

CONVENTION ON MIGRATORY SPECIES

MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS

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FIRST MEETING OF THE SIGNATORIES TO THE MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS
Bonn, Germany, 24-27 September 2012

REPORT OF THE MEETING

Agenda Item 1: Opening of the Meeting

1. Ms. Elizabeth Maruma Mrema (Acting Executive Secretary, UNEP/CMS) called the Meeting to order. As this was the First Meeting of the Signatories to the Memorandum of Understanding (MoU), she said that the Secretariat would preside over the opening items of the Agenda until officers were elected.

2. Ms. Mrema thanked the Government of Germany for its hospitality. Germany's voluntary contribution, along with those from Australia, the European Commission, Monaco and the USA, had made the Meeting and initial actions under the MoU possible. She welcomed all the participants to the Meeting. List of Participants annex to this report.

Presentation by Ms. Sonja Fordham (Shark Advocates International)

3. Ms. Fordham summarized the range of actions that had taken place or were being implemented regarding the management of sharks both at a national and international level. The slides accompanying Ms. Fordham's presentation can be found on the Sharks MoU website.

Agenda Item 2: Rules of Procedure

4. Ms. Mrema introduced Doc.2/Rev.1: Provisional Rules of Procedure (RoP) for the Meeting. As the document had been available online for some time, she proposed not to go through it line by line. The Rules of Procedure reflected the relevant sections of the MoU, namely paragraphs 18, 19 and 21, but provided more detail on issues where the MoU itself was silent, such as how to amend the MoU text and its Annexes. The draft was otherwise based on the Rules of Procedure used by AEWA, which in turn was based on those adopted by CMS.

5. Key issues to be resolved included the frequency of Meetings of the Signatories (RoP 4, MoU paragraph 19); the admission of observers to Meetings (RoP 7, MoU paragraph 21); procedures for the submission of amendments to the MoU and the Annex (RoP 35) where it was proposed that there should be a 150-day deadline for amendments to the MoU and its Annexes and a 60-day deadline for policy proposals; and decision-making processes

(i.e. by voting or through consensus) (RoP 39-51, MoU paragraph 18). One amendment had been made to the original Document and this concerned Rule 40 where the term “simple majority” had been replaced by “two-thirds majority”.

6. Mr. Gerhard Adams (Germany) speaking on behalf of the European Union (EU) said that he welcomed the document and felt that the Rules of Procedure were generally acceptable but some points would have to be discussed in greater detail in the Working Group. Ms. Mrema suggested that the Rules of Procedure be provisionally adopted before they were examined in closer detail prior to being adopted on the final day.

7. Ms. Shannon Dionne (USA) said that the Signatories had yet to address a number of important issues as highlighted by the Secretariat. She questioned whether using as a basis the Rules of Procedure of AEWA, a legally binding agreement, was appropriate for a non-binding MoU. An alternative would be to use the Rules of Procedure of the parent Convention, as all Signatories to the MoU (other than the USA) were Party to CMS, but this was not the case with AEWA. The USA had a number of detailed comments to make on the Rules of Procedure but thought that the Working Group rather than the Plenary was the most suitable forum to raise them. The priority for the Meeting was to conclude the Conservation Plan.

8. Mr. Adams said that his preferred way forward was to use the draft Rules of Procedure as presented in Doc.2/Rev.1 as he had not had the chance to examine the CMS Rules of Procedure. Mr. Asis Perez (Philippines) supported Germany’s proposal, pointing out that the Rules of Procedure would be discussed at Agenda Item 10, meaning that some interim solution was needed to cover the intervening items of the agenda. The USA agreed that the draft Rules of Procedure be used on the understanding that the Meeting would operate by consensus.

9. The draft Rules of Procedure were later considered by the Working Group on Administrative and Budgetary Issues, established under Agenda Item 10. One of the major points raised, concerned voting, namely which issues would be decided by voting and which by consensus. However, neither this group, nor the final plenary were able to finalise the document. Therefore, the plenary agreed to establish an inter-sessional working group to work by electronic means to further develop the Rules of Procedure. The USA, the European Union and Australia all expressed interest to be in this working group, which would also consider the other unresolved issue, the procedure for admitting cooperating partners (see Agenda Item 6). After such consultations, these documents could be finalized by the Secretariat and submitted to the next Meeting of the Signatories for consideration.

10. The draft Rules of Procedure as presented were provisionally adopted for the First Meeting. As definitive agreement on the Rules of Procedure could not be reached, an inter-sessional working group to further develop the Rules of Procedure was established.

Agenda Item 3: Election of Officers

11. Ms. Mrema presided over the election of the Chair and Vice-Chair.

12. For the post of Chair, Mr. Fernando Spina (Italy) was proposed by Ms. Dionne (United States of America), seconded by Mr. Nana Kofi Adu-Nsiah (Ghana). As there were no other nominations, Mr. Spina was declared elected.

13. For the post of Vice-Chair, Ms. Narelle Montgomery (Australia) was nominated by Mr. Adams (Germany on behalf of the EU), supported by both Ghana and Chile. Ms. Montgomery was similarly declared elected unopposed.

14. Mr. Spina assumed the chair and thanked the Meeting for the expression of confidence. He highlighted the vital role of sharks in ecosystems and their vulnerability towards human activities and, that it was important to work towards sustainable management of the species.

Agenda Item 4: Agenda and Meeting Schedule

15. The Chair introduced Doc.4.1 the Provisional Agenda and List of Documents and Doc.4.2, the Provisional Annotated Agenda and Meeting Schedule and asked for comments.

