

**2<sup>nd</sup> Meeting of the Working Group on the Development of a Review  
Process under the Convention on Migratory Species**  
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**OPTIONS FOR ENHANCING THE EFFECTIVENESS OF THE CONVENTION ON  
MIGRATORY SPECIES THROUGH A PROCESS TO REVIEW IMPLEMENTATION**

*(prepared by the Secretariat)*

## OPTIONS FOR ENHANCING THE EFFECTIVENESS OF THE CONVENTION ON MIGRATORY SPECIES THROUGH A PROCESS TO REVIEW IMPLEMENTATION

In line with its [Terms of reference](#), adopted by the Standing Committee at its 44<sup>th</sup> meeting (Bonn, October 2015), the *Working Group on the Development of a Review Process under the Convention on Migratory Species* (the 'Working Group') at its first meeting compared the review processes and experiences of various multilateral environmental agreements (MEAs) and collected best practices and lessons learned. These MEAs were the CMS African-Eurasian Waterbird Agreement (AEWA), the CMS Agreement on the Conservation of Cetaceans in the Black Sea Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), the Cartagena and Nagoya Protocols of the Convention on Biological Diversity (CBD), the Bern Convention, the Ramsar Convention, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Aarhus Convention, and the United Nations Framework Convention on Climate Change (UNFCCC), including its Kyoto Protocol.

The discussions and outcomes of the first meeting have been captured in the *Meeting report* ([UNEP/CMS/Rev.Proc.1/Doc.02](#)) and the *Best practices and lessons learned from other review processes* ([UNEP/CMS/Rev.Proc.1/Doc.01](#)). The Working Group also discussed what parts of the instrument and its resolutions be part of the review process, which is captured in the document *CMS obligations for possible review* ([UNEP/CMS/Rev.Proc.1/Doc.03](#)).

### ELEMENTS OF A REVIEW PROCESS

Based on the assessments of and experiences with review processes of other MEAs, the Working Group has arrived at the common understanding that any review process for CMS should contain some fundamental elements. To enable fulfilling its mandate, the Working Group requested the Secretariat to prepare options for a CMS review process for consideration at its second meeting including: determination of what parts of the instrument and its resolutions be part of the review process; cost analyses; and financial and institutional implications for CMS.

As requested, the Secretariat prepared three options containing the same fundamental elements considered as essential by the Working Group. The table below sets out which fundamental elements should be contained in any option, as well as three further options, called 'CITES' option, 'AEWA' option, and 'Aarhus' option, in reference to their main features and to enable their easy differentiation.

Through the Terms of reference, the Working Group had also been requested to consider a 'Zero Option', i.e. the maintenance of the status quo in CMS without a review process. The meeting noted that there was no other biodiversity-related MEA that did not have a review process in place and raised the question on whether it was possible for CMS not to have a review process. The 'Zero option' remains as one of the options to be considered.

<b>General principles</b>	<ul style="list-style-type: none"> <li>a) A supportive and non-adversarial approach is taken towards implementation and compliance matters, with the aim of ensuring long-term compliance.</li> <li>b) Implementation and compliance matters are handled as quickly as possible. Implementation and compliance measures are applied in a fair, consistent and transparent manner.</li> <li>c) Generally, findings, reports and communications in compliance matters are not treated confidentially.</li> </ul>
<b>Scope of review</b>	Any option: All legally binding obligations, including that of reporting, as set out in Annex I.
<b>Two types of review</b>	<ul style="list-style-type: none"> <li>1) Review of National Reports: Party-specific review based on National Reports submitted by Parties (as e.g. practiced in CITES, CBD, UNFCCC)</li> <li>2) Ad-hoc review: A case-filing system, based on information submitted when a matter of non-implementation arises (as e.g. practiced in AEWA, Ramsar and Aarhus Conventions)</li> </ul>
<b>Initiators of reviews</b>	1) Review of National Reports:

