



MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS

CMS/Sharks/MOS2/Doc.2.2

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Second Meeting of the Signatories
San José, Costa Rica, 15-19 February 2016
Agenda Item 2

**PROPOSED RULES OF PROCEDURE
FOR THE MEETINGS OF THE SIGNATORIES TO THE MEMORANDUM OF
UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS**

(Prepared by the Intersessional Working Group)

Introduction

1. The first Meeting of the Signatories (MOS1) to the Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MOU) operated under provisional Rules of Procedure (ROP) drafted by the Secretariat. They were adopted for the period of the meeting only.
2. The meeting was not able to reach a definitive agreement on the formal adoption of the provisional ROP. Therefore, an Intersessional Working Group (IWG) was established to further develop them for consideration at MOS2.
3. In December 2012, the Secretariat invited all Signatories to take part in the IWG. The following Signatories expressed their interest and were included in all subsequent correspondence: the EU and five of its Member States (Germany, Italy, Netherlands, Sweden, and the UK), Kenya, South Africa, and the USA. The group was co-chaired by the UK and USA.
4. The IWG, which worked primarily by correspondence, has proposed draft ROP for consideration and agreement by the Signatories. These are contained in Annex 2. The key points for decision at MOS2 have been highlighted in yellow in this document.
5. During its deliberations, the IWG identified a number of areas where different options or opinions existed. These have been outlined in Annex 1 as key decisions for the MOS.
6. The IWG would particularly like to draw Signatories' attention to the following points:
 - a. The draft ROP are closely based on the provisional ROP adopted for use during MOS1 and presented in document CMS/Sharks/MOS2/Doc 2.1. However, efforts have been made to shorten and simplify them. The key changes provide:
 - i. greater clarity on the admittance and status of co-operating partners (Rule 5) and observers (Rule 6);
 - ii. clarity on the role of the Chair, Vice-Chair, and the Secretariat;
 - iii. a proposal for what constitutes a quorum (Rule 11) and;

- iv. clear options for decision-making by either consensus or voting (Rule 13 and Rule 14);
- b. The European Union and its Member States have submitted a proposal to amend paragraph 18 of the MOU, regarding decision-making at the MOS (CMS/Sharks/MOS2/Doc.8.1.1). The IWG encourages Signatories to consider this proposed amendment in conjunction with the present document.

Action requested:

The Meeting of the Signatories is invited to:

- review the key decisions of the IWG listed in Annex 1;
- consider the EU proposal contained in Doc.8.1.1;
- finalize and adopt the proposed Rules of Procedure contained in Annex 2.

Annex 1**Key Questions for the Meeting of Signatories regarding the proposed Rules of Procedure****Q1. How should the MOS take decisions (Rule 14)?**

The MOS must decide how to interpret Section 6 Paragraph 18 of the MOU¹ with respect to whether the Rules of Procedure should establish a clear framework for voting or provide for decision-making by consensus only. Two options were considered by the IWG: (1) consensus on all matters, and (2) voting as a last resort on all matters with the exception of financial matters, amendments to the MOU and its Annexes, and amendments to the Rules of Procedure which will be decided by consensus only. As no agreement was possible, these options have been presented for discussion. The IWG notes that the decision taken here will have direct implications for Rules 6 and 13.

Q2. If voting on procedural matters is agreed by the MOS, what majority should be required (Rules 14 (2))?

The IWG was unable to agree on an appropriate majority for any voting. If voting is accepted, the IWG proposes two options for the MOS to consider - either a simple majority or a two-thirds majority in line with voting practices adopted under other MEAs.

Q3. If voting as a last resort is agreed by the MOS, what issues should only be decided by consensus (Rule 14 (3))?

Section 10, paragraph 33 of the MOU states that the MOU, including the Annexes, may be modified by consensus. In addition, the IWG has identified two other key substantive matters that must be decided by consensus only - financial matters and amendments to the ROP.