16. The USA said that it had detailed comments on the Advisory Committee and the procedure for adding species to the Annex (Agenda Items 8 and 11) and sought clarification that these issues would be dealt with in the Working Group. The Chair however felt that the issues were of such importance that they should also be raised in Plenary.

17. As there were no more comments from the floor, the Agenda was adopted.

Agenda Item 5: Credentials Committee

18. The Chair called for the establishment of a Credentials Committee with regional representation. The following countries were elected to the Committee: Congo (Africa); the Philippines (Asia); USA (North America); Germany (Europe); Nauru (Oceania); and Costa Rica (South and Central America and the Caribbean). Administrative support would be provided by the Secretariat.

19. Ms. Cheri McCarty (USA) presented an initial report to Plenary on the second day, informing the Meeting that the Committee had examined seventeen sets of credentials from the eighteen signatories present. The credentials presented by the following countries were found to be in order: Australia, Chile, Congo, Costa Rica, the European Union, Germany, Italy, Kenya, Monaco, Nauru, the Netherlands, the Philippines, Romania, Senegal, South Africa, the United Kingdom and the USA. It was noted however that the documents presented by Chile, Italy and the USA were copies and the originals should be sent to the Secretariat within a month. No credentials had been received from Ghana.

20. On the third day, Ms. McCarty reported that the original version of Italy's credentials had been received.

Agenda Item 6: Admission of Observers (including Cooperating Partners)

21. Ms. Andrea Pauly (UNEP/CMS) introduced Doc.6.1 on the admission of observers. The observers were listed separately on the participants' list. Ms. Margi Prideaux (Migratory Wildlife Network) was participating in the meeting via a Skype connection.

22. Ms. Pauly introduced Doc.6.2 on cooperating partners, and noted that paragraph 30 of the MoU which dealt with them was silent as regards the procedure for authorizing them. She presented two possible options and reported that a number of NGOs had already asked to be accorded this status (the applications from the Humane Society International (Australia) and the Humane Society International (USA) were annexed to Doc.6.2); other candidates were IFAW, Project AWARE Foundation and the German Elasmobranch Society (D.E.G.).

23. The first option would be to accept all requests automatically, while the second would accept non-Range States but require the approval of the Signatories in the case of other entities.

24. Ms. Pauly briefly described the role of cooperating partners, which included general support of the aims of the MoU, developing joint work programmes, participating in meetings and presenting reports of activities and research. The Meeting was asked to decide which procedure to adopt and to consider the applications received.

25. Ms. Gina Ciselle Cuza Jones (Costa Rica) and Mr. Perez (Philippines) both expressed a preference for the second option. Mr. Adams (Germany on behalf of the EU) requested that the issue be referred to the Administrative Working Group for closer scrutiny. Ms. McCarty (USA) said she preferred the first option but sought clarification of three points: the difference between observers and cooperating partners; who would determine what constituted a “relevant organization” and whether there would be any Joint Work Programme between the partner and the Secretariat or the partner and the Signatories. She supported Germany’s request for the issue to be discussed in detail in the Working Group. Ms. Montgomery (Australia) preferred the second option, but sought clarification of the procedure in the event of an objection being raised.

26. Ms. Pauly explained that the document tried to provide definitions where the text of the MoU was silent, that the practice under other CMS MoUs was for the Joint Work Programmes to be concluded between the partner organization and the Secretariat and that it would be for the Signatories to decide what constituted a “relevant organization”. Her understanding was that as the MoU was to operate by consensus, the objection by any Signatory to the application of a candidate for cooperating partner would constitute a veto. Ms. Montgomery suggested that where a Signatory objected to an application made inter-sessionally, the case could be referred to the next Meeting of the Signatories.

27. Mr. Øystein Størkersen (Norway) thought that the status of cooperating partners made NGOs pseudo-signatories to the MoU and wondered whether it would be simpler just to sign Joint Work Programmes with such entities. The Chair pointed out that the concept of “cooperating partner” was enshrined in the paragraph 10 of the MoU.

28. The Chair stated that the second option had wider support. He was reluctant to overburden the Administrative Working Group with more tasks, but agreed to do so as the USA felt that it was better to make the right decision and not be rushed.

29. On the final day, Ms. Melanie Virtue (Secretariat) reported that no consensus had emerged in the Working Group over which of the two options to choose and indeed a third option had been proposed which included a different procedure for dealing with objections to applications to become a cooperating partner.

30. Mr. Adams (Germany on behalf of the EU) welcomed the concept of cooperating partners but could not agree to the automatic acceptance of applications as foreseen in the first option and he was not convinced that the procedure set out in the third option, whereby

organizations could first sign the MoU and Signatories would then have to ratify, was the best way forward. He thought that problems would arise if a partner's name had to be removed from the MoU, as the onus would be shifted to the Signatories to explain their reasons for rejecting a partner. The need for this might arise if a controversial NGO signed the MoU. His preference was therefore the second option and South Africa supported this position.

31. Ms. McCarty (USA) said that there was universal support for the idea of allowing cooperating partners to sign the MoU and a general desire to have a transparent and unbureaucratic system. She agreed that having to remove a partner that had already signed the MoU might be awkward but pointed out that other forums had expelled organizations whose behaviour merited such action, but wished to avoid a situation where one Signatory could veto a partner's application.

32. The Meeting failed to reach a consensus on the procedure for accepting cooperating partners and doc.6.2, "Authorization of Cooperating Organizations to Sign the MoU" was not adopted. The issue was assigned to the inter-sessional working group.

33. The Meeting did agree, without wishing to set a precedent for future meetings, that the two organizations which had submitted their documentation on good time, the Humane Society International (Australia) and the Humane Society International (USA) should be allowed become cooperating partners and representatives of both organizations were called forward to sign the MoU.

