



# CONVENTION ON MIGRATORY SPECIES

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MEETING TO IDENTIFY AND ELABORATE AN  
OPTION FOR INTERNATIONAL COOPERATION  
ON AFRICAN-EURASIAN MIGRATORY RAPTORS  
UNDER THE CONVENTION ON MIGRATORY SPECIES  
Loch Lomond, Scotland, United Kingdom, 22-25 October 2007  
Agenda Item 7.0

## LEGAL AND INSTITUTIONAL OPTIONS UNDER CMS FOR INTERNATIONAL COOPERATION ON MIGRATORY AFRICAN-EURASIAN RAPTORS

*(Note by the CMS Secretariat)*

### Overview

1. CMS Conference of the Parties Recommendation 8.12 (Nairobi, 2005) called upon Parties to the Convention, non-party Range States and other stakeholders to engage in co-operative activities to promote the sustainable management of migratory raptors and owls by, in particular:
  - a) Protecting and managing important breeding sites and migration bottlenecks.
  - b) Alleviating habitat degradation by developing and promoting sustainable land management policies and practices.
  - c) Controlling the shooting, poisoning, and taking of these birds and their eggs.
  - d) Raising awareness of the plight of these birds, the threats they face, and the measures needed to conserve them.
  - e) Monitoring populations throughout the region to establish population trends and carry out appropriate research.
  - f) Exchanging information in order to develop and implement best-practice approaches to the conservation and sustainable management of these species.
  
2. It also called upon Parties to the Convention and non-party Range States to consider whether a CMS instrument would better help to deliver these conservation objectives and, if so, to participate actively in the development and conclusion of an instrument under the auspices of the CMS Scientific Council and the CMS Secretariat.

3. The preamble to Recommendation 8.12 noted that initial soundings of stakeholders undertaken as part of the “Assessment of the Merits of a CMS Instrument covering Migratory Raptors in the African-Eurasian Region” (UNEP/CMS/Inf. 8.18) revealed that a CMS instrument would likely improve the conservation status of migratory raptors and owls, and that a Memorandum of Understanding (MoU) was the preferred instrument.

4. This note’s analysis expands upon the strengths, weaknesses, opportunities and threats (SWOT) analysis undertaken as part of the original 2005 and now updated 2007 version of the Raptors Assessment (UNEP/CMS/AERAP-IGM1/Inf/7). The Raptors Assessment SWOT analysis has been further refined, is presented in Table 1 and reviews the following legal and institutional options that could be considered by the Scotland meeting:

- a) A partnership arrangement with action plan;
- b) An MoU with action plan; and
- c) A legal binding treaty with action plan.

A stand alone action plan represents a basic regional cooperation that needs further commitment from the range states for its implementation. Such an instrument is more useful when overarched by at least a formal or a fully binding text as mentioned in a), b) and c). Thus, the Secretariat disregards the stand alone action plan as a separate option.

5. Since all migratory raptors are listed on CMS Appendix II, any of these arrangements could be used as a basis for international cooperation under CMS. If appropriate it could be envisioned to start with a relatively simple instrument and upgrade its legal standing over time.

### **General Advantages and Disadvantages of Cooperative Activities through CMS**

6. Action under CMS has a number of distinctive features and advantages compared with those possible through other Multilateral Environmental Agreements (MEAs). In general, CMS may:

- a) Focus attention on a discrete set of migratory species within any given geographic area.
- b) Specify and engage the Range States most appropriate for these species.
- c) More easily facilitate joint action including by harmonising existing legislation and policies, information exchange and integration, and best practice development across the geographical area of the instrument, whether through a formal, binding Agreement, an MoU, or a partnership arrangement.
- d) Provide the possibility for better access to other types of assistance, including from within the CMS Family, other biodiversity-related conventions and international organisations, and integration into the entire world of environment and development.

