to the protection and preservation of the marine environment.

2. *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*

In March 2009 The European eel was listed in CITES Appendix II following a German request. This request was submitted, on behalf of the European Community Member States, at the Fourteenth meeting of the Conference of the Parties in The Hague (Netherlands), 3-15 June 2007.

Appendix II lists “species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival”.⁹

CITES requires that the species listed in Appendix II are subjected to a licensing system. Article IV CITES stipulates that the export of such species requires “the prior grant and presentation of an export permit”. The conditions for obtaining such permit are listed in Article IV, para. 2 CITES. A major role is played by the Scientific Authority and the Management Authority of each State Party to CITES.¹⁰ When the Scientific Authority, whose task it is to continuously monitor the issuance of these permits, believes the “the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I”, it shall advise the Management Authority to limit the grant of export permits.¹¹

The listing of the eel as Appendix II species does not entirely prohibit trade therein. Article IV CMS requires that “an export permit shall only be granted when [...] a Scientific Authority of the State of

⁷ See also Article 192 and 194(5) LOSC.

⁸ Eels do not only use freshwater. Estuaries and coastal waters are also suspected to play a large part – some eels may not even enter freshwater at all.

⁹ CITES, Article II (2).

¹⁰ A Management Authority must be competent to grant permits or certificates on behalf of the State Party.

¹¹ CITES, Article IV (3).

export has advised that such export will not be detrimental to the survival of that species”; and taking the European eel from the sea requires a certificate, which will “only be granted when [...] a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved”. In any case, a “non-detriment finding” of a Scientific Authority is required. Such a finding is unlikely for the eel, as it seems improbable that any Scientific Authority could conclude that exporting the European eel for consumption is possible without endangering the survival of the species.¹²

3. *Convention on Biological Diversity (CBD)*

Article 5 CBD is relevant. This provision requires of all States parties to the CBD to:

As far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.¹³

In 2012 on the proposal of the government of Bermuda, the Sargasso Sea was described as an ecologically or biologically significant marine area (EBSA).¹⁴ One of the reasons for this description is the fact that the Sargasso Sea is the only breeding location for European eel. Its description as an EBSA means that it meets the CBD scientific criteria for ecologically or biologically significant areas, as outlined in Annex I, of decision IX/20, of the Conference of the Parties to the CBD.¹⁵ These criteria are:

- Uniqueness or Rarity;
- Special importance for life history stages of species;
- Importance for threatened, endangered or declining species and/or habitats;
- Vulnerability, Fragility, Sensitivity, or Slow recovery;
- Biological Productivity;
- Biological Diversity; and
- Naturalness.

In decision X/29 of the COP,¹⁶ the CBD Contracting Parties took note of “the importance of collaboration and working jointly with relevant regional initiatives, organizations, and agreements in identifying ecologically or biologically significant marine areas (EBSAs) [and] to promote conservation and sustainable use of biodiversity in those areas”,¹⁷ and for this reason, States and competent intergovernmental organizations were encouraged to:

Cooperate, as appropriate, collectively or on a regional or sub-regional basis, to identify and adopt, according to their competence, appropriate measures for conservation and sustainable use in relation to ecologically or biologically significant areas, and in accordance with international law, including the United Nations Convention on the Law of the Sea, including by establishing representative networks of marine protected areas in accordance with international law, including the United Nations Convention on the Law of the Sea, and based on best scientific information available, and to inform the relevant processes within the United Nations General Assembly.¹⁸

¹² See also Håkan Wickström, *Non-detriment Findings for the European eel - the Swedish Case* (https://cites.org/sites/default/files/ndf_material/WG8-CS2-S.pdf).

¹³ CBD, Article 5.

¹⁴ *The Sargasso Sea as Ecologically or Biologically Significant Areas (EBSA)* (<https://chm.cbd.int/database/record?documentID=200098>).

¹⁵ Ninth meeting of the Conference of the Parties to the Convention on Biological Diversity, held in Bonn, Germany, on 19 - 30 May 2008.

¹⁶ Tenth meeting of the Conference of the Parties to the Convention on Biological Diversity, held in Nagoya, Japan, on 18 - 29 October 2010.

¹⁷ Decision X/29, para. 11.

¹⁸ Decision X/29, para. 32.

Relevant States, intergovernmental organizations and other non-State actors are encouraged to share scientific data, thereby enhancing the knowledge of the EBSA and threats to the EBSA. Meetings of the stakeholders are organized to ensure data collation and synthesis, as a way to integrate existing regional and national conservation efforts.

The CBD framework thus complements that of the LOSC, by “focusing on provision of scientific [...] information and advice relating to marine biological diversity, the application of the ecosystem approach and the precautionary approach”.¹⁹ The CBD framework does not prescribe a specific way to protect EBSAs, leaving it to the States concerned how to employ the concept in implementing their rights and obligations under international law in relation to the protection and preservation of the marine environment.

