



# CONVENTION ON MIGRATORY SPECIES

Distribution: General

UNEP/CMS/COP11/Doc.18.3/Rev.1  
2 October 2014

Original: English

11<sup>th</sup> MEETING OF THE CONFERENCE OF THE PARTIES

Quito, Ecuador, 4-9 November 2014

Agenda Item 18.3

## ENHANCING THE EFFECTIVENESS OF THE CONVENTION THROUGH A PROCESS TO REVIEW IMPLEMENTATION

### Summary:

While most major multilateral environmental agreements (MEAs) have a process to review compliance and implementation, the Convention on Migratory Species does not. To initiate a discussion concerning the development of such a process within the Convention, this document summarizes the processes used by MEAs and other relevant agreements to enhance implementation and compliance.

The Conference of the Parties is invited to consider for adoption the draft Resolution included in the Annex, which establishes a process for developing a review process for the Convention.

This document has been revised only to indicate, in the third paragraph of the preamble of the draft Resolution, that the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) also has a process for reviewing the effectiveness of implementation measures.

## **ENHANCING THE EFFECTIVENESS OF THE CONVENTION THROUGH A PROCESS TO REVIEW IMPLEMENTATION**

*(Prepared by the UNEP/CMS Secretariat)*

### **Scope and purpose of this paper**

1. The United Nations Environment Programme (2002) has identified “[s]trengthening of compliance with multilateral environmental agreements . . . as a key issue”. While most major multilateral environmental agreements (MEAs) have a process to review compliance and implementation, the Convention does not. Given the inherent need for cooperation and concerted action of all Range States of migratory species for the conservation and effective management of such species, the Convention may benefit from a process to facilitate implementation and provide support to those Parties experiencing difficulties implementing the Convention. To initiate a discussion concerning the development of such a process within the Convention, this paper summarizes the processes used by MEAs and other relevant agreements to enhance implementation and compliance.

### **An Overview of the Compliance Mechanisms of Other Agreements**

2. MEAs and other agreements have developed a range of processes for addressing issues of implementation and compliance. This paper summarizes five types of these processes, frequently called “compliance mechanisms”. Most MEAs have adopted a single type of compliance mechanism. These processes, however, are not necessarily mutually exclusive. The Kyoto Protocol, for example, maintains a compliance mechanism that combines the first two processes described below.

#### *The “Carrots and Sticks” Approach*

3. Under the first type of process, a compliance body reviews issues of non-compliance and recommends action to assist the non-complying Party come into compliance, such as sending a mission to help the Party develop adequate legislation to implement the relevant agreement. If the non-compliance persists, the compliance body may issue a formal warning or recommend a suspension of benefits.

4. These processes begin when issues of non-compliance with the agreement’s provisions are brought to the attention of the Parties or the agreement’s secretariat. Depending on the agreement, a Party may self-report or another Party or the Secretariat may raise an issue of non-compliance. In each case, a sub-set of Parties hears the views of the Parties, including the Party alleged to be in non-compliance, and then determines what action should be taken to enhance implementation of the agreement. Typically, substantial efforts are taken to bring the Party into compliance through facilitative approaches. Only as a last resort do Parties recommend punitive measures, such as trade sanctions.

5. In the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Standing Committee, a sub-set of 19 Parties, addresses issues of non-compliance. Issues of non-compliance are brought to the attention of the Standing Committee by Parties or, more commonly, by the Secretariat. Issues of non-compliance cover a wide range of activities, including a failure to submit reports, failure to adopt adequate

implementing legislation, failure to implement CITES with respect to particular species, and other issues. See CITES Resolution Conf. 14.3, *CITES Compliance Procedures*.

6. Typically in CITES, the Secretariat is the first to become aware of non-compliance issues. When it does, the Secretariat assesses and communicates to the Party concerned information about that Party's non-compliance. The Secretariat also advises and assists the Party in complying with its obligations under the Convention and makes recommendations for achieving compliance.