Q4. How should the MOS decide whether co-operating partners/observers should be admitted (Rules 5(2) and 6(2))?

If the MOS decides that all decision-making is by consensus then it would follow that the acceptance of a co-operating partner/observer would also have to be by consensus. However, if voting is agreed then the IWG proposes that one-third of signatories would be required to reject a potential co-operating partner/observer.

Q5. How should the MOS handle points of order (Rule 13(1))?

Signatories may raise a point of order at any time during discussions. In order to ensure the efficient running of the meeting, the IWG considered it desirable to provide the Chair with clear instructions on how to resolve it. The IWG therefore proposes that, if voting on procedural matters is agreed under Rule 14, any appeal against the ruling of the Chair on a point of order be resolved by a simple majority vote.

Q6. Should it be possible to re-open an adopted/rejected proposal at the same meeting (Rule 13(2))?

The IWG agreed that the MOS should be able to decide to reconsider an adopted/rejected proposal at the same meeting. If the MOS decides that all decision-making is by consensus then it would follow that the decision to reconsider a proposal would also have to be by consensus. However, if voting is agreed then the IWG proposes that a two-thirds

¹ The Meeting of the Signatories should be the decision-making body of this Memorandum of Understanding. Decision making of the Meeting of the Signatories should be by consensus.

majority should be required to re-open a decision.

Q7. Is a Bureau needed to help ensure efficient running of the proceedings?

The MOS is asked to decide whether there is a need to establish a Bureau and, if so, whether the proposed make-up and frequency of meetings is appropriate.

Q8. Is a quorum of one half of the signatories for a MOS and one half of those present for a plenary session acceptable?

The IWG agreed this was an acceptable compromise. However, it noted that the current small number of Signatories meant a quorum could be achieved with few Signatories present.

ANNEX 2

**RULES OF PROCEDURE FOR MEETINGS OF SIGNATORIES TO THE
MEMORANDUM of UNDERSTANDING ON THE CONSERVATION OF
MIGRATORY SHARKS**

Rule 1 – Purpose

- (1) These Rules of Procedure will apply to Meetings of the Signatories (MOS) to the Memorandum of Understanding on the Conservation of Migratory Sharks, hereinafter referred to as the “MOU”, convened in accordance with Section 6 of the MOU.
- (2) Insofar as they are applicable, these Rules will apply *mutatis mutandis* to any other meeting held in the framework of the MOU, such as an intersessional or working group meeting.

Rule 2 – Definitions

For the purpose of these Rules:

- (a) “MOU” means the Memorandum of Understanding on the Conservation of Migratory Sharks, which entered into effect on 1 March 2010. This MOU is an agreement within the meaning of Article IV, paragraph 4 of the Convention on the Conservation of Migratory Species of Wild Animals (1979).
- (b) “Convention” means the Convention on the Conservation of Migratory Species of Wild Animals, 1979.
- (c) “Signatories” means the Signatories to the MOU.
- (d) “Meeting of the Signatories” means the Meeting of the Signatories in accordance with Section 6 of the MOU.
- (e) “Session” means any ordinary or extraordinary session of the Meeting of the Signatories convened in accordance with Section 6 of the MOU, or any individual session during a Meeting of the Signatories, as appropriate.
- (f) The “Chair” means the Chair elected in accordance with Rule 9 of the present rules of procedure.
- (g) “Subsidiary body” means any committees or working groups established by the Meeting of the Signatories.
- (h) “Advisory Committee” means the body established in accordance with Section 7 of the MOU.
- (i) [The “Bureau”, means the body established in accordance with Rule 16.]
- (j) “Secretariat” means the Secretariat of the MOU established in accordance with Section 8 of the MOU.
- (k) “Convention Secretariat” means the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals.
- (l) “Observer” means a Range State, non-Range State, an intergovernmental or a nongovernmental organization, or other body or entity which has informed the Secretariat of its desire to attend the meeting.
- (m) “Cooperating partner” means a non-Range State, an intergovernmental or a nongovernmental organization, or other body or entity that associates itself with this Memorandum of Understanding in accordance with the provisions of paragraph 30 of the MOU.

