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MEETING TO NEGOTIATE THE
INSTITUTIONAL AND LEGAL FRAMEWORK
FOR THE CENTRAL ASIAN FLYWAY
Abu Dhabi, 12-13 December 2012
Agenda Item 9.0

**OPTIONS FOR A LEGAL AND INSTITUTIONAL FRAMEWORK
FOR THE CENTRAL ASIAN FLYWAY**

(Prepared by the CMS Secretariat)

Introduction

1. At the Meeting to Conclude and Endorse the Proposed Central Asian Flyway Action Plan to Conserve Migratory Waterbirds and their Habitats, which took place in New Delhi, India (10-12 June 2005), participants considered the following three options for a legal and institutional framework to support the implementation of the CAF Waterbird Action Plan:

- a. Extending the AEWA geographical area to encompass the entire CAF region and incorporating the CAF Waterbird Action Plan under the Agreement;
- b. Developing a new agreement for the CAF region under the auspices of CMS to which the CAF Waterbird Action Plan would be annexed;
- c. Setting up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework.

2. These options reflected the policy and practice concerning agreement development at the time of the New Delhi meeting. However, taking into account the progress since then (see also CMS/CAF/Doc.5), including the decisions and criteria concerning agreement development adopted by CMS Parties resulting from the Future Shape process, as well as the limited human and financial resources within the CMS Secretariat for agreement servicing, effective implementation and appropriate servicing of a stand-alone CMS instrument for CAF under CMS (option b. above) does not seem feasible anymore.

3. In the light of these considerations and after consultation with the AEWA Secretariat, the CMS Secretariat proposes that the CAF Range States limit the choices to be considered at the present meeting to options a. and c. above.

4. The purpose of this document is to provide some elements for consideration to the CAF Range States on each of these two options, including some of their possible advantages and disadvantages. It is hoped that this information will provide some assistance to the Range

State delegations in their decision about the preferred legal and institutional framework to support the implementation of the CAF Waterbird Action Plan.

Option 1: Extend the AEWA geographical area to include the entire CAF and incorporate the CAF Waterbird Action Plan under the Agreement

5. AEWA was concluded on 16 June 1995 in The Hague, the Netherlands, and entered into force on 1 November 1999. As of July 2012, 65 countries out of the 119 Range States covered by AEWA and the EU have become Contracting Parties.

6. AEWA is the most ambitious Agreements established to date under CMS auspices. Its geographical area encompasses the whole of Africa, Europe, West Asia, part of Central Asia and the Canadian archipelago. The Agreement applies currently to populations of 255 species of waterbirds.

7. The AEWA geographic area extends into the Caucasus, North, Central and Southwest Asia. It thereby already covers 16 out of the 30 Range States of the CAF. If Range States prefer to include the entire CAF and its Action Plan under the AEWA umbrella, the AEWA Agreement Area would have to be extended to cover the remaining 14 Range States (Afghanistan, Bangladesh, Bhutan, China (mainly west and central), India, Kyrgyzstan, the Maldives, Mongolia, Myanmar, Nepal, Sri Lanka, Pakistan, Tajikistan and the United Kingdom (Chagos Islands)).¹

Possible AEWA advantages

8. AEWA offers an existing and well-established institutional framework that would support the implementation of the CAF Waterbird Action Plan. Subsidiary bodies and a UNEP-administered Secretariat are already in place.

9. As regards financial resources, AEWA has a regular budget agreed triennially by the Meeting of the Parties, which provides a stable funding source for the functioning of the Secretariat and the subsidiary bodies. The regular budget is covered by compulsory contributions from the Parties. In addition to the regular budget, over the years the agreement has proven effective in mobilizing a variety of voluntary contributions (from Parties, UNEP and other organizations) to fund action-oriented projects on the ground within the Agreement Area. Under current policies, most CAF range states would be eligible for project funding if they join AEWA.

10. Incorporating the entire CAF region, and following from this the CAF Waterbird Action Plan, into the AEWA framework would provide the possibility to ensure that a single forum addresses the CAF region. By including the CAF region into the AEWA Agreement Area, overlapping mandates, as well as thematic and geographical applications between other fora and AEWA, would be eliminated.

11. To maximize the benefit of an extension of the AEWA geographic area towards the implementation of the CAF Waterbird Action Plan, the CAF Range States should accede to the existing Agreement. At present, only three CAF Range States (Georgia, Uzbekistan and United Kingdom) are already a Party to AEWA.

¹ The United Kingdom is already a Party to AEWA.