4. *Code of Conduct for Responsible Fisheries of Food and Agriculture Organization*

The Code of Conduct for Responsible Fisheries, adopted in 1995, establishes legally non-binding principles and standards applicable to the conservation, management and sustainable development of fisheries, taking into account ecosystem and biodiversity protection. It is applicable to both freshwater and the seas, and both to fisheries within a particular State’s maritime zones and on the high seas. Most of the fishing for eels takes place when the eel is in the freshwater stage of its life, *i.e.* in the lakes and rivers of Europe and Northern Africa.²⁰

The Code requires of States and other users that “all critical fisheries habitats in marine and fresh water ecosystems, such as [...] nursery and spawning areas, should be protected and rehabilitated as far as possible and where necessary”, and that “particular effort should be made to protect such habitats from destruction, degradation, pollution and other significant impacts resulting from human activities that threaten the health and viability of the fishery resources”. The importance of research into the health of stocks and their habitat is emphasized, as well as that of cooperation in the exchange of relevant data. States are also urged to cooperate at subregional, regional and global levels through fisheries management organizations, other international agreements or other arrangements to promote conservation and management, and ensure responsible fishing.

The FAO has also developed a series of technical guidelines for responsible fisheries, to supplement the Code of Conduct for Responsible Fisheries. Two of these guidelines seem particularly interesting: the guidelines on marine protected areas in the context of fisheries, and the guidelines on the Ecosystem Approach to Fisheries. The latter approach seeks to take into account more effectively the interactions between fisheries and ecosystems.

The Sargasso Sea is included in the area of competence of the Western Central Atlantic Fishery Commission (WECAFC), established in 1973, whose task it is to promote the application of the FAO Code of Conduct on Responsible Fisheries.²¹ Its task is also to collect data, and to secure independent funding to its members for initiatives related to conservation, management and development of the living resources. It only has limited - and mainly advisory - competences.

Some of the waters through which the European eel passes are governed by other organizations. The Mediterranean Sea is within the area of competence of the General Fisheries Commission for the Mediterranean (GFCM), which is a regional fisheries management organization. The inland waters of (western) Europe are within the area of competence of the European Inland Fisheries and Aquaculture Advisory Commission (EIFAAC), which is not a regional fisheries management organization.

The EIFAAC, the International Council for Exploration of the Sea (ICES) – an organization that provides States with scientific advice on marine ecosystems -, and the GFCM established a joint

¹⁹ Decision X/29, para. 24.

²⁰ France, the Netherlands, Spain, Sweden and the United Kingdom are involved in eel fishing. There are various kinds of “eel fishing”. For example, France is the major glass eel fishing nation, but there is no glass eel fishery in either Sweden or Netherlands.

²¹ The Sargasso Sea is also within the area of competence of International Commission for the Conservation of Atlantic Tunas (ICCAT), but this fishery organization is only responsible for the conservation of tuna-like species, and the eel is not such a species.

Working Group on Eels (WGEEL) in 2014. The task of this WGEEL is to report on the status of the European eel stocks and to provide technical and scientific advice in support of the development and implementation of the EU Regulation for the recovery of the eel stock.²²

5. *European Union Eel Management Plans*

On 18 September 2007, Council Regulation (EC) No 1100/2007, on the establishment of measures for the recovery of the stock of European eel, was adopted. This regulation requires of all EU States with river basins in their territory that constitute habitats for the eels, to establish and implement Eel Management Plans (EMPs) for each of these eel river basins. The objective of these plans is as follows:

To reduce anthropogenic mortalities so as to permit with high probability the escapement to the sea of at least 40 % of the silver eel biomass relative to the best estimate of escapement that would have existed if no anthropogenic influences had impacted the stock.²³

This means that States must, first of all, look at whether there actually are eel river basins within their territory. If this is the case, then the State must determine the actual situation of the eel in the basin and the status of the basin itself. When there is sufficient data²⁴ about the size of the eel population, its health, and the health of its habitat, then the State must explain the measures it will take to achieve the abovementioned objective. Article 2 (8) provides that such measures may include:

- Reducing commercial fishing activity,
- Restricting recreational fishing,
- Restocking measures,
- Structural measures to make rivers passable and improve river habitats, together with other environmental measures,
- Transportation of silver eel from inland waters to waters from which they can escape freely to the Sargasso Sea,
- Combating predators,
- Temporary switching-off of hydro-electric power turbines,
- Measures related to aquaculture.²⁵

The plans must include a specific timetable. In case of transboundary eel river basins, the States involved have to prepare and submit an Eel Management Plan together.²⁶ States must also provide information about ships, flying their flag, engaged in eel fishing.²⁷

In 2014, the European Commission reported to the Council and the European Parliament on the implementation of the Eel Management Plans.²⁸ The Commission concluded that the implementation of the Eel Regulation “suffered significant delays”: many of the States submitted their plans after the deadline, “technical evaluations took unexpectedly long, reports had to be re-submitted for approval by the Commission, and the implementation of the majority of plans and the application of restocking measures were correspondingly delayed”.²⁹ Many implementation problems still not be solved.

6. *Habitats Directive of the European Union*

²² *Working Group on Eel – WGEEL* (<ftp://ftp.fao.org/FI/DOCUMENT/eifac/WGeels/WPeelsTOR.pdf>).

²³ Council Regulation (EC) No 1100/2007, Article 2(4).

²⁴ In this way, the eel regulation complements the more general Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy, adopted by Council Regulation (EC) No 199/2008 of 25 February 2008 (and thus adopted after the eel regulation).

²⁵ Council Regulation (EC) No 1100/2007, Article 2(8).

²⁶ Council Regulation (EC) No 1100/2007, Article 6. However it is stated that these should not impact the activities of the individual States, and this does give a bit of a get-out clause.

²⁷ Council Regulation (EC) No 1100/2007, Article 11.