Rule 3 – Meeting of the Signatories

- (1) The MOS will meet once every three years, unless the Signatories decide otherwise. Sessions of the Meeting of the Signatories shall be held in public, unless the Meeting of the Signatories decides otherwise.
- (2) At each session of the MOS, the Signatories will strive to decide on the date, venue and duration of the next MOS. If such a decision is not reached, the [interim] Secretariat will contact the Signatories one year after the session of the MOS to solicit expressions of interest to host the next MOS, including potential dates.
- (3) Unless there is an offer from a Signatory, the MOS will meet at the seat of the Convention Secretariat or another United Nations duty station determined by the Secretariat in coordination with the Chair, taking into consideration cost-effectiveness.
- (4) The Secretariat will notify Signatories of the month or quarter that the meeting will take place, and prepare and circulate to Signatories the provisional agenda of the meeting at least 150 days in advance.
- (5) The Secretariat will endeavour to notify the Signatories of the venue and dates of each session of the MOS at least one year before the meeting is due to commence. The notification will include a deadline for submission by Signatories of proposals to be discussed at the meeting that allows respecting Paragraph 7 of this Rule.
- (6) The Secretariat shall also notify the Convention Secretariat, in its role as Depository of the MOU, the United Nations, its specialized Agencies, any Range State not Signatory to the MOU, any regional economic integration organization, any secretariat of relevant international conventions and other instruments, and any relevant scientific, environmental, cultural, fisheries or technical body, particularly those concerned with the conservation and management of marine living resources or conservation and management of sharks, of the venue and dates of each session of the MOS at least six months before the meeting is due to commence so that they may be represented as observers.
- (7) All documents for the MOS requiring a decision by the Signatories, will be made available electronically at least ninety days before the start of the meeting.
- (8) However, the Chair, before the meeting, [or the Bureau,] during the meeting, may also permit the discussion and consideration of urgent draft documents requiring a decision of the Signatories after the 90 day period provided that they have been circulated to all Signatories in the working languages of the meeting.
- (9) The Secretariat will include any item proposed by a Signatory on the provisional agenda. Should items be received by the Secretariat after the provisional agenda has been produced, but before the opening of the meeting, a supplementary provisional agenda will be circulated.
- (10) The MOS will adopt the provisional agenda. It may add, delete, defer, or amend items as considered appropriate by the Signatories.
- (11) Extraordinary sessions of the MOS will be convened on the written request of at least one third of the Signatories or by the Advisory Committee in accordance with paragraph 24 (d) of the MOU.
- (12) An extraordinary session will be convened not later than ninety days after the request has been received, in accordance with paragraph 11 of this rule.
- (13) The provisional Agenda for an extraordinary session of the MOS will consist only of those items proposed for consideration in the request for the extraordinary meeting. The provisional agenda and any necessary supporting documents will be distributed to the Signatories at the same time as the invitation to the extraordinary meeting.

Rule 4 – Signatories

- (1) Each Signatory to the MOU, hereinafter referred to as a “Signatory,” will be entitled to be represented at the meeting by a delegation consisting of a designated Head of Delegation and such Alternative Representative(s) and Advisors as the Signatory may deem necessary.
- (2) Logistical and other limitations may require that no more than five delegates of any Signatory be present at the meeting. The Secretariat will notify Signatories of any such limitations 6 months in advance of the meeting.

Rule 5 – Co-operating Partners

- (1) Any non-Range State, intergovernmental or nongovernmental organisation, or other relevant body and entity wishing to become a cooperating partner to this Memorandum of Understanding in accordance with paragraph 30 of the MOU, will be accepted unless the MOS decides otherwise [at least one third of the Signatories present at the meeting object].
- (2) Co-operating Partners that have signed the MOU will have the right to participate but do not take part in the decision-making process.