	<ul style="list-style-type: none"> <li>• Any option: The Secretariat assesses the National Reports and submits a matter of non-implementation to the Standing Committee for further recommendations (as e.g. practiced in CITES or Bern Convention).</li> </ul> <p>2) Ad-hoc review:</p> <ul style="list-style-type: none"> <li>• Any option: Self-reporting by Party; Party-on-Party reporting</li> <li>• 'CITES' option: Self-reporting by Party; Party-on-Party reporting; Secretariat reporting.</li> <li>• 'AEWA' option: Anyone can make a written submission in an agreed template. Cases are filtered by the Secretariat and/or the Intersessional Committee of the Scientific Council, based on minimum thresholds.</li> <li>• 'Aarhus' option: Parties, members of the public, the Secretariat and the COP. Cases are filtered by the Secretariat and/or the Intersessional Committee of the Scientific Council, based on minimum thresholds.</li> </ul>
<b>Information base</b>	<p>1) Review of National Reports</p> <ul style="list-style-type: none"> <li>• Any option: National Reports.</li> </ul> <p>2) Ad-hoc review</p> <ul style="list-style-type: none"> <li>• Any option: National Reports.</li> <li>• 'CITES' option: Also legislative texts, special reports and responses to information requests from any source.</li> <li>• 'AEWA' option: Any information elucidating non-implementation.</li> <li>• 'Aarhus' option: Any information elucidating non-implementation.</li> </ul>
<b>Bodies of review</b>	<p>1) Review of National Reports</p> <ul style="list-style-type: none"> <li>• Any option: The Standing Committee.</li> </ul> <p>2) Ad-hoc review</p> <ul style="list-style-type: none"> <li>• Any option: The Standing Committee.</li> <li>• 'CITES' option: The Conference of Parties.</li> <li>• 'AEWA' option: The Intersessional Committee of the Scientific Council followed by the Standing Committee.</li> <li>• 'Aarhus' option: A Subcommittee on implementation and compliance, comprising independent experts.</li> </ul>
<b>Basic mechanics of review</b>	<p>Review of National Reports and Ad-hoc review:</p> <ul style="list-style-type: none"> <li>• Any option: The Secretariat consults with the Party concerned on remedial actions. If no actions are taken by the Party concerned within a reasonable time limit, the Standing Committee may recommend any of the <b>Measures to achieve implementation and compliance</b> set out below.</li> </ul>
<b>Measures to achieve implementation and compliance</b>	<p>Where a Party has not taken remedial measures, following its identification of non-implementation and non-compliance any of the following measures may be recommended by the review body (as practiced by CITES).</p> <p>1) and 2) Review of National Reports and Ad-hoc review:</p> <ul style="list-style-type: none"> <li>• Any option:             <ol style="list-style-type: none"> <li>a) provide further advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;</li> <li>b) request special reporting from the Party concerned;</li> <li>c) issue a written caution, requesting a response and offering assistance;</li> <li>d) send a public notification of a compliance matter through the Secretariat to all Parties advising that compliance matters have been brought to the</li> </ol> </li> </ul>

	<p>attention of a Party and that, up to that time, there has been no satisfactory response or action;</p> <p>e) issue a warning to the Party concerned that it is in non-compliance; and</p> <p>f) 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.</p> <ul style="list-style-type: none"> <li>• ‘CITES’, ‘AEWA’, ‘Aarhus’ options:</li> </ul> <p>a) provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned.</p>
<p><b>Cost analyses and institutional implications</b></p>	<p>1) Review of National Reports and 2) Ad-hoc review:</p> <ul style="list-style-type: none"> <li>• Any option: Basic costs can be covered through the core budget of the Convention without the need for additional funds. Additional costs may arise if the review body would need to meet in addition to its regular meetings.</li> <li>• ‘CITES’, ‘AEWA’, ‘Aarhus’ options: Additional costs may arise depending on the need for in-country missions (Euro 20,000), which could be raised from voluntary contributions.</li> </ul>

## ANNEX I

### Article III

4. Parties that are Range States of a migratory species listed in Appendix I **shall** endeavour:
  - a) 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;
  - b) to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species; and
  - c) to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species.
  
5. Parties that are Range States of a migratory species listed in Appendix I **shall** prohibit the taking of animals belonging to such species. Exceptions may be made to this prohibition only if:
  - a) the taking is for scientific purposes;
  - b) the taking is for the purpose of enhancing the propagation or survival of the affected species;
  - c) the taking is to accommodate the needs of traditional subsistence users of such species; or
  - d) extraordinary circumstances so require; provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.
  
7. The Parties **shall** as soon as possible inform the Secretariat of any exceptions made pursuant to paragraph 5 of this Article.

### Article VI

The Parties **shall** keep the Secretariat informed in regard to which of the migratory species listed in Appendices I and II they consider themselves to be Range States, including provision of information on their flag vessels engaged outside national jurisdictional limits in taking the migratory species concerned and, where possible, future plans in respect of such taking.

### Article VII

4. [...] Each Party **shall** contribute to the budget according to a scale agreed by the COP.

### Article VI

The Parties which are Range States for migratory species listed in Appendix I or Appendix II **should** inform the Conference of the Parties through the Secretariat, at least six months prior to each ordinary meeting of the Conference, on measures that they are taking to implement the provisions of this Convention for these species.