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Revised Draft Text of a Memorandum of Understanding for Dugongs – For Consideration at the Second Meeting of Dugong Range States

General Comment

In reviewing the draft proposed elements of a possible memorandum of understanding for dugongs, and the outcomes of the first meeting of range states, including the more detailed discussions in the three breakout groups, it may be helpful in moving forward if the second draft is based on the following:

- amending the first draft taking into account the outcomes and discussions of the first meeting; and
- providing a more concise and focused draft for consideration by range states that takes into account both the model of the Indian Ocean and Southeast Asian Memorandum of Understanding for Marine Turtles, as well as other memorandum done under the auspices of the Convention for Migratory Species (CMS).

Attachment A contains an extract of the relevant parts of the meeting report of the first meeting on the draft memorandum along with an explanation as to how each point has been taken into account.

Attachment B is a revised second draft for consideration by participants at the second meeting of dugong range states.

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Attachment A

Extract of the First Meeting Report (in italics) with Commentary

1. *The meeting invited comments on the sample draft text of a memorandum of understanding. It was agreed that all references in the text to “arrangement” would be amended to read “memorandum of understanding”, and that consideration be given to including some background information on the species, perhaps as an annex.*

“Arrangement” amended to read “memorandum of understanding”

The consideration of including background material should occur at the second meeting.

2. *Questions were raised about the definition of the term “Range State” which, it was noted, had also arisen in the context of the IOSEA Marine Turtle MoU. It was pointed out that as there were only passing references in the text to the term “Range State” -- none of them substantive -- the term need not be defined explicitly in the text, and any existing references could be amended.*

Range state not explicitly defined and in line with memorandum of understanding other than the IOSEA Memorandum, it is proposed that the definitions section be deleted – especially as many are already defined in CMS.

3. *It was agreed to insert a reference to responsible fisheries in the sixth preambular paragraph of the draft MoU text.*

In line with the general comment above that it may be more helpful to facilitate finalization of the proposed dugong memorandum, this preambular paragraph has been deleted. However a reference to responsible fisheries has been included in the revised third preambular paragraph.

4. *There was a general discussion of the issue of subsistence and sustainable levels of harvest of dugong, and any references to this issue in the draft MoU. Concerns were raised about the implications of such references in relation to existing national legislation, which in some countries, prohibited any harvest of dugong. It was agreed that the text in 3a) could be clarified by adding, at the end, the words: “in those States where it is allowed”. The same clarification would be added after “management of subsistence harvesting” in 3b (and elsewhere in the text, where relevant).*

The descriptor “legal” has been added to references of subsistence harvest.

5. *The meeting sought to clarify the potential geographic scope of the memorandum of understanding, noting the importance of involving countries throughout the range of the species, as well as other countries that are relevant (eg. in terms of possible impacts). In*

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particular, justification was given for extending the coverage eastward to include relevant Pacific Island States, whilst taking account of other initiatives being undertaken through SPREP. The representative of Papua New Guinea indicated that his country would be comfortable working through both instruments. Without wishing to preclude further discussion of the geographic scope, in the absence of some interested countries, two possible formulations for the geographic scope were suggested:

- *“Region means all of the waters and coastal States of the Indian Ocean, East Asia, Pacific Ocean, as well as their adjacent seas, [within the range of dugong] or [bounded by latitudes 27 degrees north and south of the equator].” (This issue remained unresolved and will require further consideration at the next meeting).*

Further discussion of this point to occur before any changes to be made to the draft memorandum.

6. *Questions were raised as to the implications for possible amendments needed to domestic legislation and regulations to be able to implement the MoU. It was noted that the draft MoU text provided for review, formulate, revise and harmonise national legislation, as necessary. In the course of the discussion, it was suggested that the Conservation and Management Plan reflect regional differences that clearly exist.*

No changes proposed

7. *The question was raised as to whether a Memorandum of Understanding should be developed with a view to stimulating national capacity and activities where few or none currently exist, or whether the starting point should be that countries first develop capacity at sub-regional levels. Views in favour of both approaches were expressed. Cambodia suggested that national representatives be called on to present their national perspectives, and that regional bodies be invited to future meetings to contribute their expertise and share valuable experience.*

No drafting changes proposed.

8. *It was noted that various gatherings over the past three decades had not yielded much progress for dugong conservation in terms of international collaboration, and that a formal MoU might stimulate greater cooperation where other initiatives had not succeeded to date. It was noted also that resource limitations may lead to disappointment over differences between the aspirations of any instrument and delivery, in terms of actions on the ground. Nevertheless, it was pointed out that for any international instrument, a certain number of years are needed before they become fully operational.*

No drafting changes proposed

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9. *It was recognised that MoUs reflect the aspirations of Signatory States. The meeting noted that sometimes these aspirations do not translate to effective on-ground actions. The meeting was of the view that there needed to be a strong focus on ensuring that MoUs deliver on-ground conservation actions.*

No drafting changes proposed

10. *The future status of the Memorandum of Understanding was raised, with reference to paragraph 4d) of the basic principles; with reservations raised about the possibility of the instrument being transformed at some point into a legally-binding instrument. It was agreed that the reference to possible replacement of the MoU by a legally-binding treaty be deleted.*

Reference deleted

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Attachment B

MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION AND MANAGEMENT OF DUGONGS AND THEIR HABITATS THROUGHOUT THEIR RANGE