²⁸ Report from the Commission to the Council and the European Parliament on the outcome of the implementation of the Eel Management Plans, COM/2014/0640, 21 October 2014.

²⁹ *Idem*.

Council Directive 92/43/EEC, adopted 21 May 1992, deals with the conservation of natural habitats and of wild fauna and flora.³⁰ Its main aim is to “contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies”.³¹ Natural habitats include “aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural”.³² The Directive defines a “habitat of a species” as an “environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle”. A “species of Community interest” is defined as a species which, within the European territory of the EU Member States, is endangered, vulnerable, rare, or endemic and requiring particular attention. Such species are listed in Annex II,³³ Annex IV³⁴ and/or V.³⁵

The European eel is not listed, although the European Anglers Alliance (EAA) has suggested this in 2004.³⁶ This might be explained by the fact that eels are very widely distributed over much of the waters in the EU, and there is not a specific region within the EU, which should receive special protection.

The Habitats Directive does, however, have a link with the EU’s eel regulation of 2007. In the latter, it is explicitly stated that the Habitat Directive is intended to protect, conserve and enhance the aquatic environment where eels spend part of their life cycle and it is thus necessary to ensure that there is coordination and consistency between measures taken under the Eel Regulation and Habitat Directive.

7. *Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)*

The aim of this Convention, concluded by the Member States of the Council of Europe in 1979, is to “conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation”.³⁷ The convention is widely ratified by members of the Council of Europe. States from outside can also join, and a few have done so.³⁸

Appendix II of the Convention contains a list of strictly protected fauna species. States must take “appropriate and necessary legislative and administrative measures to ensure the special protection” of the species enlisted in the appendix.³⁹ States must, *inter alia*, take measures to prohibit, *inter alia*, “the deliberate damage to or destruction of breeding or resting sites”, “the deliberate disturbance of wild fauna, particularly during the period of breeding”.⁴⁰

Appendix III lists protected fauna species. States Party must take “appropriate and necessary legislative and administrative measures to ensure the protection” of these species. Exploitation of these species is allowed, but must be regulated. Measures to be taken may include “a closed seasons and/or other procedures regulating the exploitation”, and “the temporary or local prohibition of

³⁰ It was amended by Council Directive 2013/17/EU of 13 May 2013.

³¹ Council Directive 92/43/EEC, Article 2.

³² Council Directive 92/43/EEC, Article 1(b).

³³ This annex lists animal species of community interest whose conservation requires the designation of special areas of conservation.

³⁴ This annex lists animal species of community interest in need of strict protection.

³⁵ This annex lists animal species of community interest whose taking in the wild and exploitation may be subject to management measures.

³⁶ See “Resolution on a ban of fishing for eels in order to save the European Eel (*Anguilla anguilla*) from extinction in Europe”, referred to on p. 45 (para. 5.4.2.6) of *Freshwater Fisheries in Central & Eastern Europe: the Challenge of Sustainability*, an Overview Report compiled by Robert Aps, Robin Sharp and Tamara Kutonova, on behalf of European Sustainable Use Specialist Group of IUCN/SSC Fisheries Working Group, published in 2004 (http://www.eaa-europe.org/files/iucn_7938.pdf).

³⁷ Bern Convention, Article 1.

³⁸ All Members of the Council of Europe are parties to the Bern Convention, except for Russia and San Marino. Belarus, Burkina Faso, Morocco, Senegal, Tunisia, and the European Union are also parties to the Bern Convention, but not members of the Council of Europe.

³⁹ Bern Convention, Article 6.

⁴⁰ *Idem*.

exploitation, as appropriate, in order to restore satisfactory population levels”, and “the regulation as appropriate of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals.”⁴¹

The European eel is not listed in either of the two Appendices.

8. *Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)*

The OSPAR Convention entered into force in 1998. The Sargasso Sea is not within the scope of the OSPAR Convention, but the Arrangement notes in particular the “shared interest in conservation of the European eel”. Since 2008, the eel has been included in OSPAR’s List of Threatened and/or Declining Species in the Northeast Atlantic.⁴² The OSPAR Commission recently adopted a recommendation calling upon OSPAR States to take various measures to “strengthen the protection of the European eel at all life stages in order to recover its population and to ensure that the population is effectively conserved in [...] the OSPAR maritime area”.⁴³ This Recommendation has effect from 2014.

3. *Possible additional measures to further ensure the sustainable management of the European eel (Anguilla anguilla) under the Convention on Migratory Species*



Since 2014 the European Eel has been listed in Appendix II of the Convention on Migratory Species (CMS). The eel is thus considered a “migratory species with an unfavourable conservation status, requiring an international agreement for their conservation” and management.

Range States of the European eel “shall endeavour to conclude agreements where these would benefit the species and should give priority to those species in an unfavourable conservation status”.⁴⁴ Range is defined as “all the areas of [...] water that a migratory species inhabits, stays in temporarily, crosses [...] at any time on its normal migration route”.⁴⁵

In the case of eel, the Range covers the Sargasso Sea, the freshwater habitat of the eel in Europe and Northern Africa, and the migratory routes between these areas. A Range State is defined as any State that “exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species”.⁴⁶ In the proposal to include the eel in Appendix II, 51 Range States were identified (see Figure 1⁴⁷). Only a limited number of these States are not party to the CMS. However, non-Parties to the CMS can also sign any instrument concluded within the CMS framework.⁴⁸

⁴¹ Bern Convention, Article 7.