34. Ms. Sarah Fowler, speaking in her capacity as a Trustee of the Sharks Trust said that this organization had also written to the Secretariat seeking the status of cooperating partner. The Trust was running several projects relevant to species listed on the Annex of the MoU.

Agenda Item 7: Reports

Agenda Item 7.1: Report of the Interim Secretariat

35. Ms. Virtue introduced the report of the Secretariat (Doc.7.1). She explained that under paragraph 27 of the MoU, the parent Convention provided secretariat services and served as the MoU's depositary. Responsibility for the MoU lay primarily with the Agreements Unit, with 40 percent of a post funded by the German government dedicated to sharks. Part of the Agreement Officer's time was spent on the MoU together with some senior management and general administrative time.

36. The Secretariat's main efforts had concentrated on the preparation of the meeting, outreach, fundraising and facilitating the drafting group dealing with the Conservation Plan. A number of meetings had been attended in forums such as CITES and FAO and contact established with RFMOs and SPREP.

37. Since the Meeting in Manila when 11 countries had signed the MoU, membership had risen to 25. The Secretariat had also recently been approached by the Syrian Arab Republic expressing its interest in signing. Five NGOs had also applied to be co-operating partners.

38. In addition to the in-kind support provided by Germany in the form of a staff member, voluntary contributions had been received from Australia, the European Union, Monaco and the USA.

39. Signatories were reminded of the importance of nominating a focal point to facilitate communication with the Secretariat and with other partners. Non-signatories were urged to sign the MoU. All non-signatory Range States had been invited to the Meeting and it was reassuring that 20 were participating. Consideration should be given to how more countries could be encouraged to join.

40. Mr. Youssef Ouati (Morocco) said that his country was not yet a signatory but was very concerned about conserving sharks and was reviewing the MoU with stakeholders with a view to signing the MoU in due course. Morocco had a national plan for shark conservation.

41. The Chair welcomed the many activities already taking place for shark conservation and Morocco's interest in possibly signing the MoU.

Agenda Item 7.2: Reports from Signatories

42. The Chair stressed that Signatories would have further opportunities to report on their conservation activities, but this item on the agenda was an appropriate time for them to do so. He noted that a number of Signatories had provided written reports, which were made available as information documents (Inf.5.x)

43. Mr. Lucien Maloueki (Congo) first emphasized that the country he represented was the Republic of the Congo and not the Democratic Republic of the Congo. He would report on Congo's activities at a later stage.

44. Ms. Montgomery (Australia) had not been aware of the fact that she would be able to complement the written report already submitted (Inf.5.6) but this was a comprehensive account of activities undertaken in Australia.

45. Ms. Dionne (USA) said that her country had also submitted a written report (Inf.5.3). She noted that some signatories had not and this was something she regretted as such reports potentially contained important information of great interest to others

46. Mr. Antonio Fernández Aguirre (European Commission, speaking on behalf of the EU) provided some further information on the protection status of the species listed on the Annex of the MoU under European legislation. Zero quotas were in place for five of the seven listed species – with only the shortfin and longfin mako being subject to catch. A new assessment of shortfin mako stocks was under way and the policy might be reviewed.

47. Mr. Perez (Philippines) said that the whale shark was listed and it was not allowed to fish for it. Shark feeding had become a feature of eco-tourism but there were no regulations governing the practice, and research was being undertaken with a view to drawing up legislation. Rules were also being proposed for thresher sharks, although these were not listed on the MoU Annex.

48. Mr. Djibril Diouck (Senegal) said that his country was collaborating at the sub-regional level with its neighbours in a Fisheries Commission. A regional plan had been adopted and research was being undertaken to enhance the scientific knowledge base.

49. Ms. Cuza Jones (Costa Rica) reported that considerable progress was being achieved with regard to the protection of migratory species in general, and this included sharks. A suite of instruments was being built as a "platform" to strengthen laws. Sharks were considered a flagship species and Costa Rica wanted to benefit from international synergies.

50. Dr. Monde Lategan Dutoit Mayekiso (South Africa) said that the Department of Fisheries had drafted a plan published in August 2012 in response to the FAO. Its main focus was fisheries regulation but it also dealt with climate change and coastal development. The plan was initially meant for implementation during the period 2012-2015 with annual reviews. The Department of the Environment had developed a shark conservation plan which included the identification of key habitats to be protected, demonstrating the political will to achieve conservation aims through collaboration with fisheries interests.

Agenda Item 7.3: Reports from Observers

51. The Chair called upon observers to make brief reports, noting that some reports had been received in writing, and were available as Information documents (Inf.6.x)

Non-Signatory Range States

52. Ms. Julia Angelita Cordero Guillén (Ecuador) said that Ecuador had a binding decree and a national plan which banned finning. A report had been submitted to the Secretariat but it had not been posted on the web. The Secretariat undertook to investigate and asked that the report be resubmitted so that it could be posted.

53. Mr. Mohammed Nejmeddine Bradai (Tunisia) said that there were important shark fisheries operating in Tunisian waters, some of which were intensively exploited. Tunisia was involved in regional research activities with studies into reproductive behaviour. Some bycatch issues needed to be further examined and more effort made to combat illegal fishing.

54. Ms. Monica Brick Peres (Brazil) reported on a number of activities already being undertaken in respect of sharks. The twelve shark species on the national Red List enjoyed full protection, and 169 species had been reviewed. A new norm required that fins should be left attached to sharks before landing and some work was being done on the catch, trade and transportation of rays. Some Marine Protected Areas had been declared for sharks.