7. However, there are also possible qualifying factors that need to be considered, including:

- a) The need to make optimal use of the existing framework of treaties, including CMS and its Agreements, rather than introducing new stand-alone bodies.
- b) The additional burden on Range States from new conservation instruments rather than the implementation of existing instruments. Extra administrative and financial implications can arise for some national level implementing agencies, even when actions are closely correlated with obligations under other MEAs.
- c) The considerable time likely to be needed to negotiate and conclude a new arrangement, and the potentially significant financial and other resources needed to set-up the institutional machinery to sustainably support and monitor implementation.
- d) Continued reliance on national conservation priorities.

### **Financial Implication of Options under CMS**

8. Leaving out the substantial cost of the negotiation process, the financial implications of each option are dependent on the costs to (1) establish a secretariat or coordination mechanism, (2) service the instrument including regular meetings to monitor and evaluate implementation, and (3) costs for activities to support implementation (mostly likely internationally-oriented cooperative activities rather than individual activities within a Range State). Assuring a sustainable flow of resources will help to ensure the arrangement's success over time.

9. In its estimates, the Secretariat has set the following assumptions and parameters:

- (i) All estimates are for a 3 year period.
- (ii) Options A and B are treated alike for estimating purposes.
- (iii) For each main option (i.e. A/B and C) sub-options are provided for two different staffing models (a) full UN staffing and (b) non-UN staffing with UN supervision at three different locations (Europe, W. Africa and West Asia). There are thus 12 different cost options (A/B 1-6 and C1-6).
- (iv) The costs of non-UN staff are assumed to be the same as UN staff but without "post adjustment" which considerably lowers costs. However in full market conditions the savings could be greater than the estimates given.
- (v) The costs options for full UN staffing in Bonn assume free office accommodation on the same terms as the current CMS and Agreements staff located there. Other cost options include accommodation estimates.

10. Final costs for an option would also depend on such factors as the number of meetings scheduled to service the arrangement, the location of the meetings, how many countries would be funded to attend and the number of activities that would be funded.

11. A significant consideration would be the extent to which the participating Range States would be obliged to contribute to the arrangement's maintenance and the extent to which CMS's regular budget would contribute to the overall budget especially during the time before there is significant or universal membership in the arrangement. Assessed contributions pursuant to a legally binding arrangement would seem the surest way to assure financial and therefore, institutional stability.

12. A dedicated budget line within the CMS regular budget to underwrite some, or all, regular meetings of the signatories of a partnership arrangement or MoU - a practice that ended for MoUs with the Eighth Meeting of the CMS Conference of the Parties - would also contribute to ensuring institutional stability<sup>1</sup>. An option could also be envisioned where the Convention's contribution gets phased out within a specified period of time giving the members of an arrangement time to mobilise resources.

13. Both sources of funds could be supplemented by voluntary contributions.

**Action Requested:**

The Range States are invited to:

- Consider the three options for international cooperation under CMS to conserve migratory African-Eurasian Raptors.
- Choose an option for subsequent elaboration during the meeting, and subsequently:
- Consider, in light of document UNEP/CMS/AERAP-IGM/7, to (i) establish an Interim Secretariat, which will assist implementation of the adopted instrument; and (ii) establish an Advisory Committee to provide scientific and legal advice to the Signatory States.

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<sup>1</sup> CMS COP Resolution 8.5 encouraged Parties, non-Parties and organisations to work closely with the CMS Secretariat in the triennium and to generously contribute financially and in-kind resources beyond whatever funds may be provided in the core CMS budget to support coordination mechanism for instruments such as MoUs. The Eighth Meeting of the Conference of the Parties adopted the CMS budget for the triennium 2006-2008 with a very modest amount dedicated to Agreement development and servicing under budget line 2260. This is in contrast to past CMS budgets. However, the present triennium's budget was agreed on the understanding that voluntary contributions would be provided to help support the implementation of the Convention in lieu of larger assessed contributions on the Parties.