⁴² OSPAR Agreement 2008-6.

⁴³ See OSPAR Recommendation 2014/15 on furthering the protection and conservation of the European eel (*Anguilla anguilla*) in Regions I, II, III and IV of the OSPAR maritime area, OSPAR 14/21/1, Annex 20.

⁴⁴ CMS, Article IV.

⁴⁵ CMS, Article I(1)(f).

⁴⁶ CMS, Article I(1)(h).

⁴⁷ The figure is taken from the *CMS Species List item of the Anguilla Anguilla* (<http://www.cms.int/en/species/anguilla-anguilla>).

⁴⁸ These non-Parties are Bosnia, Iceland, Lebanon, Russia, and Turkey.

Monaco proposed the listing of *Anguilla anguilla* at the 11th Meeting of the Conference of the Parties (COP11), held 4-9 November 2014, in Quito, Ecuador.⁴⁹ This proposal was supported, *inter alia*, by the EU and all its Member States, Morocco, and Norway.⁵⁰ The proposal was adopted.⁵¹

The Monaco proposal identified certain issues that a new agreement might resolve. Range States that are EU Members are already required, under EU law, to develop Eel Management Plans (EMPs), but some range states from outside the EU do not have an eel management plan.⁵² An agreement under CMS could remedy this problem.

The Submission listed a number of further issues that could benefit from a CMS agreement:

- Fisheries enforcement and management,
- Freshwater habitat restoration, improvement and protection – including water quality,
- Transboundary protection,
- Monitoring programmes – particularly in North Africa and the Mediterranean,
- Stock assessments,
- Area protection for key locations, such as the Sargasso Sea,
- Easement of barriers such as dams and hydropower units to improve both upstream and downstream freshwater passage – including trap and transport programmes,
- Threat assessment at the local, national and international level,
- Water abstraction management, such as screening of intakes and reduction of hydropower turbine activity during silver eel escapement,
- Understanding of the benefits and limitations of restocking programmes.⁵³

The proposal stressed the point that, there is a pressing need for transboundary cooperation and collaboration in relation to conservation of both the marine and freshwater habitats of the European eel. An agreement under CMS might serve, *inter alia*, to recognize the importance of the Sargasso Sea as the eel's breeding area.

According to Article IV (3), “parties that are Range States of migratory species listed in Appendix II shall endeavour to conclude AGREEMENTS where these should benefit the species and should give priority to those species in an unfavourable conservation status”. An AGREEMENT – written in capital letters – is “an international agreement relating to the conservation of one or more migratory species as provided for in Articles IV and V of [the CMS]”. The European eel is listed in Appendix II. The 51 Range States thus should endeavour to conclude such an AGREEMENT.

Any new AGREEMENT should focus on resolving the issues identified above, taking into account the many different regulatory mechanisms that are in place already, and (partly) respond to these threats in some way. Such a new AGREEMENT should not limit itself to protecting the European eel when in the Sargasso Sea. A new CMS instrument should cover the whole range of the European eel, *i.e.* it should cover both its sea and freshwater habitat, and it should cover all stages of the eel's life.

Criteria

Criteria have been developed on the basis of which new agreements are assessed.⁵⁴ These criteria are:

- Conservation priority: severity/urgency of conservation need:

⁴⁹ Proposal for the inclusion of the European eel (*Anguilla anguilla*) on CMS Appendix II, UNEP/CMS/COP11/Doc.24.1.18 Rev.1, dated 12 September 2014.

⁵⁰ Proceedings of the 11th meeting of the conference of the parties to the convention on the conservation of migratory species of wild animals, held in Quito, Ecuador, 4-9 November 2014, unep/cms/cop11/proceedings, para. 485.

⁵¹ Proceedings, paras 549-551. See also Annex VII: Species added to Appendices I and II, p. 4, on p. 144 of the Report. See also Appendix II of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), as last amended by the Conference of the Parties in 2014, p. 11 (http://www.cms.int/sites/default/files/document/Appendices_COP11_E_version5June2015.pdf).

⁵² *Idem*, p. 17.

⁵³ *Idem*.

⁵⁴ *Criteria for assessing proposals for new agreements*, adopted by the Conference of the Parties at its 11th Meeting (Quito, 4-9 November 2014), UNEP/CMS/Resolution 11.12.

There can be little doubt about the severity of conservation need of the European eel, as its population has declined dramatically over the last decades, despite the measures that have been taken.⁵⁵ The apparent lack of effectiveness of the measures taken makes international cooperation, to come to an integrated approach, a matter of urgency.

- Serving a specific existing COP mandate: do they respond to any specifically relevant objectives expressed in CMS strategies and other decisions of the Parties?

Reference can be made here to the targets, included in the Strategic plan for migratory species 2015-2023, adopted by the CMS Conference of the Parties at its 11th Meeting (Quito, 4-9 November 2014). Target 9 and 15 stress effective cooperation and coordination. For example, Target 9 prescribes “International and regional action and cooperation between States for the conservation and effective management of migratory species [...] in which all States sharing responsibility for the species concerned engage in such actions in a concerted way.” Target 15 requires that “the science base, information, training, awareness, understanding and technologies relating to migratory species, their habitats and migration systems, their value, functioning, status and trends, and the consequences of their loss, are improved, widely shared and transferred, and effectively applied”.

- Clear and specific defined purpose: do the target species benefit from international cooperation?