Rule 6 – Observers

- (1) The United Nations, its Specialized Agencies, and any State not a Signatory to the MOU may be represented at the meeting by Observers who will have the right to participate but do not take part in the decision-making process.
- (2) Any relevant scientific, environmental, cultural, fisheries, or technical body concerned with the conservation and management of sharks, and which has informed the Secretariat of its desire to be represented at the meeting by Observers, will be permitted to be represented unless the MOS decides otherwise [unless objected to by at least one-third of the Signatories]. Once admitted, these Observers will have the right to participate but not to take part in the decision-making process.
- (3) Bodies and agencies desiring to be represented at the meeting by Observers will submit the names of their representatives to the Secretariat 75 days prior to the opening of the meeting.
- (4) Logistical and other limitations may require that no more than two Observers from any non-Signatory State, body, or agency be present at the meeting. The Secretariat will notify Observers of any such limitations 60 days in advance of the meeting.

Rule 7 – Credentials

- (1) The Head of Delegation, any Alternative Representative(s) or Advisors of a Signatory will be accredited by, or on behalf of, an appropriate authority (the Minister or deputy of the focal Ministry/Authority for the MOU or a higher body) or the competent authority of any Regional Economic Integration Organization (REIO)^{2 3}, to fully represent the Signatory at the MOS and to take part in the decision-making process.
- (2) The credentials will include: the full title and date of the MOS; a full list of representatives authorized to represent the Signatory and to transact all such matters with an indication of who is Head of Delegation; a full signature of the appropriate authority as indicated above and printed on official letterhead, preferably with a seal, clearly indicating that the credentials have been issued by the appropriate authority. The Secretariat will provide a credential template as an example, together with the notification of the venue and dates of the MOS (Paragraph 5 of Rule 2).

² As defined under Article I, paragraph 1 (k) of the CMS Convention – ‘regional economic integration organization constituted by sovereign States which has competence in respect of the negotiation, conclusion and application of international Agreements in matters covered by this Convention for which this Convention is in force.

³ For the purpose of interpreting this Rule, in the case of the European Union “competent authority” means the President of the European Commission or the Commissioner responsible.

- (3) The credentials will be submitted in their original form to the MOU Secretariat within 24 hours of the start of the MOS, for assessment by the Credentials Committee which will be set up in accordance with Rule 7 (4). If credentials are presented in a language other than one of the three working languages of the MoU they will be accompanied by an official translation into English, French, or Spanish.
- (4) A Credentials Committee shall be established at the first session of each MOS and be composed of at least one Signatory of each region present. It will validate the supplied credentials and, in consultation with the Secretariat and Chair or Vice-Chair, will report to the MOS on the results of the assessment of the Credential Committee for final approval. Pending a decision approving their credentials, delegates may participate provisionally in the meeting but do not take part in the decision-making process.

Rule 8 – Secretariat

- (1) In addition to the tasks laid down in Paragraph 27a of the MOU, the [interim] Secretariat will ensure transparency as appropriate, in application of Paragraph 21 of the MOU.
- (2) [The [interim] Secretariat will develop a provisional agenda for the MOS in consultation with the Signatories and will service the meeting and carry out Secretariat functions as required by the MOS. The provisional agenda will be circulated 150 days before the session of the MOS. At the beginning of each session, the MOS will adopt its agenda for the session on the basis of the provisional agenda.]
- (3) [The Head of the Secretariat shall be the Secretary of the Meeting of the Signatories. In all sessions of the MOS and of subsidiary bodies, the Secretary or the representative of the Secretary shall, in accordance with these rules:
 - (a) Arrange for interpretation at the meeting;
 - (b) Prepare, receive, translate, reproduce and distribute the documents of the meeting;
 - (c) Publish and circulate the official documents of the meeting;
 - (d) Make and arrange for keeping of sound recordings of the meeting;
 - (e) Arrange for the custody and preservation of the documents of the meeting;
 - (f) Draft the report of the meeting for consideration and approval by the [Bureau first and then by the] MOS; and
 - (g) Generally perform all other work that the MOS may require.]