7. If the matter cannot be resolved through the Secretariat, the Secretariat refers the matter to the Standing Committee. The Standing Committee assesses the compliance matter and, if it determines that a country is in non-compliance, it may recommend any of the following actions:

- a) provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
- b) request special reporting from the Party concerned;
- c) issue a written caution, requesting a response and offering assistance;
- d) recommend specific capacity-building actions to be undertaken by the Party concerned;
- e) provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;
- f) send a public notification of a compliance matter through the Secretariat to all Parties advising that compliance matters have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- g) issue a warning to the Party concerned that it is in non-compliance, e.g. in relation to national reporting and/or the National Legislation Project; and
- h) request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.

8. If the compliance matter remains unresolved and persistent and the Party shows no intention of achieving compliance, the Standing Committee may recommend that the Parties suspend trade with the non-complying Party in specimens of species included in the CITES Appendices.

9. Under the Montreal Protocol on Substances that Deplete the Ozone Layer, the Implementation Committee, a sub-set of ten Parties, addresses issues of non-compliance brought to its attention by the non-complying Party, another Party or the Secretariat. The Implementation Committee may make the following recommendations:

- a) provide appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training;
- b) issue warnings; and
- c) suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements.

10. The Montreal Protocol's Implementation Committee has recommended, as a first step, capacity-building support to a non-complying Party that has not, for example, submitted data on its production or consumption of ozone depleting substances. If the Party does not submit the relevant data, the Implementation Committee may recommend that a developing country Party lose access to funds from the Montreal Protocol's Multilateral Fund. Parties may also lose the ability to trade in ozone depleting substances. *See* Montreal Protocol, Annex IV, *Non-Compliance Procedure*.

11. Commentators have reported that the compliance mechanisms of CITES and the Montreal Protocol have been effective in some cases and less effective in others. With respect to the Montreal Protocol, Victor (1998) has stated that the Implementation Committee has applied the facilitative approach most frequently, but "it has been effective in its most difficult cases of non-compliance only because it has access to slightly 'harder' tools of conditionality," such as the loss of funds from the Multilateral Fund. Reeve (2002) has stated that the CITES non-compliance regime "has been remarkably effective against non-responsive countries with major implementation problems," but that it has been less effective in relation to failures to submit annual reports.

#### *The Carrots-Only Approach*

12. The second type of process is very similar to the first type of process, but it differs by precluding the use of punitive measures, such as trade sanctions. The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal provides an example. The Parties to the Basel Convention have established the Committee Administering the Mechanism for Promoting Implementation and Compliance. The Committee comprises 15 members, nominated by the Parties, who serve in their individual capacities. The Committee members are not required to work for the government. The Decision establishing the Committee specifically provides that the compliance mechanism "shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention". *See* Basel Convention, Decision BC-10/11. As such, the Committee may only recommend measures, such as capacity-building support, to facilitate compliance. The Basel Convention's compliance mechanism has reviewed ten submissions addressing failures to comply with reporting obligations. To date, the Basel Convention's compliance mechanism does not appear to have resulted in significant improvements in the implementation of reporting obligations.

13. In addition to reviewing specific submissions of non-compliance, the Basel Convention's Compliance Committee also has authority to review implementation issues more generally for the purpose of helping Parties implement their obligations. These issues, specified by the Parties, include ensuring the environmentally sound management and disposal of hazardous and other wastes; establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing; and monitoring, assessing, and facilitating reporting. Once the Committee reaches a conclusion or makes a recommendation, the Committee reports such results to the Conference of the Parties. If necessary, the Committee also makes suggestions about any additional work that may be required to resolve general issues of compliance and implementation.