Much of the above has shown that the problem is the fragmented approach in the protection of the European eel. There is thus a clear need for enhanced cooperation.

- Absence of better remedies outside the CMS system: compare the option of a CMS Agreement with alternative options outside the Convention’s mechanisms

There is no lack of remedies outside the CMS system, but few of these remedies cover the entirety of the *problématique* of the European eel, or apply to all relevant States and non-State actors. A CMS AGREEMENT for various reasons might be more successful in this respect. First, under the CMS, AGREEMENTS can cover the *whole* of the range of the migratory species concerned and are open to accession by *all* Range States of that species, whether or not they are Parties to the Convention.⁵⁶ In this sense, CMS AGREEMENTS differ from EU regulations, or regulations applicable only to particular maritime zones (Sargasso Sea). Second, AGREEMENTS under the CMS require of all States to designate a national authority responsible for the implementation of the agreement. This provides clarity – at least in theory - as to where these responsibilities lie at the national level. Third, such AGREEMENTS must include an obligation to report regularly to the CMS Conference of the Parties. In practice, all existing CMS AGREEMENTS have a website, through which the public is informed of any progress made. Furthermore, AGREEMENTS must include an obligation to setup co-ordinated conservation and management plans. Such plans exist already for the European eel at national and EU level, but this excludes many (North-African) States. A CMS AGREEMENT can also call upon States to conduct research into the ecology and population dynamics of the migratory species concerned, and to exchange information. There is an urgent need for such exchange and cooperation.

- Absence of better remedies inside the CMS system: compare the option of a CMS Agreement with alternative options available under the Convention

There are different types of legal instruments within the CMS framework to choose from⁵⁷:

1. Agreements *stricto sensu* (treaties, or AGREEMENTS)

⁵⁵ At present it seems to be fluctuating at the bottom of a downward curve.

⁵⁶ CMS, Article V. Some agreements cover only certain populations of species, see below.

⁵⁷ This part is partly based on the *Guidelines for the harmonisation of future agreements*, adopted at the sixth meeting of the conference of the parties, Cape Town, 10-16 November 1999, unep/cms/conf. 6.10, 1 November 1999.

Legally binding agreements (AGREEMENTS) can be concluded for species listed in Appendix II, such as the European eel. These agreements must be considered treaties in the traditional sense.⁵⁸ Agreements have already been concluded on birds,⁵⁹ whales,⁶⁰ bats,⁶¹ gorillas⁶² and seals.⁶³ Some of the threats from which these species need protection are similar to those of the eel, as they include marine pollution and disease.

2. Memoranda of understanding

Memoranda of understanding (MoU) are not mentioned explicitly in the CMS, but have developed in practice. They have a legally non-binding character, and are not considered treaties. Since MoUs are not legally binding, they are not meant to create new legal commitments. MoUs can provide a basis for better coordination and cooperation in fulfilling obligations based on already existing international legal instruments. The difference between a legally binding agreement (AGREEMENT) and an MoU is particularly significant when it comes to the financial arrangements. An AGREEMENT obliges States to negotiate and agree on the budget and then they are bound by it. With MoUs, the budget normally is comprised of voluntary contributions, and it can be quite a challenge to run a secretariat on the basis of such voluntary contributions alone.

A wide variety of species are included in existing CMS MoUs. These include birds,⁶⁴ terrestrial animals,⁶⁵ and marine animals.⁶⁶ The Atlantic Turtles MoU is interesting, as its approach seems well-suited for the European eel as well. The Atlantic Turtles MoU focusses on the establishment of a database on the species ecology, and on a database on the threats it is exposed to. Efforts to synthesize the knowledge currently available are encouraged in the MoU, as a means to expose gaps in this knowledge that need to be filled. Another aim is to set-up a monitoring and protection network for the habitat of the species, and to do this in close collaboration with local communities, fishermen, and other stakeholders. The Atlantic Turtles MoU also links up with other international regulatory frameworks at the international and regional level.⁶⁷

3. Special Species Initiatives and Action Plans

There are currently only a handful of such initiatives and action plans. One initiative seeks to protect the Central Asian Flyway, a route used by many different birds to migrate. The strategy is to work on the basis of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), and widen its scope of application. Similarly, the Central Asian Mammals Initiative seeks to protect a vast area of grassland used by various land animals such as antelopes and gazelles to migrate. The Sahelo-Saharan Megafauna Action Plan also seeks to protect the gazelle. And then there is the single species action plan for the loggerhead turtle in the South-Pacific Ocean.⁶⁸

⁵⁸ By this is meant that they constitute “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (Article 2, *Vienna Convention on the Law of Treaties*, concluded at Vienna on 23 May 1969).

⁵⁹ Agreement on the Conservation of Albatrosses and Petrels and the Agreement on the Conservation of African-Eurasian Migratory Waterbirds.

⁶⁰ Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area, and the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas.

⁶¹ Agreement on the Conservation of Populations of European Bats.

⁶² Agreement on the Conservation of Gorillas and their Habitats.

⁶³ Agreement on the Conservation of Seals in the Wadden Sea.

⁶⁴ Aquatic Warbler, Birds of Prey (Raptors), High Andean Flamingos, Middle-European Great Bustard, Ruddy-headed Goose, Siberian Crane, Slender-billed Curlew, and Southern South American Grassland Birds.