**Table 1. Strengths, weaknesses, opportunities and threats (SWOT) of potential CMS instruments or partnership arrangements for migratory raptors** (adapted from Goriup and Tucker 2005 and IUCN Shark Specialist Group 2007)

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<b>1. Partnership Arrangement</b>	<ul style="list-style-type: none"> <li>An informal voluntary framework, potentially defined by a written partnership agreement, to promote dialogue, cooperation and collaboration between a range of stakeholders, from all levels of government to non-governmental organisations, industry, community groups and local people.</li> <li>Ideally associated with an action plan and would act as the institutional umbrella to support action plan implementation.</li> <li>Requires a secretariat for effective functioning.</li> <li>The species covered do not necessarily have to all be listed in Appendix II of CMS.</li> </ul>	<ul style="list-style-type: none"> <li>Interpreted to meet the key requirements for a regional cooperative framework under Article IV of the Convention and CMS COP Res 2.6.</li> <li>If affiliated with CMS it would enjoy the international legitimacy of CMS along with the benefits derived from the Convention's close partnership with UNEP.</li> <li>Membership not restricted.</li> <li>Partners are not confined to governments, but can include inter-governmental organisations, non-governmental and private sector entities.</li> <li>Depending on taxonomic and geographic scale of the undertaking could be developed relatively quickly with little or no post-adoption procedures at national level (no need for signatures by the participating agencies or States) in most countries.</li> </ul>	<ul style="list-style-type: none"> <li>Not legally binding and therefore depends for effectiveness entirely on the goodwill of the partners, and the willingness of partners to establish national partnership networks, and to support and provide resources to a secretariat.</li> <li>Might be ineffective if established without a secretariat to support and coordinate or an accompanying action plan.</li> <li>Untested mechanism within CMS. (Note however that MoUs are essentially partnership agreements between Range States and a limited number of collaborating organisations (see below)).</li> </ul>	<ul style="list-style-type: none"> <li>Relatively quick and simple to negotiate and establish and therefore potentially expedient. Any relevant potential partners may become engaged in the process.</li> <li>The partnership could serve as a bridge to a more formal arrangement, potentially including a new CMS MoU or a formal Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>Partners do not provide financial or in-kind contributions to support the partnership's operations and implementation because it is not legally binding.</li> <li><i>Ad hoc</i> voluntary financial contributions are probably not sustainable over the longer term.</li> <li>The CMS COP may not provide the CMS Secretariat with the additional financial and/or manpower resources needed to coordinate the partnership.</li> <li>Range State partners will not give sufficient attention to implementation at national level because it is not legally binding.</li> <li>CMS "Agreement overload" could create a disincentive for Ranges States to conclude.</li> </ul>
<b>2. Memorandum of Understanding</b> (under Article IV(4) and CMS COP Res. 2.6)	<ul style="list-style-type: none"> <li>A non-binding legal and institutional framework for the delivery of an integral action plan.</li> </ul>	<ul style="list-style-type: none"> <li>Depending upon the taxonomic and geographic scale can be developed and concluded on relatively short notice.</li> </ul>	<ul style="list-style-type: none"> <li>Not legally binding and therefore depends for effectiveness entirely on the goodwill of the participating signatories.</li> </ul>	<ul style="list-style-type: none"> <li>The material for an MoU and action plan is readily available and any Range State willing to participate</li> </ul>	<ul style="list-style-type: none"> <li>CMS "Agreement overload" could create a disincentive for Ranges States to conclude.</li> </ul>