### *The Effectiveness Approach*

14. The third type of process focuses on effectiveness of the measures implemented by a Party rather than compliance with the obligations of the agreement. The Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) illustrates this process. AEWA requires Parties to implement a range of conservation measures to protect 255 species of endangered migratory waterbird species throughout Europe, parts of Asia and Canada, the Middle East, and Africa. AEWA's Action Plan also requires Parties to implement measures relating to species and habitat conservation, management of human activities, research and monitoring, and education and information. Despite these requirements, populations of 41 per cent of the species covered by AEWA are declining. To help reverse these trends, the AEWA Parties established the Implementation Review Process (IRP) that focuses on preventing adverse effects or potential adverse effects on migratory waterbirds or their habitats resulting from human activities.

15. The process is initiated when the Secretariat becomes aware of an issue or a concerned Party submits a Possible Case Information Sheet to the AEWA Secretariat describing "adverse effects or potential adverse effects" to migratory waterbirds or their habitats as a result of human activities. Then, the AEWA Secretariat forwards the Possible Case Information Sheet to the AEWA Standing Committee. The Resolution itself does not describe a process for deciding whether to open a case. Based on current practice, the Secretariat forwards the Possible Case Information Sheet to the Technical Committee for advice on whether to open a case. The Standing Committee then determines whether to open the case or not. If the Standing Committee opens the case, the Standing Committee may send a mission, with the agreement from the Party concerned, to assess the impact of the activity at issue. Based on the report from the mission, the Standing Committee formulates a recommendation to the Party concerned about how to prevent or mitigate the impact at issue. *See* AEWA Resolution 4.6, *Establishment of an Implementation Review Process* (2008). Because only three cases have been initiated, insufficient information exists to determine the effectiveness of this process.

### *The Notice and Consultation Approach*

16. The fourth type of process is based on notification and consultation and is intended to avoid issues of non-compliance before they happen. The process included in the Agreement on Technical Barriers to Trade (TBT Agreement) of the World Trade Organization (WTO) exemplifies this approach. Within the WTO, developing countries have complained about the lack of information concerning technical regulations. Technical regulations establish product characteristics relating to the quality, shape, and size of a product, such as toxicity levels in electrical cables or energy efficiency requirements for appliances. Technical regulations may vary from country to country, making it difficult for producers to meet them if they are not adequately informed. They can also be discriminatory if they are designed to benefit domestic producers at the expense of foreign producers.

17. Due to these concerns, transparency became a central feature of the TBT Agreement. To ensure transparency, the TBT Agreement requires WTO members to notify other Members of draft technical regulations, which the WTO Secretariat circulates to all Members, and to establish a TBT enquiry point for communicating with members about technical regulations. When a WTO member has concerns about another member's technical regulation, it may seek consultations within the Committee on Technical Barriers to Trade (TBT Committee) and

make comments in writing. To enhance implementation of these transparency provisions, the WTO established the Technical Barriers to Trade Information Management System (TBT IMS), a publicly available database that contains information provided by WTO members about their technical regulations. See WTO, *TBT Information Management System*, <http://tbtims.wto.org/>). The TBT IMS includes each member's notifications of technical regulations (and any revisions to them), as well as specific trade concerns raised by members in the TBT Committee.

18. These transparency provisions have been critical to the success of the TBT Agreement in minimizing or eliminating conflicts. (Horn et al., 2012; European Commission 2012). The notifications allow WTO members to voice concerns at an early stage in the development of a technical regulation so that changes can be made. Early notification and public disclosure also provide information to exporters so that they can meet new requirements prior to their entry into force. Moreover, by bringing complaints to the TBT Committee, WTO members have a structured, formal, and non-adversarial process to resolve potential problems.

#### *The Peer Review Approach*

19. The fifth type of process is based on peer review, such as with the Universal Periodic Review (UPR). The UPR is a process, under the auspices of the UN Human Rights Council acting as the UPR Working Group, through which the human rights records of all UN Member States are reviewed every four years. The aim of this process is to improve human rights in all States and address human rights violations wherever they occur. Under the UPR, each State has the opportunity to declare the actions it has taken to improve human rights within its jurisdiction and to fulfil its human rights obligations. To date, all the human rights records of all 193 UN Member States have been reviewed. See UN General Assembly Resolution 60/251 (3 April 2006).