⁶⁵ Bukhara Deer, Saiga Antelope, South Andean Huemul, West African Elephants

⁶⁶ Atlantic Turtles, Dugong, Marine Turtles in the Indian Ocean and South-East Asian region, Monk Seal in the Atlantic, Pacific Islands Cetaceans, Sharks and Western African Aquatic Mammals.

⁶⁷ Unfortunately, this Turtles MoU is currently facing some implementation issues, owing to a lack of funding and leadership within the range states.

⁶⁸ Single Species Action Plan for the Loggerhead Turtle (*Caretta caretta*) in the South Pacific Ocean, adopted by the Conference of the Parties at its 11th Meeting (Quito, 4-9 November 2014), UNEP/CMS/Resolution 11.21, and

Which type of CMS instrument has the most potential to secure effective protection of the European eel? In light of the need for an effective regime for the protection of the European eel, a legally binding instrument (AGREEMENT) should be preferred over an MoU. Conclusion of a MoU could be an option only if concluding a legally binding AGREEMENT is a step too far for (most of) the Range States.⁶⁹

- If a CMS instrument is the best option, extending an existing instrument is not feasible

At present, there is no existing AGREEMENT whose scope could be expanded to also include the European eel. This is explained by the fact that the way of life of the eel is unique, and the dangers it faces too particular, to simply add it to an existing agreement, protecting another species of fish.

- Prospects for funding

From the above, it should be clear that there is sufficient awareness of the urgency to take measures to protect the European eel. At the same time, it must be admitted that awareness of the problem does not automatically translate into available funding. The EU could be approached to gauge its willingness to provide sustainable support to fund an ongoing initiative which would supplement the protection measures already in place at the EU level. Perhaps the States within the EU might be willing to voluntarily provide funding for regular meetings of the Range States, and to finance implementation activities. At the same time, the EU and its Member States should not be considered the only likely source for funding. Other States with a particular interest should be approached as well.

- Synergies and cost effectiveness

From the above overview of instruments and other initiatives already undertaken to protect the European eel, it is clear that a new CMS AGREEMENT would not operate in splendid isolation. It can – and should – link up, in a meaningful way, to the various instruments and regulations already in place.⁷⁰

- Prospects for leadership in developing the Agreement

Monaco has taken the initiative to place the eel on the CMS list. The Sargasso Sea Commission could take a leadership role in coordinating activities to protect the saltwater habitat of the eel, the Sargasso Sea. The European Union could take the lead in protecting the eel in the waters of the Union. That leaves part of the range – particularly North Africa - not covered. Here we should also find a front-runner or initiator. The Sargasso Sea Commission could likely play a role in this respect. A lead in developing the agreement as a whole also needs to be identified, besides identifying those capable of undertaking specific regional activities (see also next criterion, below).

- Prospects for coordination of the Agreement's implementation

The Sargasso Sea Commission could assume a leadership role in coordinating the Agreement's implementation. The Sargasso Sea Commission might be prepared to take such a leadership role in running the agreement, if asked by the Range States. The proposal for a new CMS AGREEMENT – see below – will also include plans to establish a separate secretariat and other institutions. With sufficient resources, these institutions can also assume overall leadership.

- Feasibility in other respects

It is expected that a proposal, whose primary goal is to unify the wealth of already existing institutions and instruments whose mandate includes the protection of the European eel and (parts of) its habitat, will not face much political opposition or diplomatic barriers, and as a matter of fact will receive support for that reason.

UNEP/CMS/COP11/Doc.23.2.2/Rev.1 for the text of the plan. The plan is currently working because it has a lead country (Australia) that funds activities under the plan.

⁶⁹ The MoU on sharks is a good example. Originally proposed as an Agreement, it was adopted as an MoU, perhaps because some countries were not comfortable with legally binding provisions covering commercially fished species.

⁷⁰ These instruments and regulations were described in section 2 of this report.

- Likelihood of success

The problem is that there is much uncertainty still about the life of the European eel, and that there is a considerable lack of data and knowledge. This makes it difficult to predict the effectiveness of any measures taken under this new CMS instrument. At the same time, improving data collection is included as one of the goals of the new agreement, and successful implementation is a positive obligation and should thus normally follow.

- Magnitude of likely impact

The proposed AGREEMENT covers the entire habitat of the European eel. It thus does not focus exclusively on the regulation of the Sargasso Sea, but also includes the territorial and inland waters in Europe and Northern Africa.

The number of countries that will thus (potentially) benefit, by improving the conservation status of European eel, both in Europe, Africa and the Sargasso Sea, is considerable. The European eel has been sighted in the Canary Islands, Egypt, Kenya, Libya, Madeira, Mauritania, Morocco, Tunisia (Africa); Cyprus, Georgia, Iran, Israel, Lebanon, Myanmar, Syria, Turkey (Asia); Albania, Austria, Azores, Belarus, Belgium, Bosnia Herzegovina, Bulgaria, Channel Islands, Croatia, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Iceland, Ireland, Isle of Man, Italy, Latvia, Lithuania, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Ukraine.⁷¹

- Provision for monitoring and evaluation

For proposals on reporting and measuring etc., see section 4 below.

4. Suggestions and examples of actual provisions that might be included in an MOU or a CMS agreement

Below, a sketch of what an agreement might look like is provided. This sketch is based on the findings in the sections above, and on a close analysis of the already existing CMS instruments, with particular attention paid to the already existing AGREEMENTS.