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
	<ul style="list-style-type: none"> <li>• Has been used most typically within CMS to co-ordinate short-term conservation measures across the range of one or more seriously endangered migratory species.</li> <li>• Operates until conservation status improves, or a more elaborate instrument (i.e. a formal Agreement (see below) under Article IV(3) or IV(4)) is prepared, adopted by Range States and enters into force.</li> <li>• Species covered do not have to be listed in Appendix II of CMS.</li> </ul>	<ul style="list-style-type: none"> <li>• Geographical coverage does not need to extend to the entire migratory range of the species concerned.</li> <li>• Enjoys the international legitimacy of CMS along with the benefits derived from the Convention's close partnership with UNEP.</li> <li>• If sustainably resourced, has the potential to provide a stable and long-term legal and/or political framework for initial implementation and later evolution.</li> <li>• Implementation kept under regular review.</li> <li>• Signatories should regularly report on implementation.</li> <li>• Historically, no regular financial contributions are assessed on MoU Signatories, though voluntary contributions are encouraged.</li> <li>• CMS acts as secretariat and depositary and coordinates it with the possibility to outsource.</li> <li>• Their simplicity allows MoUs (and/or their integral comprehensive action plans) to be fairly easily re-opened for re-negotiation or amendment.</li> </ul>	<ul style="list-style-type: none"> <li>• No formal organisational structure created for implementation.</li> <li>• Typically has a much less substantive content than a formal Agreement because it must not create any new commitment for the signatory Range States however the integral action plan is comprehensive and tailored to the particular species' needs.</li> <li>• As an MoU does not create any institutional structure of its own, it arguably may not be as dynamically implemented as an Agreement with the daily engagement of a secretariat, unless the CMS Secretariat has dedicated capacity or a coordination mechanism is created (see IOSEA).</li> </ul>	<p>could do so provided the government signs the MoU.</p> <ul style="list-style-type: none"> <li>• International collaborating organisations may sign the MoU demonstrating their commitment to support its implementation.</li> <li>• The MoU could focus on the most threatened species and key Range States in order to minimise delays and costs and direct conservation action to where it is most needed.</li> <li>• The MoU could serve as a forerunner for a new formal Agreement either focusing on the species originally addressed or a larger group.</li> </ul>	<ul style="list-style-type: none"> <li>• Signatories do not provide financial or in-kind contributions to support the MoU's operations and implementation because MoU is not legally binding.</li> <li>• CMS COP may not provide the CMS Secretariat with the additional financial and/or manpower resources needed to coordinate the MoU and Action Plan and hold regular meetings of the signatories to monitor implementation.</li> <li>• <i>Ad hoc</i> voluntary financial contributions are probably not sustainable over the longer term.</li> <li>• Signatories to the MoU will not give sufficient attention to implementation at national level because it is not legally binding.</li> <li>• CMS has no experience with the application and implementation of MoUs to such a wide geographical and taxonomic scope.</li> <li>• The MoU itself could provide a poor substitute for a higher-level formal Agreement (see below) because of the number of Range States involved (over 100 for raptors) and the 77 raptor species involved.</li> </ul>

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<b>3. Agreement</b> (under Article IV)	<ul style="list-style-type: none"> <li>• A legally binding multilateral treaty pursuant to CMS Articles IV (3) or IV (4).</li> <li>• May be concluded for species listed on Appendix II (Article IV (3)) or any population, members of which periodically cross one or more national boundaries (Article IV (4)).</li> <li>• While initially developed for species listed on CMS Appendices, Article IV (3) Agreements may later be expanded to cover additional species (see for example EUROBATs).</li> </ul>	<ul style="list-style-type: none"> <li>• A self-standing treaty with its own institutional machinery and budget for supporting and monitoring the implementation of the instrument and its integral action plan.</li> <li>• The legally binding nature of this instrument could unlock resources that would not be released for a MoU.</li> <li>• Decision making and advisory bodies, serviced by a secretariat, meet on a regular basis.</li> <li>• Decision and policymaking bodies, serviced by dedicated secretariat, meet on a regular basis.</li> <li>• Implementation kept under regular review by dedicated secretariat.</li> <li>• Parties must make regular reports on implementation.</li> <li>• Has the potential to create a dynamic environment to address the particular needs of the species covered, and Range States.</li> <li>• Provides long term legal stability for the Range States, their authorities and scientific bodies, as well as the international community of governmental and non-governmental organisations involved.</li> <li>• Has flexibility in coverage of species and geographic range, and can develop organically from an MoU.</li> <li>• Agreement budget based on an agreed scale of assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially long and costly negotiation process.</li> <li>• Formal negotiation session needs to be organised to adopt final text.</li> <li>• Needs to be ratified in accordance with the internal law or decision making procedures of every Range State. This can take considerable time.</li> <li>• Entry into effect could take many years.</li> <li>• Membership limited to States, though the forum created by the Agreement could be open to observers.</li> <li>• The legal and institutional framework of an Agreement means the Parties may have to stretch limited resources to a further MEA requiring regular contributions and national personnel for meetings, reporting and implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• The material for an Agreement and action plan is readily available and any Range State willing to become a Party could do so provided it ratifies the Agreement.</li> <li>• An Agreement could provide the most comprehensive, stable legal and institutional framework for the large number of Range States involved (over 100) and the 77 raptor species involved.</li> </ul>	<ul style="list-style-type: none"> <li>• CMS “Agreement overload” could create a disincentive for Range States to conclude.</li> <li>• Agreement Parties might not contribute sufficient resources to make it effective as an independent instrument.</li> <li>• Need a critical mass of countries to provide sufficient financial resources to support institutions created.</li> <li>• Parties do not give sufficient attention to implementation at national level because of lack of resources regardless of instrument’s legal nature.</li> </ul>