20. Each State review is assisted by groups of three States, known as "troikas", which serve as rapporteurs. The selection of the troikas for each State is done by drawing lots following elections for Council membership in the General Assembly. Each review is based on information from three sources: 1) information provided by the State under review, 2) information contained in the reports of independent human rights experts and groups, and 3) information from other stakeholders including national human rights institutions and non-governmental organizations. Reviews take place at meetings of the UPR Working Group through an interactive discussion between the State under review and other UN Member States. During this discussion, any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive discussion takes place in a smooth and orderly manner. The duration of the review was three hours for each country during the first round of reviews, but it is now three hours and thirty minutes. Other stakeholders, such as non-governmental organizations, may not participate in the interactive discussion, but they may attend the UPR Working Group sessions and may make statements at the regular session of the Human Rights Council when the outcome of the State reviews is considered.

21. Following the review by the Working Group, the troika prepares an "outcome report" with the involvement of the State under review and assistance from the Office of the High Commissioner for Human Rights. The outcome report provides a summary of the interactive discussion, including the questions, comments and recommendations made by States to the

State under review, as well as the responses of the reviewed State. The outcome report is then discussed during a meeting of the UPR Working Group, with 30 minutes allocated to adopt the report. The State under review has the opportunity to make preliminary comments on the recommendations, choosing either to accept or note them. Both accepted and noted recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements within the following two weeks. The report then must be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to Member and Observer States that may wish to express their opinion on the outcome of the review and to other stakeholders to make general comments.

22. The State has the primary responsibility to implement the recommendations contained in the final outcome report. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. During the second review, the State is expected to provide information on what they have been doing to implement the recommendations made during the first review as well as on any developments in the field of human rights. The international community will assist in implementing the recommendations and conclusions regarding capacity building and technical assistance, in consultation with the State under review. If necessary, the Council will decide on the measures where States are not cooperating.

23. Commentators have noted several positive aspects of the first round of UPR reviews. They note that States have been very engaged in the process, including at the Ministerial level, that the process has resulted in greater communication between Governments and non-State actors, and that the process has created a baseline set of documentation. In addition, the UPR has become an important tool for identifying areas where technical assistance and capacity building are needed and for incentivizing States to ratify human rights treaties. States have also accepted the majority of recommendations included in outcome reports. Whether the adherence to human rights norms by States has actually improved is perhaps too early to tell, however. (McMahon 2012; Domínguez-Redondo 2012).

### **Questions to Consider When Designing a Review Process for the Convention**

24. The CMS Parties must address several issues when designing a review process, including the following:

- 24.1 What will be the basic design type of the process and what action will trigger the process?
- 24.2 How many Parties should be included in the review committee?
- 24.3 For how long will members serve on the review process?
- 24.4 Will the review committee or the Parties have final authority to make recommendations to improve compliance?
- 24.5 Who may trigger or otherwise participate in the review process?

#### *Basic Design*

25. As noted above, MEAs and other agreements have taken different approaches to compliance processes. The approach chosen will determine whether the process (1) addresses

issues of non-compliance, as with the CITES, Montreal Protocol and Basel Convention processes, (2) addresses the effectiveness of implementation measures, like AEWA's International Review Process, (3) seeks to avoid non-compliance, as with the TBT Agreement's notification and consultation approach, or (4) combines elements of these different approaches, as with the UPR.

#### *Number of Parties*

26. MEAs and other agreements have not established a common number of members to participate in a review process, but each MEA reviewed requires balanced regional representation. In CITES, the 19 Members of the Standing Committee come from the six CITES geographic regions (Africa, Asia, Central and South America and the Caribbean, Europe, North America, and Oceania) based on the number of Parties from each region. Thus, a region with up to 15 Parties gets one representative on the Standing Committee, a region with 16 to 30 Parties gets two representatives, and so on. These representatives are nominated by the regions and elected by the Parties. In addition, the Depositary Government and the hosts of the previous and next meeting of the Conference of Parties are members of the Standing Committee (CITES Resolution Conf. 11.1 (Rev. CoP16)).