- Preamble
 - List the reasons for concluding the Agreement.
- Article I: Scope, Definitions and Interpretation
 - Definition of “European eel”, “Sargasso Sea”, “Range State”, “habitat”, “favourable and unfavourable conservation status”, “regional economic integration organisation” (reference essentially to EU), and the name of any body or institution established by this Agreement, such as “Secretariat”, “Scientific Committee”, etc. If certain terms have the same meaning as they do in the CMS itself, then the AGREEMENT should specify this.
 - Definition of the geographic scope of the AGREEMENT (in the remainder of the Agreement it can be referred to simply as the "Agreement area"). Does it include Bermuda’s EEZ, the freshwaters of Europe, etc.?
 - This provision should make clear whether the EU can become a party, or not.
 - It should be specified that this is an AGREEMENT within the meaning of Article IV (3) of CMS.
 - It should be made clear that the Annex to this Agreement forms an integral part thereof (*i.e.* the Action Plan, more on this below).
- Article II: Purpose or Objective

⁷¹ Source is the *Anguilla anguilla* entry in the online Fish Base (<http://www.fishbase.se/Country/CountryList.php?ID=35&GenusName=Anguilla&SpeciesName=anguilla>).

- The objective of this Agreement could be to achieve and maintain a favourable conservation status for the eel (and if necessary, restore the eel status to a favourable one), and good quality of its habitat (spawning area in the Sargasso Sea, but maybe also freshwater habitats, and migration routes). This term “good quality”, or whatever other term is used, should then be defined also in Article I.
- Article III: Fundamental Principles
 - This provision could urge Parties to take all measures, both individually and together, to achieve the above-mentioned purpose or objective.
 - This is done principally by requiring of all States to take co-ordinated measures (keywords should be “coordination”, “cooperation”, “integrated approach” etc.).
 - Add reference to the precautionary approach in this provision; many other CMS agreements do so.
- Article IV: Conservation Measures
 - This is the most important substantive provision of the agreement. The details can be elaborated in the Annex, the Action Plan.
 - This provision could prohibit harmful interference with the eel and its breeding sites.
 - Identify relevant areas:
 - It should include an obligation for each Party to identify those sites within its own area of jurisdiction which are important for the conservation status of the eel, and protect such sites from damage or disturbance.
 - Protection of eel
 - It could oblige States to consider the potential effects of human activities, conducted within its jurisdiction, on the status of the eel and its habitat, and to replace harmful practices with less harmful ones, to the extent reasonably possible.
 - The AGREEMENT could simply prohibit the taking and harvesting of the European eel, and appoint competent authorities (at the domestic level) which may grant exemptions from this general prohibition. The Agreement should then allow other States an opportunity to challenge the granting of such exemptions. But such a certification scheme should not conflict with other relevant schemes, at EU level or others.
 - In a more general sense, this provision could call upon States to develop and implement measures to prevent, remove, minimize or mitigate the adverse effects of human activities that may influence the conservation status of the eel.
 - Protection of eel habitat:
 - The provision could urge States to protect, preserve, conserve and, where feasible and appropriate, restore and rehabilitate the habitats of the eel. This should not only include the spawning area (Sargasso Sea), and the place where the eel lives most of the time, but also the areas it uses to migrate from the former to the latter, and back. The Agreement could call upon the creation and joint maintenance of a network of all these protected areas.
 - Special importance of Sargasso Sea:
 - The Agreement could label the Sargasso Sea as an area of exceptional international importance, and thus deserving of extra protection. The term “in-situ conservation” could be employed here, the idea being that the eel is best protected in its own natural habitat. This can be done by protecting the habitat itself, and/or by shielding the eel from various threats from outside, insofar as this is possible under international law.
 - Each Party could be obligated to take the necessary measures, in respect of its nationals and vessels flying its flag, to regulate conduct in the Sargasso Sea, so that the eel and

its spawning area are not disturbed. Of course, it is important to bear in mind that only Parties to the agreement would be bound by such obligation. It is possible that not all Range States will agree to bind themselves in this way.

- The Agreement could call upon harmonizing enforcement actions, to ensure their effectivity.
- If the Sargasso Sea is granted such special status, it must be made clear in the Agreement how this relates to other possible designations of the same area under other agreements (see sections above), and how designation in this Agreement affects the rights and obligations of States not party to the Agreement.
- Prevention of pollution:
 - The Agreement could call upon States to do their utmost – due diligence obligation - to further reduce pollution of the Sargasso Sea and other habitats of the eel from whatever source with the aim of conserving and protecting the Agreement Area. To do so, States must first endeavour to identify the sources of such pollution; jointly conduct research on and continuously monitor the effects of pollution on the status of the eel and its habitat.
- Research:
 - The provision could urge States to initiate or support research into the effective conservation of the eel.
 - The Agreement can also call upon the establishment of joint or cooperative research and monitoring programmes.
 - It could further specify the type of research needed: for example, call upon research intended to increase the knowledge of the biology and the habitats of the eel, and its spawning habits, and the results of particular human activities on the eel population.
 - States can also be urged to conduct periodic aerial surveys and counts, and research specifically the diseases from which the eel suffers.
- Training:
 - States could be called upon to ensure the existence – at the domestic level - and appropriateness of training for the implementation of conservation measures.
- Raising of Awareness:
 - States could be urged to develop and maintain programmes to raise awareness and understanding of eel conservation issues among the general public and/or specific stakeholders (such as fishermen).
- Exchange of information:
 - States should be obligated to exchange information and results from domestic, regional (EU) and/or international eel conservation programmes.
- Reports on Implementation
 - All States should be obliged to report each year to the Secretariat, or another body established by this Agreement, on progress made in implementing this Agreement. The Agreement could set a deadline for submission of these reports.
- Article V: Capacity Building
 - The Agreement could include a provision obliging States to provide assistance, to those States in need of such assistance, with the implementation of conservation measures for the eel and its habitats, and the setting up of domestic institutions. This assistance can take the form of funding, research, training, institution-building, etc. One may think here also of strengthening the judiciary and law enforcement agencies of a particular State.
- Article VI: Cooperation between Parties
 - Parties must cooperate in order to implement the Conservation Measures identified above.