12. Expanding the AEWA Agreement Area to include the entire CAF would require the AEWA Contracting Parties to approve the amendment of the existing AEWA annexes. The basis for amending AEWA's annexes is found in Article X, paragraph 1 (see Document CMS/CAF/Inf.3). It provides that the AEWA Meeting of Parties (MOP) may amend the Agreement's annexes at any of its ordinary sessions.

13. AEWA Annex 1a describes the AEWA Agreement Area and this would have to be amended at a forthcoming MOP. The same is applicable for the AEWA Action Plan and the AEWA List of Species that are found in separate annexes to the Agreement. If CAF became part of AEWA, 41 species migrating along CAF and currently not covered by AEWA would have to be added to the AEWA Annex II.

14. AEWA Article X, paragraph 5, provides the only qualification: a two-thirds majority of the Parties present at the MOP must adopt the amendment. Importantly, amendments to the annexes become effective 90 days after the session of the MOP that adopted them, without requiring any national level ratification procedure by the Parties.

15. In 2004 and 2005, the fifth and sixth meetings of the Technical Committee of AEWA already discussed the option of extending the AEWA Agreement Area to include the entire CAF region and a future CAF Waterbird Action Plan. It did not find any scientific or biological reason to object to the extension of the Agreement Area. Furthermore, the 5th session of the AEWA MOP (May 2012), took note of the steps undertaken by the CMS Secretariat and the outcome of the Abu Dhabi Meeting will be considered at the next meeting of the AEWA Standing Committee.

16. Integrating CAF into AEWA would be very much in line with the CMS Future Shape Process and the requirements resulting from it, such as the need to increase efficiency of the CMS Secretariat in servicing its various agreements and the need to search for synergies, to consider merging existing instruments before developing new ones, and to look into possibilities of clustering instruments according to species and geography.

17. The Range States would also gain access to a well-established network of expertise in waterbirds, habitat conservation and sustainable use in addition to being eligible for funding for projects and to attend AEWA technical workshops. Another benefit of membership is the possibility to influence the future direction of the world's largest dedicated intergovernmental forum on the conservation of waterbirds and their habitats.

Possible AEWA disadvantages

18. If the AEWA Agreement Area is expanded to include the entire CAF region and the CAF Action Plan, CAF Range States will need to accede to the Agreement. Internal, national accession procedures may take time and AEWA membership will entail annual membership contributions. For developing countries and countries with economies in transition, AEWA membership fees are modest and these costs can almost certainly be exceeded by the benefits that accrue from membership. Meetings of Parties are convened triennially and the attendance of countries meeting eligibility requirements can be financially supported by the Agreement.

19. Despite the potential for delays in accessions at the country level, the CAF Action Plan could still be applied on an interim basis by the Range States (and across the CAF for that matter) until accession takes place. Finance to support coordination and implementation of the Action Plan through this interim phase will need to be secured.

Implications and possible next steps

20. If Range State delegations decide on the AEWA-linked option as the preferred framework for CAF, next steps would include 1) discussion of the outcomes of the CAF meeting at the next meeting of the Standing Committee of AEWA; 2) initiation of a feasibility study to examine financial, administrative, operative and technical implications as well as to develop recommendations that indicate ways towards realizing the AEWA-linked option for CAF; 3) submission of a proposal of amendment of AEWA annexes by one of the current AEWA Parties and consideration of the proposal by the MOP6; and 4) continued close cooperation between the CMS and AEWA Secretariats involving a gradual transfer of responsibility and coordination of the CAF towards AEWA.

Option 2: Set-up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework

21. As an alternative to an institutional and legal framework provided through CMS and AEWA, the Range States might also consider establishing CAF as an independent, cooperative framework for action. The administrative structure of such an independent framework could be rather flexible and informal, consisting, for example, of a steering committee and working groups as well as a coordinating organization.

22. The East-Asian Australasian Flyway Partnership (EAAFP) is an example of such an independent and legally non-binding international cooperative conservation framework built on the premise of the voluntary participation of the Range States and non-governmental partners.

23. EAAFP is an outcome of the World Summit on Sustainable Development in Johannesburg (2002), where the Governments of Japan and Australia, together with Wetlands International proposed a Type II Partnership for the conservation and sustainable use of sites of international importance for migratory waterbirds in North East Asia, South East Asia and Australasia.

24. The purpose of the EAAFP is to provide “*a flyway wide framework to promote dialogue, cooperation and collaboration between a range of stakeholders to conserve migratory waterbirds and their habitats.*” EAAFP membership currently consists of mostly governments (14 countries), three inter-governmental agencies including CMS, as well as nine international Non-Government Organizations, which agreed to endorse the text and supporting the objectives and actions under this Partnership. Partners meet regularly to report against an Implementation Strategy, respond to emerging issues and priorities and discuss future collaboration.