<b>Table 2.a: ESTIMATED GENERAL COSTS (EURO) - OPTIONS A &amp; B -</b>						
<b>OPTION A: PARTNERSHIP ARRANGEMENT &amp; - OPTION B: MEMORANDUM OF UNDERSTANDING &amp; ACTION PLAN</b>						
<b>Sub-options</b>	<b>Full UN Staffing [6]</b>			<b>Non-UN Staffing [7]</b>		
<b>Locations/Cost options</b>	<b>EUROPE</b>	<b>W-ASIA</b>	<b>W-AFRICA</b>	<b>EUROPE</b>	<b>W-ASIA</b>	<b>W-AFRICA</b>
<b>BUDGET COMPONENTS (In Euros)</b>						
1. Secretariat/Coordination mechanism[1]	501 241	463 027	367 006	424 246	411 904	216 180
2. Servicing[2]	300 800	300 800	300 800	300 800	300 800	300 800
3. Activities[3]	564 000	564 000	564 000	564 000	564 000	564 000
<b>SUB-TOTAL (EURO)</b>	<b>1 366 041</b>	<b>1 327 827</b>	<b>1 231 806</b>	<b>1 289 046</b>	<b>1 276 704</b>	<b>1 080 980</b>
4. Office incidentals/overheads[4]	68 302	66 391	61 590	64 452	63 835	54 049
<b>SUB-TOTAL (EURO)</b>	<b>1 434 343</b>	<b>1 394 218</b>	<b>1 293 396</b>	<b>1 353 499</b>	<b>1 340 539</b>	<b>1 135 029</b>
5. "Standard UNEP" overheads charge[5]	186 465	181 248	168 141			
<b>TOTAL (EURO)</b>	<b>1 620 808</b>	<b>1 575 466</b>	<b>1 461 537</b>	<b>1 353 499</b>	<b>1 340 539</b>	<b>1 135 029</b>
<b>Savings (Euro)</b>						
In comparison to Bonn duty station (international officer)	<b>0%</b>	<b>3%</b>	<b>10%</b>	<b>16%</b>	<b>17%</b>	<b>30%</b>

- [1] Outsourcing secretariat/coordination functions to a non-UN entity may result in savings. Estimated costs for outsourced support will depend on location and could range from 16% to 30% over the 3-year-budget for a full time coordinator and 1 Assistant,
- [2] Assumes: 2 standalone meetings @ USD 200,000 (€ 150,400)/meeting (final costs depend on location and number of subsidised participants). Savings could be achieved if regular meetings were held in the margins of other meetings.
- [3] The Raptors Assessment (UNEP/CMS/AERAP-IGM1/Inf/7) estimated 1,760,000 (€ 1,323,520) for a 5 year suite of activities (€ 794,112 over a 3 year-budget). Activities cost are considered for the 70%-75% key actions during the triennium and may increase since the next triennium, resources permitting.
- [4] Assumes: 5 percent of programme costs and includes office, supplies and travel. European location in CMS HQ in Bonn, where the Convention enjoys the benefit of accommodation provided gratis by the Government of Germany under the HQ Agreement would reduce costs by € 63,495 saving over 3 years.
- [5] Assumes: 13 percent of total costs.
- [6] Secretariat's Coordination by international officer & assistant, in addition to CMS oversight reflected in (i) agreement officer (3% time), (ii) CMS assistant (5%) and (iii) CMS senior officer (2%).
- [7] Secretariat's Coordination by national officer & assistant, in addition to CMS oversight reflected in (i) agreement officer (5% time), (ii) CMS assistant (2%) and (iii) CMS senior officer (2%).