Rule 9 – Chair and Vice-chair

- (1) At the first plenary session of the MOS, a Chair and a Vice-Chair will be elected taking into consideration appropriate geographic balance. If the Chair or Vice-Chair is unable to carry out his or her functions, or ceases to be a representative of a Signatory, or if a Signatory of which he or she as a representative ceases to be a member of the MOS, he or she will cease to hold office and a new Chair or Vice-Chair will be elected for the unexpired term. A Chair and Vice-chair can be re-elected for a second term at the maximum unless no new candidate is available.
- (2) The Chair and Vice-Chair will serve in this role until the next Chair and Vice-Chair have been elected.
- (3) The Chair will preside at plenary sessions of the Meeting.
- (4) The Chair, in the exercise of the functions of that office, remains under authority of the MOS.
- (5) In addition to exercising the powers conferred upon him/her elsewhere in these Rules, the Chair will at Plenary sessions, Committee sessions, and Working Groups:
 - (a) Declare the session open and closed;
 - (b) Direct the discussion;
 - (c) Ensure the observance of these Rules;

- (d) Subject to these Rules, have complete control of the proceedings and the maintenance of order.

Rule 10 – Seating

- (1) Delegations will be seated in accordance with standard United Nations practice which uses the alphabetical order of the full official names of the Signatories in the English language⁴.

Rule 11 – Quorum

- (1) No session of the MOS will take place in the absence of a quorum. A quorum for convening a session of the MOS will consist of one half of the Signatories.
- (2) A quorum for plenary sessions will consist of one half of the Signatories having delegations at the MOS. No plenary session will take place in the absence of a quorum.

Rule 12 – Speakers

- (1) The Chair will call upon meeting participants to speak in the order in which they indicate their desire to speak, with precedence given to Signatories, followed by non-Signatory Range States, Co-operating Partners, and Observers, in that order. Meeting participants may speak only if called upon by the Chair, who may call a speaker to order if the remarks are not relevant to the subject under discussion.
- (2) The Chair may, in the course of discussion at the meeting, propose to the meeting, *inter alia*:
- (a) Time limits for speakers;
 - (b) Limitations on the number of times members of a Signatory's delegation or other participants may speak on any subject;
 - (c) The closure of the list of speakers;
 - (d) The adjournment or the closure of the debate on the particular subject under discussion;
 - (e) The suspension or adjournment of the meeting.
- (3) The Chairperson of a committee or working group may be accorded precedence for the purpose of explaining the conclusions arrived at by that committee or working group.

Rule 13 – Procedural Motions

- (1) During the discussion of any matter, a Signatory may make a point of order [The point of order shall be immediately decided by the Chair. A delegate representing a Signatory may appeal against any ruling of the chair. The appeal shall immediately be put to a vote and the Chair's ruling shall stand unless a simple majority of the Signatories present and voting decides otherwise].
- (2) When a proposal has been adopted or rejected, it may not be reconsidered at the same meeting, unless the MOS decides otherwise, [unless a two-thirds majority of the Signatories present and voting, decide in favour of reconsideration]. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter, after which it shall be put immediately to the vote.

⁴ *The European Union and its Member States reserve the right to make specific comments as regards the seating arrangements.

Rule 14 – Decision Making

[Option 1]

- (1) In accordance with Paragraph 18 of the MoU decision-making of the MOS should be by consensus.]

[Option 2]

- (1) Without prejudice to rule 13, the Signatories should make every effort to reach decisions by consensus.
- (2) If all efforts to reach consensus under Rule 14(1) have been exhausted and no agreement is possible, decisions shall, as a last resort, be decided by a [[simple] [two thirds] majority vote] [two thirds majority vote for substantive matters or a simple majority vote for procedural matters].
- (3) Decisions on financial matters, amendments to the MOU, including the Annexes, and Rules of Procedure will be taken by consensus only].
- (4) Without prejudice to the provisions of Rule 4, each Signatory shall have one vote, which can be exercised by a Representative duly accredited according to Rule 7.
- (5) The meeting shall vote by a show of hands. The Chair may, in an exceptional case, request a roll-call vote. The roll-call vote shall be taken in the seating order of the delegations.
- (6) If votes are equal, the motion or amendment will not be carried.]