27. The Basel Convention's Compliance Committee consists of 15 members based on equitable geographical representation of the five regional groups of the United Nations (Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and Western Europe and Others). The Conference of the Parties nominates and elects three members from each region (Basel Convention, Decision VI/12).

28. The Montreal Protocol's Implementation Committee consists of ten Parties based on "equitable geographical distribution" (Montreal Protocol, Annex IV, Non-Compliance Procedure).

29. The TBT Committee includes all WTO Members.

30. The AEWA Standing Committee, which considers submissions under the Implementation Review Process, "shall consist of not more than seven Contracting Parties". Five of these seven Parties are appointed by the Meeting of the Parties based on balanced geographical distribution, reflecting two representatives from the Europe and Central Asia region, one representative from the Middle East and Northern Africa region, one representative from the Western and Central Africa region, and one representative from the Eastern and Southern Africa region. The remaining two members are the host country for the next session of the Meeting of the Parties and the Depositary Government (AEWA Resolution 2.6).

31. The UN Human Rights Council consists of 47 Member States, which are elected individually by secret ballot by the majority of the members of the UN General Assembly. The Council's membership is based on equitable geographical distribution, with representation distributed as follows among regional groups: Group of African States, thirteen members; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven (UN General Assembly Resolution 60/251 (3 April 2006)).

*Length of Term*

32. The Parties on the CITES Standing Committee serve for the period between two meetings of the Conference of the Parties, or roughly five to six years. Members of the AEWA Standing Committee serve for the period between meetings of the Meeting of the Parties, with the possibility of a second term, or roughly three to six years. The members of the Basel Convention Compliance Committee serve for the period between two meetings of the Conference of the Parties, or roughly four to five years. The Parties on the Montreal Protocol's Implementation Committee serve for two years but may be re-elected for another two-year term. The members of the UN Human Rights Council serve for a period of three years with the possibility of a second term.

*The Entity That Has Authority to Make Final Recommendations*

33. The agreements reviewed for this paper differ as to which entity has authority to make recommendations to the Party whose compliance is under review. In the Montreal Protocol, the Parties, at a meeting of the Parties, make final decisions based on recommendations of the Implementation Committee.

34. In contrast, the Basel Convention's compliance committee may recommend actions that a non-complying Party should take to come into compliance; further action by the Conference of the Parties is needed only after the compliance committee has failed to bring the non-complying Party into compliance. Similarly, both the CITES Standing Committee and AEWA Standing Committee have authority to make final recommendations to the Party under review. Because the CITES and AEWA Parties meet as a Conference of the Parties roughly every three years, delegating this responsibility to these Standing Committees ensures that non-compliance issues get addressed as quickly as possible. The Human Rights Council also makes recommendations without referring those recommendations to the UN General Assembly.

*Triggering the Compliance Mechanism*

35. The compliance processes reviewed for this paper take a variety of approaches to initiating a compliance matter. The CITES, Montreal Protocol, and Basel Convention processes all allow a Party to self-report or another Party or the Secretariat to raise an issue of compliance. The TBT's Agreement's process is a discussion among WTO Members.

36. Other mechanisms, however, specifically incorporate non-governmental organizations (NGOs) and other non-State actors into the process. The AEWA International Review Process can be triggered by the submission of an NGO. In fact, all three cases to date have been submitted by NGOs. The UPR also allows NGOs, human rights experts, and other individuals to submit information and make general statements when the outcome report is being considered.