55. Dr. Marcel Enzo Calvar Agrelo (Uruguay) said that it had not been possible to collate the relevant data by the due date of 30 August 2012 but he explained that Uruguay had commitments under agreements covering the Rio de la Plata, under which finning was illegal in Uruguayan waters. The Ministry of Fisheries was developing a decree banning finning beyond Uruguay and Argentina and for some shark species; the fishing quota was set at zero.

56. Mr. Ouati (Morocco) said that his country's National Action Plan was modelled on the International Plan of Action developed by the FAO, so it reflected the country's international obligations. Morocco was also a member of RFMOs covering the Mediterranean and Atlantic Tuna, where bans on the practice of finning were in place.

NGOs

57. Ms. Barbara Helfferich (Wildlife Conservation Society) outlined the history and aims of her organization. WCS activities included ecological research, such as documenting shark fisheries, management planning, capacity-building, outreach and awareness, and national and international shark policy. Activities covered several CMS-listed species. Her full statement is available as CMS/Sharks/MOS1/Inf.6.3.

58. Mr. Peter Pueschel (IFAW) said that IFAW was organizing the first ever workshop for the Arabian-Red Sea region which would take place in Abu Dhabi a week later.

59. A representative of the Pew Charitable Trust outlined their work which was taking place at national, regional and global levels with many countries. Key issues were the establishment of shark sanctuaries and securing bans on finning. The Pew Charitable Trust also collaborated with RFMOs and CITES and the theme of presentation at the Group's reception on the second evening was proposed listing of sharks under CITES.

60. On the morning of the second day, Ms. Johanne Fischer Gerhardt (FAO) gave a presentation entitled "Review of the Implementation of the International Plan of Action (IPOA) for the Conservation and Management of Sharks". The IPOA was now thirteen years old and a review, which had just been completed, would be published shortly.

61. Ms. Fischer Gerhardt's conclusion were that the IPOA was a general guidance instrument that left it to the countries themselves to identify the threatened species and target policies accordingly; the IPOA was flexible, not a "one size fits all" solution; IPOA for sharks should be embedded in law; IPOA implementation had improved but more effort was still needed and finally that the CMS MoU would work better if it were more closely linked to fisheries management.

62. The slides accompanying Ms. Fischer Gerhardt's presentation have been posted on the Sharks MoU website.

Agenda Item 7.4: Report on the Conservation Status of Migratory Sharks

63. Ms. Fowler (IUCN Shark Specialist Group) presented an updated report on the conservation status of sharks. She said that she had given earlier versions of the report at previous meetings and unfortunately new data showed that the situation was worsening. Gathering data for CMS had started in 2006 and drew on thirteen Red List workshops over a period of ten years with input from over 300 experts from 64 countries. In the latest report, appraisals of a further 52 species had been added.

64. Of the shark species studied, 2 percent were Critically Endangered, 4 percent Endangered and 11 percent Vulnerable, but 44 percent were Data Deficient. With migratory species, only 10 percent were categorized as Least Concern. Only some classes of amphibian and reef corals had higher percentages in the endangered categories.

65. The slides accompanying Ms. Fowler's presentation have been posted on the Shark MoU website.

Agenda Item 8: Establishment of the Advisory Committee

66. Ms. Virtue (Secretariat) introduced Doc.8 and the terms of reference for the Advisory Committee (Doc.8/Annex I). She stressed that members were to be elected from regions but would serve in individual capacity and were not to represent national interests.

67. A number of tasks had been identified that would reasonably fall to the Advisory Committee although they were not listed in the text of the MoU. Among the additional tasks not mentioned in the MoU were the approval of the format of national reports, setting the criteria for listing species on Annex 1 and reviewing listing proposals, and yet more tasks might emerge from the Conservation Plan.

68. It had been agreed to limit the size of the Advisory Committee and ensure that its members were shark experts. The regional composition of the Advisory Committee had been set at two members for Africa, Asia, Europe, South & Central America and the Caribbean and one each for North America and Oceania. The allocation reflected the potential rather than the current membership, which gave rise to certain anomalies such as Oceania having one place despite having four Signatories, while Asia had two places for just one. Mr. Perez (Philippines) said he faced a dilemma as the representative of the only Signatory from the region which accounted for 80 percent of all shark fisheries. While he could propose two experts from his own country, he did not want to exclude the rest of the region. The Secretariat stressed that the nominees should be experts on the region and did not necessarily have to be from the region.

69. The Chair said that it was not necessary to fill all the places on the Advisory Committee at this Meeting and retaining some vacancies might act as a lure for further countries to sign the MoU.

70. The procedure for appointing members of the Advisory Committee was described thus: a Signatory could nominate a candidate; the candidate should be discussed among the Signatories from the region; and the appointment would be confirmed by the Meeting of the Signatories. Members could normally serve no more than two, or in very exceptional cases, three terms. For the first round of appointments, the Secretariat had received nominations which had been circulated to the Signatories in the regions concerned, and Signatories were asked to meet in regional groups and reach a consensus on which candidates to confirm on the final day of the Meeting.

71. The *modus operandi* of the Advisory Committee would generally be virtual meetings and through one of the online workspaces currently being developed for CMS. Face-to-face meetings would be convened if necessary but would be infrequent because of the costs involved.

72. Ms. Montgomery (Australia) said that she had some proposals for additional tasks for the Advisory Committee. Mr. Adams (Germany on behalf of the EU), suggested that CITES, FAO and ICES be invited to become permanent observers to the Committee and asked which sort of expert would be invited to the Advisory Committee's meetings. Ms. Rebecca Regnery (Humane Society International USA) pointed out that in other forums NGO representatives could serve on technical and advisory bodies. The Secretariat cited paragraph 25 of the MoU, which stated "The Advisory Committee may invite other experts to attend its meetings", wording which allowed a broad interpretation and certainly did not exclude representatives of NGOs.