25. As an informal and voluntary initiative, its administrative organization includes an annual meeting of the partners, a secretariat which facilitates effective communication and coordination of the partnership, organizes activities across the flyway, and which receives voluntary, mostly in-kind contributions from its partners to support actions. EAAFP also has a number of task forces and working groups to address specific issues or taxonomic groups, as well as the flyway site network.

Possible advantages

26. Following the example of the EAAFP, an independent framework for the CAF Action Plan outside CMS could be characterized by its flexible and responsive nature, an informal

institutional structure, expedient decision making through consensus, ability to actively involve a wide range of stakeholders and diverse range of funding sources.

27. The EAAFP does not have a very bureaucratic structure. It has neither membership fees nor binding obligations. Institutional overhead costs therefore are low. Range States participating in a similar cooperative framework for the CAF Action Plan could consider structuring it so as not to oblige them to make annual financial contributions, either to the cost of coordination activities, or to cover any cost to implement the Action Plan itself. However, secure sources of core funding to support coordination and implementation activities would need to be identified before such an option could reasonably be considered realistic and sustainable.

28. Similar to the Western Central Asian Critical Site Network for Siberian Crane and Other Waterbirds (WCASN), EAAFP established an East Asian – Australasian Flyway Site Network as a non-legal, collaborative project involving over 100 sites across fifteen countries. Together, both flyway site networks could become an excellent mechanism to increase recognition and support for waterbird conservation at many levels throughout the entire flyway region.

Possible disadvantages

29. The primary disadvantage of such an initiative is limited resources. EAAFP has a five-year MOU with the Incheon City Government in Korea to support the staffing and functioning of the Secretariat. Additional funds from the Ministries of Environment in Korea and Japan finance EAAFP activities through the Secretariat.

30. To support implementation, funding for activities and projects would have to be raised from a number of sources. Fund raising at EAAFP has been principally through individual partners and has been used to support a number of activities undertaken at the site and national levels with some international activities as well including training courses and meetings. Long-term funding has not been sought for the development of large and flyway-wide programmes.

31. Lack of sustainable funding mechanisms is likely to be the primary limitation for an independent CAF Waterbird Action Plan as well.

32. Another possible disadvantage is that representatives of participating Range States need to allocate resources to meet regularly to review EAAFP implementation, as they would, for example, within an intergovernmental forum under a treaty.

33. Especially for CAF Range States situated within the current AEWA geographic area, the establishment of a separate framework for CAF could cause difficulties in terms of overlap and duplication of work. Those countries would have to decide whether to 1) join AEWA and in addition support a separate CAF instrument or 2) not join AEWA and only focus on the new instrument for CAF. Neither option is ideal, either for AEWA, which aims at increasing the number of its contracting parties, or for the countries, which have to deal with an additional international framework for migratory waterbird conservation.

Implications and possible next steps

34. If delegations decide on an independent framework for CAF outside of CMS, Range States could arrange for a follow-up meeting in order to establish the preferred institutional structure. The CMS Secretariat could then transfer its responsibility for and the administration of the CAF to the new coordinating mechanism as agreed by the Range States.

Conclusion

35. The CMS Secretariat proposes two possible legal and institutional options to provide an international framework for promoting conservation of migratory waterbirds and their habitats in the CAF region and the CAF Action Plan to support its implementation:

- a. Extending the AEWA geographical area to include the entire CAF and incorporating the CAF Waterbird Action Plan under the Agreement;
- b. Setting up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework, but of which CMS could be a part, as it currently is in EAAFP.

36. Both options have some potential advantages and disadvantages. However, regardless of which option delegations choose, establishing a sustainable and effective institutional framework for CAF will require and largely depend on the support and active engagement of the Range States. The provision of adequate resources and the willingness of all Range States and stakeholders to participate and actively implement the Action Plan will be critical for either option in order to ensure successful conservation of migratory water birds along this flyway.

37. Which option is most favourable for the CAF Range States will depend upon what is perceived to be most beneficial for the region in supporting and achieving the goal of conserving its migratory waterbirds and their habitats across the CAF.

Action Requested:

The Range States within the CAF region participating in the meeting are invited to:

- Consider the two options available for a legal and institutional framework to support the implementation of the CAF; and
- Develop a consensus on their preferred option.

Annex 1.