**Table 2.b: ESTIMATED GENERAL COSTS (EURO) - OPTION C: AGREEMENT -**

Sub-options Locations/Cost options	Full UN Staffing [6]			Non-UN Staffing [7]		
	EUROPE	W-ASIA	W-AFRICA	EUROPE [8]	W-ASIA [9]	W-AFRICA
<b>BUDGET COMPONENTS (In Euros)</b>						
1. Secretariat/Coordination mechanism[1]	535 004	497 187	398 830	451 358	443 376	249 090
2. Servicing[2]	300 800	300 800	300 800	300 800	300 800	300 800
3. Activities[3]	564 000	564 000	564 000	564 000	564 000	564 000
<b>SUB-TOTAL (EURO)</b>	<b>1 399 804</b>	<b>1 361 987</b>	<b>1 263 630</b>	<b>1 316 158</b>	<b>1 308 176</b>	<b>1 113 890</b>
4. Office incidentals/overheads[4]	69990	68 099	63 181	65 808	65 409	55 694
<b>SUB-TOTAL (EURO)</b>	<b>1 469 794</b>	<b>1 430 086</b>	<b>1 326 811</b>	<b>1 381 966</b>	<b>1 373 585</b>	<b>1 169 584</b>
5. "Standard UNEP" overheads charge[5]	191 073	185 911	172 485			
<b>TOTAL (EURO)</b>	<b>1 660 867</b>	<b>1 615 997</b>	<b>1 499 296</b>	<b>1 381 966</b>	<b>1 373 585</b>	<b>1 169 584</b>
<b>Savings (Euro)</b> In comparison to Bonn duty station (international officer)	<b>0%</b>	<b>3%</b>	<b>10%</b>	<b>17%</b>	<b>17%</b>	<b>30%</b>

- [1] Outsourcing secretariat/coordination functions to a non-UN entity may result in savings. Estimated costs for outsourced support will depend on location and could range from 17% to 30% over the 3-year-budget for a full time coordinator and 1 Assistant,
- [2] Assumes: 2 standalone meetings @ USD 200,000 (€ 150,400)/meeting (final costs depend on location and number of subsidised participants). Savings could be achieved if regular meetings were held in the margins of other meetings.
- [3] The Raptors Assessment (UNEP/CMS/AERAP-IGM1/Inf/7) estimated 1,760,000 (€ 1,323,520) for a 5 year suite of activities (€ 794,112 over a 3 year-budget). Activities cost are considered for the 70%-75% key actions during the triennium and may increase since the next triennium, resources permitting.
- [4] Assumes: 5 percent of programme costs and includes office, supplies and travel. European location in CMS HQ in Bonn, where the Convention enjoys the benefit of accommodation provided gratis by the Government of Germany under the HQ Agreement would reduce costs by € 63,495 saving over 3 years.
- [5] Assumes: 13 percent of total costs.
- [6] Secretariat's Coordination by international officer & assistant, in addition to CMS oversight reflected in (i) agreement officer (2% time), (ii) CMS assistant (3%) and (iii) CMS senior officer (1%).
- [7] Secretariat's Coordination by national officer & assistant, in addition to CMS oversight reflected in (i) agreement officer (3% time), (ii) CMS assistant (2%) and (iii) CMS senior officer (2%).
- [8] Salary of "national senior programme officer" in Europe assumed equivalent to 15% majored salary of "national programme officer" at this duty station (by analogy to international posts)
- [9] Salary of "national senior programme officer" in Asia assumed equivalent to 15% majored salary of "national programme officer" at this duty station (by analogy to international posts)