73. The USA was generally content with the proposal presented, and supported the addition of the task of reviewing species proposals. With regard to inviting additional experts to attend meetings, the USA thought that this would best be left to the Advisory Committee. Congo agreed with the last point, saying that outside bodies potentially had a useful role to play in verifying data.

74. In reviewing the Annex, Ms. Montgomery (Australia) suggested that the Advisory Committee be asked to review the priorities, timeframes and key actors contained in Columns 5, 6 and 7 of the Conservation Plan. This should be done immediately before Meetings of the Signatories.

75. Dr. Mayekiso (South Africa) sought clarification of the terms of reference and in particular the stipulation that members were appointed in a personal capacity and not as national representatives. It was explained that the Committee had been designed to have regional balance but the members were chosen because of their scientific expertise not national affiliation.

76. The USA proposed not to restrict the number of additional experts to five and this suggestion found broad support. The USA also wanted decisions to be made by consensus and requested that the reference to voting in paragraph 12 be deleted.

77. On the final day, the Chair introduced a revised version of Doc.8/Annex I for the Secretariat.

78. Ms. Virtue explained that the amendments reflected the decisions made earlier in the Meeting and further modifications proposed by the United Kingdom. The tasks of the Advisory Committee had been changed and now included reviewing the criteria for adding species to the Annex.

79. Mr. Rendell (UK) explained the revised paragraph 5b which empowered the Advisory Committee not only to review existing listing criteria but also to suggest new ones.

80. Mr. Adams (Germany on behalf of the EU) said that in the light of the earlier discussion about harmonization of the CMS Appendices and the MoU Annex, there would be benefit in having a representative of the CMS Scientific Council on the Advisory Committee. The USA agreed and suggested that reciprocal representation would be useful, especially as the CMS scientific Council did not have many shark experts. The Chair, being also the Chair of the CMS Scientific Council agreed to this.

81. Having agreed to the establishment of the Advisory Committee and its Terms of Reference as contained in *CMS/Sharks/Outcome 1.1*, the Chair invited spokespersons for each region to inform the Meeting of the names of the nominees to serve on the Advisory Committee.

82. The following nominations were received and accepted:

Europe	James Ellis and Marino Vacchi
North America	John Carlson
Oceania	Lesley Giddings
South & Central America & the Caribbean	Jairo Sancho Rodríguez and Enzo Acuña
Africa	Mika Samba Diop and Boaz Kaunda-Arara
Asia	to be confirmed

83. The Philippines, as the only signatory from the Asian region wanted to confer further with other countries and undertook to provide two names after key regional meetings in early 2013, hoping that the consultation process might generate more interest in the MoU.

Agenda Item 9: Draft Conservation Plan

84. Ms. Dionne (USA) explained that the Conservation Plan had been the focus of a great deal of work and considerable progress had been achieved under the leadership of Mr. David

Hogan. Paragraph 11 of the MoU foresaw that the Conservation Plan should be adopted and integrated into the MoU as an Annex. The Plan had gone through several iterations since the first negotiation Meeting in Mahé, with drafts emerging from the Rome Meeting, an inter-sessional working group, the Manila Meeting and a further inter-sessional working group. The version before the current Meeting had been developed by the “Friends of the Chair” made up of representatives of Signatories, non-Signatory Range States and NGOs. The scope of the Plan had been reduced and focused exclusively on species included in Annex 1 of the MoU. Redundant parts had been eliminated and the structure changed and adapted to a tabular format. The Plan followed the five objectives of paragraph 12 and activities described in paragraph 13 of the MoU (as indicated in the first two columns of the table). The last three columns of the table had not been completed and the Meeting was asked to indicate the priority, time scale and key actors for each activity, before adopting the Conservation Plan.

85. The Chair sought the initial views of the Plenary before referring the draft Conservation Plan to the dedicated Working Group for detailed consideration.

86. Thanking the USA for having led the inter-sessional work on elaborating the Conservation Plan, Mr. Fernández Aguirre (European Commission, speaking on behalf of the EU) said that the European Union had actively participated in the drafting exercise and reaffirmed the European Union’s willingness to engage actively in the MoU and was confident that the Conservation Plan could be adopted.

87. Mr. Ouati (Morocco) said that it would be beneficial if the Conservation Plan could be aligned as far as possible with the FAO IPOA. It was pointed out that the FAO would be represented later in the Meeting and would make a presentation on the IPOA.

88. The Chair recognized that the completion of the Conservation Plan and its adoption were among the most important tasks of the Meeting and proposed the establishment of an open Working Group to be chaired by the USA.

89. At the Plenary session on the final day, Ms. Dionne (USA) reported that the Working Group had met on 25 and 26 September and had conducted a detailed review of the 5th Draft of the Conservation Plan (the “Bonn version”). Edits had been made to the text and agreement had been reached on all outstanding points. The Working Group was therefore able to recommend that the Signatories adopt the revised Conservation Plan.

90. There had not been sufficient time for the Working Group to discuss the priorities, timeframe or responsible entities for the implementation of the Conservation Plan. Therefore the Working Group recommended that the Advisory Committee be given the task of considering these issues inter-sessionally. It was noted that the Advisory Committee should rank the international priority of the actions, but where the action lay beyond the competence of the Advisory Committee, no recommendation should be made. Ms. Montgomery (Australia) had requested that it be recorded that references to the “precautionary approach” related the Principle 15 of the Rio Declaration.