- There are particular ways to do this, which could be specified in the Agreement. For example, States could be called upon to:
 - Establish a global database on the status of the eel and its habitat;
 - Exchange information on best-practices in the field of domestic policy and/or legislation;
 - Collectively provide public information on the conservation status of the eel;
 - Develop and implement training programmes on conservation techniques and measures to mitigate threats affecting the eel and its habitat;
 - Exchange of expertise, techniques and knowledge.
- A Coordinating Authority could be established by each State to serve as contact point for the other States.
- Article VII: Action Plan
 - This provision basically refers to the Annex of this Agreement, which contains the actual Action Plan.
 - In the Agreement, the main purpose(s) of the Action Plan can be mentioned, but this is not necessary. Think of species conservation, habitat conservation and restoration, management of human activities, research and monitoring, collation of information, education and public awareness, implementation, etc.
- Article IIX: National implementation
 - The Agreement should oblige each State to designate a domestic authority to undertake, monitor and control all activities carried on with a view to the application and enforcement of this Agreement. Many States – the EU States in particular – will already have such an authority, as they were obliged to establish one under other agreements mentioned in the sections above.
 - This provision should also oblige each Party to adopt and enforce such legislative and administrative measures as may be necessary for the purpose of giving effect to this Agreement. The Agreement could specify certain activities that need to be prescribed or prohibited under domestic law, such as the prohibition of the intentional taking of eel.
 - The provision could include an obligation for all States to harmonize their domestic legislation as much as possible, and share best practices and model laws.
- Article IX: Relations with Relevant International Bodies
 - This is very important, since there are already so many bodies and institutions involved in the protection of the eel and its habitat (see sections above). This provision can then call upon a coordinated and complementary working relationship with all relevant international, regional and sub-regional bodies, including those concerned with the conservation and management of the eel and its habitat. Perhaps the most important of these external bodies can be listed explicitly in the Agreement. The Secretariat – see below – can play an important part in this coordination.
- Article X: Relationship between this Agreement and other legislation and International Conventions
 - It is probably good practice to make it clear that this Agreement does not overrule any obligations under the other treaties discussed in the sections above. This provision could stipulate that nothing in this Agreement shall derogate from the rights and obligations of any Party deriving from existing international treaties, and then mention a few – the most important ones – explicitly. Or it could state that the provisions of this Agreement shall not relieve Parties of their obligations under any existing treaty, convention or agreement.
- Article IX: Financing or Financial Arrangements

- This is of course important. Who will pay for the budget of the bodies established under this Agreement?
- And will the Agreement impose upon States an obligation to provide financing assistance with capacity building to States that need such assistance? A fund consisting of voluntary contributions could be created.

The other provisions are more of an institutional character. They could include the following:

- Article X: Meeting of the Parties
 - The Meeting of the Parties shall be the decision-making body of this Agreement.
 - Etc.
- Article X: Scientific Committee, Advisory Committee, Co-ordination Units, etc.
 - This provision should then explain its tasks, mandate and responsibilities.
- Article IV: Secretariat or Bureau

At the end, the Agreement should have provisions on the following issues:

- Article X: Amendment of the Agreement
- Article XII: Settlement of Disputes
- Article XIII: Signature, Ratification, Acceptance, Approval or Accession
- Article XIV: Entry into Force
- Article XV: Reservations
- Article XVI: Denunciation
- Article XVII: Depositary

Annexed to the Agreement could be an Action Plan, which details certain of the Conservation Measures identified above. The following issues could be included:

- Species Conservation
- Habitat Conservation and Restoration
 - Conservation of marine habitats of the eel
 - Conservation of freshwater habitats of the eel
- Implementation and enforcement of conservation measures
 - Call upon drafting of guidelines assisting the States in implementing the Agreement (developing best practices, etc.)
 - Parties to this Agreement shall adopt the necessary legislative, regulatory or administrative measures to implement the Agreement and Action Plan.
- Management of human activities
- Research and monitoring
- Education, Information and Public Awareness
 - Information shall be provided to the general public in order to ensure support for the aims of the Agreement.
 - Particular groups can be targeted specifically, such as fishermen.
- Capacity building, training and education
- Conducting of surveys and research
- Amendment and Review of Action Plan
 - It is important to explain how the Action Plan can be amended and reviewed. The procedure is normally different from the amendment procedure of the Agreement itself, it is much more flexible. The Agreement could, for example, stipulate that the Action Plan shall be reviewed at each ordinary session of the Meeting of the Parties, and that any amendment to the Action Plan shall be adopted by the Meeting of the Parties, requiring a particular majority of votes, etc.