Rule 15 – Committees and Working Groups

- (1) The MOS may establish such Committees and Working Groups as may be necessary to enable it to carry out its functions. Where appropriate, meetings of these bodies shall be held in conjunction with the Meeting of the Signatories.
- (2) The Committees and Working Groups may make recommendations to the MOS for consideration and adoption, pursuant to their terms of reference established by the MOS.
- (3) The MOS will elect a Chair and a Vice-Chair, for each Committee and Working Group, taking into consideration appropriate geographic balance. As a general rule, sessions of Committees and Working Groups will be open to Signatories and Observers, unless the MOS decides otherwise. The duration of the appointment of the Chair and Vice-Chair of Committees and Working Groups will be three years. They can be re-elected for a second term at the maximum, unless no new candidate is available.
- (4) Subject to paragraph 3 of this rule, each body shall elect its own officers. No officers may be re-elected for a third consecutive term.

[Rule 16 - The Bureau]

- (1) The Bureau shall be established. It shall consist of the elected Chair and Vice-Chair of the current Meeting of the Signatories, and the Chair of the Advisory Committee. The Secretariat shall assist and support the Bureau. The Bureau may invite observers to attend the Bureau, as they deem appropriate. The Bureau shall be chaired by the Chair of the current session of the Meeting of the Signatories.
- (2) The Bureau shall meet at least once daily to review the progress of the meeting and to provide advice to the Chair in order to ensure the smooth development of the rest of the proceedings.]

Rule 17 – Languages

- (1) English, French, and Spanish, the working languages of the MOU, will be the working languages of sessions of the MOS. Interventions made in one of the working languages will be interpreted into the other working languages. The official documents of the meeting shall be produced in all three working languages.

- (2) A delegation may speak in a language other than a working language, but in that case it will be responsible for providing interpretation into a working language, and interpretation into the other working language may be based upon that interpretation. Any document submitted to the Secretariat in any language other than a working language will be accompanied by an appropriate translation into one of the working languages.
- (3) Interpretation will not be provided during meetings of the Committee or Working Groups, unless resources are made available for that purpose.

Rule 18 – Records

- (1) Summary records of a session of the MOS in English, French, and Spanish will be drafted and circulated by the Secretariat for comments from the Signatories, not later than 60 days after the completion of the MOS. The Signatories will submit their comments within 30 days. The final version of the report will be circulated by the Secretariat in all working languages within 30 days and made public.

Rule 19 – Amendments to the MOU

- (1) The MOU, including the Annexes, may be amended at any session of the MOS.
- (2) Proposals for amendment may only be made by one or more Signatories.
- (3) The process and timing for submission of proposals for amendment to the MOU including the Annexes is as follows:
 - (a) The text of any proposed amendment, with supporting rationale, and if appropriate, supporting scientific evidence, will be provided to the Secretariat at least 150 days before the MOS at which it is to be considered.
 - (b) The Secretariat will publish and communicate to all Signatories any proposal as received in its original working language as soon as possible, but not later than 7 days after receipt. Translation and publication into the other working languages will be arranged by the Secretariat as soon as possible, but not later than 30 days after receipt.
 - (c) Comments on the proposed amendment may be provided to the Secretariat up to 30 days before the MOS.
 - (d) The Secretariat will communicate any comments received by the Secretariat as soon as possible after receipt.

Rule 20 – Procedure

- (1) These Rules of Procedure will enter into effect immediately after their adoption.

Rule 21 – Authority

- (1) In the event of a conflict between any provision of these rules and any paragraph/provision of the MOU, the MOU will prevail.