91. The revised text was projected on screen and there being no comments from the floor, the Conservation Plan was adopted. Both the Chair and Mr. Fernández Aguirre thanked the USA, in the persons of first Mr. David Hogan and then Ms. Dionne, for their leadership of the drafting process which had reached such a satisfactory conclusion. Ms. Nicola Clarke (UK) added her congratulations and thanks to the USA and announced a £10,000 voluntary contribution from her government.

92. The Conservation Plan, which will become Annex 3 to the MoU, was adopted by the Meeting (*CMS/Sharks/Outcome 1.2*). The columns on priorities, timeframes and responsible entities for the implementation of the Conservation Plan were not completed at the Meeting and this task was given to the Advisory Committee to advance.

Agenda Item 10: Administrative and Budgetary Matters

93. The Chair said that a Working Group whose membership would be restricted to the Signatories would be established to consider the MoU budget and administration. He then called upon the Secretariat to make a brief introduction.

Secretariat

94. Mr. Bert Lenten (Deputy Executive Secretary, UNEP/CMS) emphasized the importance of the budget, without which no activities could be undertaken by the Secretariat. He presented Doc.10.1 and Doc.10.2, the arrangements and terms of reference for the Secretariat and recalled that the Manila Meeting had requested the CMS Secretariat to service the MoU until such time as permanent arrangements had been made. The tasks assigned to the Secretariat as set out in the Annex to Doc.10.1, were based on Section 8 (paragraph 27) of the MoU.

95. The parent Convention had provided secretariat services with the help of part of a post funded by Germany. The EU had also provided a grant to assist with implementing the MoU and both Australia and Monaco had provided contributions to fund projects. Parties to CMS would however be aware of the “Future Shape” process, which had identified clustering of instruments by taxonomy or geography as one means of achieving greater synergies and taking the pressure off the Agreements Unit, which had 13 MoUs and an Agreement to administer. No Signatory had come forward to offer to host the Sharks MoU Secretariat, so there were no parallels with the Dugong and Raptor MoUs which were being managed from an office in Abu Dhabi. The default plan in the absence of such an offer was therefore to continue with the present arrangements with the MoU being run from Bonn by staff of the CMS Secretariat, which had the advantages of continuity, synergies, cost-effectiveness and staff sharing.

96. Mr. Lenten recognized that Signatories were all affected by the global financial crisis and that resources were scarce, but a Secretariat without adequate funding could not serve as a catalyst for action. The proposed budget provided for a full-time P3 officer and a part-time G5 assistant supervised by the parent Secretariat’s D1, P5 and one of the P4s and benefitting from the support of the Administration Unit. By comparison, the IOSEA turtle MoU had the funds to employ a P5 officer and an assistant in Bangkok, while there were currently four professional staff working in Abu Dhabi. Under the current arrangements, the Sharks MoU had received Ms. Pauly’s undivided attention for the past few months, but she would soon have to turn her attention to the Gorilla Agreement and other issues.

97. It was difficult to contract full-time staff where the budget depended entirely on voluntary contributions which were not guaranteed and tended to vary from year to year. It was therefore proposed to emulate IOSEA by suggesting indicative contributions based on the UN scale with a ceiling of 20 percent, the usual 2.5 percent share for the EU and a minimum contribution of €3,000. The Executive Director would be asked to create a separate Trust Fund to receive these contributions, which would be subject to the customary 13 percent

administrative charge levied by UNEP and which helped provide the services of the Administration Unit.

98. The Chair proposed that a Working Group be established to consider all administrative and budgetary matters and asked for Signatories to volunteer to serve on it. Australia, the EU, Germany, Kenya, Monaco, the Philippines, South Africa, the UK and the USA formed the Working Group and Mr. Adu-Nsiash (Ghana) on behalf of the African region nominated Mr. Stephen Manegene (Kenya) to serve as Chair.

99. On the final day, Mr. Manegene presented a report of the Working Group's deliberations. He said that the Working Group reviewed and approved the amended version of the proposed budget for the Sharks MoU Secretariat, with one outstanding issue whether or not to include a table of suggested voluntary contributions. Also the Terms of Reference for the Interim Secretariat were finalized. Both the budget and the Terms of Reference were submitted to the plenary for final adoption.

100. It was agreed that the provisional arrangements were to continue whereby the CMS Secretariat provided the interim Secretariat for the MoU at its Headquarters in Bonn. The Terms of Reference for the Interim Secretariat were adopted by the Meeting (*CMS/Sharks/outcome 1.3*).

Budget

101. Mr. Lenten (Secretariat) introduced a revised budget based on Doc.10.2. The Chair recognized that most Signatories were facing budgetary constraints but still urged them to find the resources to ensure that the MoU could be implemented.

102. In the ensuing debates opinions differed concerning the desirability of including the table in Annex II listing the recommended levels of the voluntary contributions. Some Signatories said that specifying figures would be counter-productive with their national financial administrations, while others said that a firm indication of what the country was expected to pay was the very leverage necessary to ensure payment. Mr. Diouck (Senegal) commented that the Annex seemed to suggest that the contributions were compulsory although the MoU was non-binding. He said it should be clear that the contributions were recommendations. Ms. Marianne Courouble (France) agreed, pointing out that the availability of resources varied from year to year. Ms. Montgomery (Australia) said that the processes of her country's budgetary cycle made it difficult to make long-term commitments and stressed the voluntary nature of the contributions. Given that the two positions were not directly reconcilable it was agreed that the table would not be attached, but that Signatories should inform the Secretariat whether the table should be included when invoices were issued. The table of recommended contributions would be made available on the website.