	Main characteristics	Strengths	Weaknesses	Opportunities	Threats
Option 1: Incorporating CAF and AEWA	<ul style="list-style-type: none"> ☞ The CAF Action Plan would become part of an existing legally binding multilateral treaty. ☞ Contracting Parties pay annual contributions and have binding obligations to implement the provisions of the agreement ☞ Membership requires a formal ratification procedure at national level. ☞ Decision and policy making bodies, serviced by a Secretariat, meet regularly. 	<ul style="list-style-type: none"> ☞ Access to an effective and self-standing treaty with its own institutions (Secretariat, Subsidiary bodies) for implementing the integral Action Plan. ☞ The legally binding nature of the instrument provides access to resources that would not be released for a less formal initiative. ☞ Access to a well-established network of waterbird, habitat conservation and sustainable use expertise, opportunity to obtain project funding and funding to attend AEWA technical workshops. ☞ Provides long-term legal stability for the Range States, their authorities and scientific bodies, as well as the international community of governmental and non-governmental organizations involved. ☞ Parties must make regular reports on implementation. ☞ Complies with recent decisions of CMS COP10 on the Future Shape of CMS to reduce overlap and make best use of synergies. 	<ul style="list-style-type: none"> ☞ Needs to be ratified in accordance with the internal law or decision-making procedures of every Range State. This can take considerable time. ☞ The legal and institutional framework of the Agreement means the Signatories may have to stretch limited resources to a further MEA requiring regular contributions and national personnel for meetings and reporting. ☞ Membership is limited to States, though the forum created by the Agreement is open to observers. ☞ As part of such a larger framework, CAF will only be one part of the AEWA Action Plan, which might reduce visibility and attention for the region compared to a stand alone initiative. 	<ul style="list-style-type: none"> ☞ The technical material for incorporating the CAF Action Plan into the AEWA Action Plan is readily available and any Range State willing to become a Party could do so provided it ratifies/accedes to the Agreement. ☞ The CAF Action Plan has already been adopted, which might help to minimize delays and costs. ☞ An Agreement could provide the most comprehensive, stable legal and institutional framework for the number of Range States and species involved. 	<ul style="list-style-type: none"> ☞ CAF Range States might not accede to AEWA. ☞ Lack of sufficient financial resources to support implementation of the Action Plan in the Central Asian region. ☞ AEWA Parties might not agree to the incorporation of the CAF Action Plan and with the necessary amendment of the Annexes. ☞ The AEWA Parties might not provide the additional financial and/or manpower resources needed to manage the additional workload associated with the geographical extension of the Agreement.

<p>Option 2: Independent voluntary framework</p>	<ul style="list-style-type: none"> ⌘ An informal voluntary framework to promote dialogue, cooperation and collaboration between a range of stakeholders, from all levels of government to non-governmental organizations, industry, community groups and local people. ⌘ Requires a Secretariat/coordination mechanism to function effectively. ⌘ Would act as the institutional umbrella to support the implementation of the associated Action Plan. 	<ul style="list-style-type: none"> ⌘ Flexible and informal administrative structure, consisting for example of a steering committee and working groups as well as a coordinating organization. ⌘ Membership would not be restricted and could entail a wide range of stakeholders, from governments, to international non-governmental and intergovernmental organizations and the private sector. ⌘ It could be developed relatively quickly with little or no post-adoption procedures at national level (no need for signatures by the participating agencies or States) in most countries. ⌘ No membership fees or binding obligations, institutional overhead costs are low. ⌘ Complementary Flyway Site Networks for the Central and East Asian – Australasian flyways as a non-legal, collaborative project. 	<ul style="list-style-type: none"> ⌘ Not legally binding and therefore depends entirely on the goodwill of the partners, and the willingness of government partners to establish national partnership networks, and to support and provide resources to the Secretariat. ⌘ New structure would need to be created to manage it. ⌘ Maintenance of the new structure might be fully depending on voluntary contributions which cause difficulties in recruiting staff, unless a government provides long-term support. 	<ul style="list-style-type: none"> ⌘ Relatively quick and simple to negotiate and establish and potentially expedient. ⌘ Any relevant potential partners may become engaged in the process. 	<ul style="list-style-type: none"> ⌘ Lack of sufficient financial and human resources needed to coordinate the Partnership, and ad hoc voluntary financial contributions are probably not sustainable over the longer term. ⌘ Participants in the Partnership might not give sufficient support because it is not legally binding. ⌘ The framework might not give sufficient attention to implementation at national level because it is not legally binding. ⌘ Unless proper coordination functions and mechanisms are established, it might be ineffective. ⌘ Lack of sustainable funding mechanisms is likely to be the primary limitation. ⌘ An additional independent framework might cause potential overlap and duplication of work.
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