**Initial Thoughts for a CMS Review Process***Basic Design*

37. The nature of the Convention does not lend itself well to the "carrots and sticks" approach used by CITES and the Montreal Protocol. Unlike those two agreements, CMS does not have the type of trade benefits or financial resources needed to make such an approach

effective. A purely facilitative approach, such as the Basel Convention's compliance mechanism, also appears inadequate when considered in light of the common challenges to migratory species conservation that many CMS Parties face. For example, the Secretariat noted at the 10<sup>th</sup> Meeting of the Conference of the Parties that 92 per cent of Parties responding to a questionnaire reported habitat destruction as an obstacle to migration for Appendix I birds, with 55 per cent reporting pollution as obstacle to migration. Bycatch and electrocution were each cited by 45 per cent of responding Parties (UNEP/CMS/CONF.10.11, Annex I). Given these common challenges, an approach based on peer review may allow for an analysis of the specific challenges facing an individual Party and help other Parties meet similar challenges.

38. Other factors also suggest that a peer review approach may work best for CMS. First, Article III, paragraph 4(a), of the Convention provides that Parties "shall endeavour . . . to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction". Parties may implement such an obligation in a number of ways. In addition, a Party may implement those obligations differently for different species. A peer review process would allow for the type of discussion necessary to draw out the specific ways a Party is, in fact, implementing the obligation. Other Parties may also benefit from that discussion.

39. Second, a peer review approach may help Parties learn which conservation and management approaches are more effective than others. The goal of any MEA should be to achieve its conservation objectives. Compliance, while obviously important to the integrity of the MEA, does not necessarily mean that the MEA's conservation objectives are being met. This seems particularly true in the context of conservation and management of migratory species. For example, even if all Parties implement the Convention's prohibition against taking of an Appendix I migratory species and protect some of that species' important habitat, the species may still decline due to other threats or obstacles. A peer review process will help elucidate the reasons for the continuing decline of that species and recommendations to reverse the decline can be made to an individual Party or to a larger group of Parties.

40. This paper suggests that a peer review regime modeled on the UPR is most appropriate for CMS. However, CMS does not have the resources to review implementation of each Party. Thus, this paper suggests a hybrid approach in which an issue of non-compliance or lack of effectiveness of implementation (collectively referred to as a "compliance matter") is brought to the attention of the Secretariat. If the compliance matter cannot be resolved through communication between the Secretariat and the Party concerned, then the compliance matter will be referred to the Standing Committee for an interactive dialogue. Prior to the interactive dialogue, which would take place at a meeting of the Standing Committee, the Secretariat would circulate the information that led to the compliance matter, as well as any response of the Party concerned. Other Parties would have an opportunity to make comments and write questions to be addressed by the Parties. At the next meeting of the Standing Committee, the members of the Standing Committee and the Party concerned would participate in an interactive dialogue with the goal of recommending actions for the Party concerned to implement. The Secretariat would prepare a report based on that discussion and the Party concerned would report to the next Standing Committee meeting on its efforts to implement the agreed recommendations.

*Number of Parties on the Compliance Committee*

41. The 14 Parties of the Standing Committee, based on an equitable geographic distribution, represent a reasonable number of Parties to serve as the compliance committee. It has equitable geographic distribution (three Parties each from the Africa and Europe regions; two Parties each from the Asia and South and Central America and the Caribbean regions; and one Party each from Oceania and North America (vacant), as well as the Depositary and Host Government of the Secretariat; and the Host Government of the next and previous meetings of the Conference of the Parties.

*Length of Term*

42. Members of the Standing Committee serve for a period of approximately three years (the period between two meetings of the Conference of the Parties), with the possibility of serving a second term. This is consistent with some other compliance processes and could form the basis for the CMS review process.

*The Entity That Has Authority to Make Final Recommendations*

43. Because of the three-year period between meetings of the Conference of the Parties, it may be more appropriate for the Standing Committee, which meets annually, to be given the authority to make final recommendations.