103. Ms. Dionne (USA) asked whether the Secretariat intended to fill the two proposed posts with existing staff or whether a recruitment process would be followed. The USA also preferred to set a budget for one-year to assess how levels of expenditure turned out initially rather than to commit three years ahead. Mr. Lenten assumed that the post funded by the German government would be subsumed in full or in part within the new staffing arrangements for the MoU and he pointed out that setting a budget for only one year would necessitate convening another Meeting of the Signatories, likely to cost €100,000 in Bonn (or €135,000 elsewhere as staff travel and accommodation would have to be paid). He advocated a triennial budget with annual reports to the Bureau. The duration of the budget raised the

related question of the frequency of the Meetings of the Signatories, and South Africa advocated a three-year budget and less frequent meetings to reduce the organizational burdens on the Secretariat staff.

104. The Signatories agreed the budget, which aimed to provide adequate resources for the MoU for the period 2013-2015. The budget was based on the continued operations of the interim Secretariat at its current location. Given the non-binding nature of the MoU, contributions would be voluntary and a minimum voluntary contribution of €2,000 per annum was recommended (*CMS/Sharks/Outcome 1.3*).

Trust Fund

105. Signatories requested the UNEP Executive Director to establish a United Nations Trust Fund for the management of the resources of the MoU. Terms of Reference for the administration of the proposed Trust Fund were adopted (*CMS/Sharks/outcome 1.3*).

Agenda Item 11: Procedure for Modifying the Species List (Annex 1) of the MoU

106. Ms. Pauly (Secretariat) introduced Doc.11, in which she explained which species were listed on the Annex of the MoU and which species potentially could be listed; these included sharks, rays, skates and chimaeras. There was no automatic linkage between listings on the Appendices of the parent Convention and to the Annex of the MoU.

107. The suggested procedure for listing further species on the Annex to the MoU would entail a proposal being tabled by any Signatory to the Meeting of the Signatories. The proposal would have to be submitted to the Secretariat 150 days in advance of the Meeting and be supported by the best available scientific information. Proposed amendments to the Annex should be decided by consensus, but where no consensus could be found, a vote would take place requiring a two-thirds majority to be accepted. Any changes would take effect immediately.

108. The first option entailed the MoU adapting the listing criteria used by CMS for its Appendices. These contained a definition of what constituted a favourable conservation status. If any of the definitions were not met, the species was considered to have an unfavourable conservation status. The draft form to be completed when proposing a new species for listing was based on the similar form used by CMS.

109. Mr. Oliver Schall (Germany) pointing out that 24 of the 25 Signatories to the MoU were also Parties to the parent Convention, thought that the listing procedure could be simplified. Changes made to the CMS Appendices regarding shark species could be brought to the attention of the Advisory Committee of the MoU. The Chair said that the supporting scientific data provided for CMS should certainly be passed to the Advisory Committee, but there should be no automatic linkage between the CMS Appendices and the MoU Annex.

110. Mr. Fernández Aguirre (European Commission, speaking on behalf of the EU) said that the EU countries preferred the first option rather than passing responsibility for the criteria to the Advisory Committee. He added though that he felt that the criteria for listing species under both Appendix I and Appendix II of the Convention were relevant and both should be taken into account.

111. The USA expressed a firm preference for the second option where the Advisory Committee would be responsible for drawing up listing criteria. It was pointed out that the Advisory Committee would be made up of shark experts, and it was noted that the CMS Scientific Council had few such specialists. The USA also advocated that amendments to the Annex should be decided by consensus, sought the deletion of the resort to voting and suggested some further minor linguistic changes.

112. Mr. Fernández Aguirre raised a procedural question. He noted that if the listing criteria were to be left to the Advisory Committee, then the second Meeting of the Signatories would be precluded from making any changes to the Annex, and potentially three years could be lost. The USA remained adamant that the Advisory Committee should draw up the criteria, adding that unlike most other species covered by CMS instruments, sharks were widely economically exploited. Decisions should not be rushed and mistakes needing to be rectified should be avoided.

113. Mr. Perez (Philippines) felt that having too many criteria would overcomplicate the procedure. He added that as the final decision for listing would be made by consensus by the Signatories, the question of who drew up the criteria was of secondary importance. A further complication was the lack of Asian signatories from whom to draw experts to serve on the Advisory Committee, which might lead to further delays.

114. Mr. Diouck (Senegal) said that if progress were to be made the Signatories should not wait for the Advisory Committee to be established, convene and set criteria. In these circumstances, the MoU Signatories could revert to the criteria of the parent Convention for the interim period. Mr. Schall (Germany) was concerned that no further listings could be considered until the Advisory Committee had decided on the criteria, meaning no species could be added until the Third Meeting of the Signatories.

115. The Chair intervened to say that his expectation was that the Advisory Committee would develop criteria inter-sessionally and this should allow the process of revising the Annex to proceed if necessary. Mr. Lenten advised that the criteria used by CMS could be used until such time as the Advisory Committee had developed specific guidelines for the MoU. He also pointed out that in time the Convention might follow the lead of the MoU with regard to species listings. Mr. Størkersen (Norway) said that CMS was in the process of preparing guidance on the criteria for listing species on its Appendices and the MoU would soon have the benefit of this advice to draw on.

116. The Chair requested a small group of interested Signatories to work on this issue in the margins of the Meeting and report back to the final plenary.

117. Re-opening the discussion on the final day, the Chair said that the MoU Annex already contained seven species, which were “flagships” and conservation efforts undertaken for their benefit would have positive impacts on other taxa.