The Signatory States,

Background

Aware that the populations of dugongs are seriously threatened throughout the range of the species;

Recognising that dugongs migrate and disperse over vast distances, which makes their survival dependent on their conservation over a wide area and in a wide range of marine and coastal habitats;

Acknowledging that human activities that may threaten dugong populations directly or indirectly include destruction or modification of habitat, coastal development, pollution, fishing activities, vessel strikes, unsustainable hunting or poaching, mariculture and tourism;

Concerned also by the harm caused to dugongs by trawlers and other vessels of distant water fishing countries, while recognizing that some fishing activities are conducted responsibly;

Acknowledging their shared responsibility for the conservation and management of dugong populations and their habitats;

Recognising the desirability of involving other States whose nationals or vessels conduct activities that may affect dugongs of the region, as well as States that may be in a position to contribute resources or expertise that may promote the implementation of this Memorandum of Understanding;

Noting that dugongs have a priority for conservation action through their listing in the respective appendices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

Recalling that Article IV of the CMS obliges Parties that are Range States of migratory species listed in Appendix II to endeavor to conclude agreements where these would benefit the species;

Recalling also Resolution 2.6 of the Second Meeting of the CMS Conference of the Parties which recommended that Parties implement where appropriate Article IV, paragraph 4 of the CMS, within the spirit of the Convention through the use of instruments such as memorandum of understanding, as well as agreements in accordance with Article V; and

Further noting recommendation 7.5 and resolution 8.5 of the Seventh and Eighth Meetings of the CMS Conferences of the Parties called on Range States of dugongs to cooperate among

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themselves, as appropriate, and participate actively to develop and conclude a Memorandum of Understanding and a Conservation and Management Plan for the conservation and management of dugongs throughout the species' Range;

Express their desire to work closely together to improve the conservation status of dugongs and the habitats on which they depend. To that end, the Signatory States to this Memorandum of Understanding, in the spirit of co-operation, have reached the following understandings. They will:

1. Endeavor to co-operate closely in order to restore, or where appropriate maintain, a favourable conservation status for dugongs and the habitats on which they depend, including where appropriate, taking into account subsistence harvest of dugongs in those States where it is undertaken on a legal and sustainable basis.
2. Consider ratifying or acceding to those international instruments most relevant to the conservation of dugongs and their habitat, in order to enhance the legal protection of the species in the region.
3. Make every effort to review, formulate, revise and harmonise national legislation relevant to the conservation of dugongs and their habitats, as necessary, and make every effort to implement such legislation effectively.
4. Implement, subject to availability of necessary resources, the Conservation and Management Plan annexed to this Memorandum of Understanding. The Conservation and Management Plan will address: (a) species conservation and protection, (b) habitat protection and management, (c) management of legal subsistence harvesting (in those States where it occurs), (d) reduction of threats, (e) research and education, (f) information exchange, (g) capacity building and (h) international cooperation.
5. Facilitate the rapid exchange of scientific, technical and legal information necessary to coordinate conservation measures and to cooperate with recognised experts and cooperating organisations so as to facilitate the work conducted in relation to the Conservation and Management Plan.
6. Request that an appropriate organisation or institution, decided by consensus of the Signatory States, undertake secretariat duties to assist in the administration and implementation of this Memorandum of Understanding by communicating with, reporting on and facilitating activities between and among Signatory States and performing such other functions as may be assigned by the Signatory States, such as convening meetings.
7. Assess the implementation of this Memorandum of Understanding, including the Conservation and Management Plan, at regular meetings to be attended by representatives of each of the Signatory States concerned, and persons or organisations technically qualified in dugong conservation.
8. Designate a competent national authority to serve as a focal point for communication among Signatory States and for activities under this Memorandum of Understanding, and communicate the complete contact details of this authority (and any changes thereto) to the Secretariat.

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9. Provide to the Secretariat a regular report on their implementation of this Memorandum of Understanding, the frequency of which will be determined at the first meeting of the Signatory States. The Secretariat will transmit to all of the Signatory States all of the national reports it receives and prepare a periodic review of progress on the implementation of the Conservation and Management Plan.
10. Assess at the first meeting of Signatory States, the need for and possibilities of obtaining financial resources, as well as the establishment of a special fund for purposes such as:
 - a) Contributing towards any expenses required to operate the Secretariat and activities carried out under this Memorandum of Understanding; and
 - b) Assisting the Signatory States to carry out their responsibilities under this Memorandum of Understanding.

Basic Principles

11. This Memorandum of Understanding is not legally binding.
12. The Annex to this Memorandum of Understanding forms an integral part thereof.
13. This Memorandum of Understanding will take effect when a minimum of **XXX** States have signed it. It will take effect for each subsequent Signatory State on the date of signature. It will cease to have effect for a State upon the date of written notice to all signatories of that State's intention to no longer apply its provisions.
14. The Memorandum of Understanding, including the Conservation and Management Plan, may be altered by a consensus of all of the Signatory States.
15. Signatory States acknowledge that they may implement stronger measures domestically than those specified in the Conservation and Management Plan.
16. The original text of the Memorandum of Understanding in the English language will be deposited with the CMS Secretariat, which will act as the depositary and will keep track of the signatory status of this Memorandum of Understanding. The working language for all matters related to this Memorandum of Understanding will be English.

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