*Triggering the Review Process*

44. A Party should be allowed to self-report a compliance matter. In addition, another Party or the Secretariat should be allowed to raise an issue of compliance. Given the importance of NGOs to this Convention, particularly in partnerships, the Parties should also consider allowing NGOs to submit compliance matters, as they are allowed to do in AEWA and other compliance processes. In any event, all Parties and interested stakeholders, including NGOs, should be allowed to make comments and pose questions to the Party concerned as part of the interactive dialogue.

**Action requested:**

The Conference of the Parties is requested to:

- Adopt the resolution included in the Annex establishing a process for developing a review process for the Convention.

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## DRAFT RESOLUTION

### ENHANCING THE EFFECTIVENESS OF THE CONVENTION THROUGH A PROCESS TO REVIEW IMPLEMENTATION

*Recalling* that the United Nations Environment Programme, in its *Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements* (2002), has identified “[s]trengthening of compliance with multilateral environmental agreements . . . as a key issue”;

*Noting* that most major multilateral environmental agreements have established a process for facilitating implementation and providing support to those Parties experiencing difficulties with implementation;

*Aware* that two agreements within the CMS Family, the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), already have processes for reviewing the effectiveness of implementation measures (AEWA Resolution 4.6, *Establishment of an Implementation Review Process* (2008), ACCOBAMS Resolution 5.4, *ACCOBAMS Follow-up Procedure* (2013));

*Recognizing* that both compliance with the Convention’s obligations and the effectiveness of implementation measures are critical to the conservation and management of migratory species;

*Recalling* Article VII, paragraph 5, of the Convention, which provides that “the Conference of the Parties shall review the implementation of this Convention” and may, in particular, “make recommendations to the Parties for improving the effectiveness of this Convention”;

*Recalling* Resolution 10.9, Activity 16, of the Future Structure and Strategies for CMS, which establishes a medium-term priority (by COP12–2017) to “improve mechanisms to measure implementation of CMS and its Family . . . and identification of gaps and propose measures to close these gaps”; and

*Recalling* Article IX, paragraph 4, of the Convention, which directs the Secretariat “to invite the attention of the Conference of the Parties to any matter pertaining to the objectives of this Convention”;

#### *The Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals*

1. *Launches* an intersessional process to explore possibilities for strengthening implementation of the Convention through the development of a review process;
2. *Establishes* a Working Group to draft a review process for implementation of the Convention to be considered at the 12<sup>th</sup> Meeting of the Conference of the Parties;

3. *Instructs* the Working Group to develop a proposal for a process for review of the implementation of the Convention with the following objectives:
  - 3.1 To facilitate and promote implementation of the Convention;
  - 3.2 To provide support to Parties that are experiencing challenges implementing the Convention;
  - 3.3 To assist Parties to comply with their obligations under the Convention; and
  - 3.4 To improve the effectiveness of measures to implement the Convention;
4. *Decides* that the Working Group shall be composed of:
  - 4.1 Parties to the Convention on the basis of the same regions as the Standing Committee, with a maximum of two representatives per region. The regional groups will select representatives with relevant experience at the Eleventh Meeting of the Conference of the Parties; and
  - 4.2 The Chair and the Vice-Chair of the Standing Committee;
5. *Instructs* the chair of the Working Group to seek relevant inputs and expertise from observer organizations.
6. *Instructs* the Secretariat to support the Working Group on the development of a review process for the Convention;
7. *Instructs* the Chair of the Working Group to report to the Standing Committee on its progress at the 44<sup>th</sup> and 45<sup>th</sup> Meetings of the Standing Committee;
8. *Invites* the Standing Committee, at its 44<sup>th</sup> and 45<sup>th</sup> Meetings, to review the report of the Working Group and provide the Working Group with advice and recommendations for developing the process within one month after the relevant Standing Committee meeting;
9. *Requests* UNEP, Parties and other donors to provide financial assistance to support the development of the review process; and
10. *Requests* the Secretariat, where possible, to reduce costs by convening meetings of the Working Group in the most cost-effective way.