118. Mr. Jamie Rendell (UK) speaking for the Working Group members trying to find a compromise, announced that agreement had been reached to the satisfaction of all concerned based on an amended version of the first option contained in Doc.11 and drawing on the listing criteria used by CMS. The Advisory Committee would be able to suggest further criteria for assessing whether species qualifies. The revised text was presented and included new wording about treatment of late submissions. The USA intervened to remind the Meeting

that the agreed terminology was “modifying” the Annex rather than “amending” and pointed out some other minor editorial changes that needed to be made.

119. Mr. Mayekiso (South Africa) while generally supporting the idea of the MoU operating by consensus felt that an exception should be made with regard to listing species. A single Signatory bowing to pressure from fisheries interests might thwart the will of the majority. He advocated the retention of deciding listings by voting with a two-thirds majority needed to carry an amendment. Ms. Cuza Jones (Costa Rica) agreed and Mr. Adu-Nsiah (Ghana) added that the conservation status of some species meant that urgent decisions might have to be taken and finding a consensus might take too much time. Mr. Pueschel (IFAW) commented that in other forums the opposite problem arose with decisions made by voting, especially where delisting a species also required a two-thirds majority.

120. The USA referred to the text of the MoU, paragraph 18 of which stated that decisions were to be taken by consensus. Majority voting was therefore contrary to the provisions of the MoU. Given that many shark species were commercially exploited, it would always be an essential element of the MoU to accommodate conservation and fisheries interests. Mr. Perez (Philippines) feared that changing to majority voting would deter the shark fishing countries from signing the MoU.

121. Mr. Mayekiso (South Africa) reiterated his strongly held view that listing of species should be as a last resort determined by a vote but declined to press the point in the interests of making progress.

122. Ms. Fowler (IUCN) reminded the Meeting that in 2006 the UK had funded a sharks database for CMS. The data gathered would doubtless be of great value to the MoU. Ms. Fischer Gerhardt (FAO) felt that an area in need of attention was recruiting the shark fishing nations, as the effectiveness of the MoU would be impaired without them.

123. The Chair summed up the debate, pointing out that the MoU was in its infancy and the challenges to be faced were complicated and difficult. The solutions agreed by the Signatories would of necessity involved some compromises. The Signatories should aim to make the MoU as effective an instrument as possible and this would encourage wider membership, which hopefully would also include the main shark fishing nations.

124. The procedure for the inclusion of additional species in Annex 1 of the MoU was adopted (*CMS/Sharks/Outcome 1.4*). Annex 1 could be modified by consensus at any session of the Meeting of the Signatories, in accordance the process and timing laid down in the above document. Listing criteria were agreed based on the broad biological criteria used under the Convention. The Advisory Committee was requested to review the listing criteria and propose changes as necessary.

Agenda Item 12: Date and Venue of the next Meeting

125. Mr. Adams (Germany on behalf of the EU) said that it had been agreed that the interval between Meetings of the Signatories should be three years. The Chair asked whether any Signatory wished to host the next Meeting but no offers were forthcoming.

Agenda Item 13: Any other Business

126. Before the Plenary session started on the final day, the USA signed the Memorandum of Understanding for the Conservation of Cetaceans and Their Habitats in the Pacific Islands Region, bringing the total number of signatories to that instrument to 15.

127. A joint statement on behalf of the Humane Society International, Project AWARE, Shark Advocates International, the German Elasmobranch Society, IFAW and WCS commended the Meeting on the adoption of the Conservation Plan (available as Inf.6.7). The success of the MoU depended on its being implemented, and the NGOs called for four immediate actions:

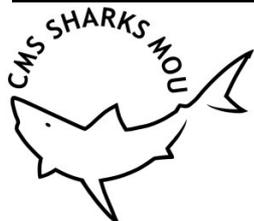
- (i) the European Parliament should be encouraged to endorse the Commission's proposal for landing all sharks with fins naturally attached;
- (ii) an International Commission for the Conservation of Atlantic Tunas (ICCAT) proposal to set science-based limits for shortfin mako sharks should be supported;
- (iii) a Western and Central Pacific Fisheries Commission (WCPFC) proposal to prohibit setting purse seine nets on whale sharks should be supported; and
- (iv) the EU proposal to list the porbeagle shark on Appendix II of CITES should be endorsed.

Agenda Item 14: Closure of the Meeting

128. After noting the significant achievements of this Meeting, and expressing thanks to all those involved in the successful organization and running of the Meeting, the Chair declared the Meeting closed.

Acronyms

AEWA	: Agreement on the Conservation of African-Eurasian Migratory Waterbirds
AC	: Advisory Committee
CMS	: Convention on the Conservation of Migratory Species of Wild Animals
CITES	: Convention on International Trade in Endangered Species of Wild Fauna and Flora
DEG	: Deutsche Elasmobranchier-Gesellschaft e.V.
EC	: European Commission
EU	: European Union
FAO	: Food and Agriculture Organization of the United Nations
HSI	: Humane Society International
ICES	: International Council for the Exploration of the Sea
ICCAT	: International Commission for the Conservation of Atlantic Tunas
IFAW	: International Fund for Animal Welfare
IOSEA	: Indian Ocean – South-East Asian Marine Turtle Memorandum of Understanding
IPOA	: International Plan of Action
IUCN	: International Union for Conservation of Nature
NPOA	: National Plan of Action
RFMOs	: Regional Fisheries Management Organisations
SPREP	: Secretariat of the Pacific Regional Environment Programme
SAI	: Shark Advocates International
UNEP	: United Nations Environment Programme
WCPFC	: Western and Central Pacific Fisheries Commission
WCS	: Wildlife Conservation Society



CONVENTION ON MIGRATORY SPECIES

MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS

Distr: General

CMS/Sharks/MOS1/Report Annex

Original: English

FIRST MEETING OF THE SIGNATORIES

Bonn, Germany, 24-27 September 2012

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