



# Convention on the Conservation of Migratory Species of Wild Animals

Secretariat provided by the United Nations Environment Programme



## SECOND MEETING ON INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER THE CONVENTION ON MIGRATORY SPECIES

Rome, Italy, 6-8 December 2008

UNEP/CMS/MS2/Doc/4

Agenda Item 9.2

### SECOND DRAFTS OF PROPOSED LEGALLY AND NON-LEGALLY BINDING INSTRUMENTS ON MIGRATORY SHARKS

*(Prepared by the CMS Secretariat)*

#### **Introduction**

1. The meeting to Identify and Elaborate an Option for International Cooperation on Migratory Sharks under the Convention on Migratory Species, held in Mahé, Seychelles from 11-13 December 2007, recommended that the text of an agreement under the Convention on the Conservation of Migratory Species of Wild Animals (CMS), incorporating the conclusions reached at the meeting, should be prepared by the CMS Secretariat in consultation with an Inter-sessional Steering Group on Migratory Sharks (ISGMS) comprising Australia, Chile, Costa Rica, the European Commission, New Zealand, Seychelles and United States of America. The participants considered that an instrument developed under Articles III, IV and V of CMS would add value to current global shark conservation and management efforts, and that the process to develop such an instrument should continue with a view to finalizing the proposed instrument.

2. The meeting in Seychelles did not reach consensus on the final form that the CMS agreement should take (legally or non-legally binding), and therefore the ISGMS was charged with considering and proposing texts for both types of instruments. The Secretariat therefore provided ISGMS with two first drafts of CMS shark instruments, one legally-binding, the other non-legally binding, which were to serve as starting points for the ISGMS's work.

#### **ISGMS comments on the first drafts of the proposed CMS agreement**

3. The European Commission, Chile, Argentina (at the invitation of Chile), and the United States of America each provided comment on the first drafts of legally- and non-legally binding agreements under CMS on migratory sharks. These comments also include comment on the Terms of Reference for the ISGMS, the most substantive of which centered on the process for developing a Plan of Action under the CMS agreement.

4. The CMS Secretariat wishes to thank the ISGMS for providing useful comment on the first drafts of the legally-binding and non-legally binding instruments on migratory sharks, the majority of which has been incorporated into the second drafts which are to be further considered at the second CMS meeting on sharks in Rome on 6-8 December 2008.

*For reasons of economy, documents are printed in a limited number, and will not be distributed at the meeting. Delegates are kindly requested to bring their copy to the meeting and not to request additional copies.*

## **The second draft of a legally binding instrument**

5. The Secretariat decided, due to time constraints, to move the second drafts of the proposed CMS agreements on migratory sharks forward on a two track path.

- (i) The ISG was asked to provide comments on the second drafts by 19 November 2008, and the Secretariat committed to consolidate any further comment by the ISGMS and make it available as a meeting document for the second meeting on sharks in Rome on December 6-8, 2008.
- (ii) The second drafts of the proposed CMS instruments were translated and made available to meeting participants before the meeting through the CMS website <[http://www.cms.int/bodies/meetings/regional/sharks/sharks\\_meeting\\_Rome.htm](http://www.cms.int/bodies/meetings/regional/sharks/sharks_meeting_Rome.htm)>. They are attached to this note as Annex 1 and 2.

### **Action requested**

The meeting is invited to:

- a. *Note* the progress made by the CMS Secretariat and the ISGMS in implementing UNEP CMS Recommendation 8.16, and Resolution 8.5 put forward at the 8<sup>th</sup> Conference of the Parties to CMS, which call for the development of a global migratory shark agreement under CMS.
- b. *Consider* the two draft texts of legally and non-legally binding instruments under CMS and seek consensus on the final form that the CMS instrument should take (legally or non-legally binding).
- c. *Consider* whether a dedicated Plan of Action pursuant to the instrument is necessary, and whether the IPOA-sharks developed under the auspices of the Food and Agricultural Organization of the United Nations (FAO) could be the basis of a Plan of Action under the proposed CMS shark instrument.
- d. *Propose* such modifications and changes to the agreed form of the instrument that are deemed appropriate to further ensure that the objective of the instrument is ultimately achieved.
- e. *Recommend* to the CMS Secretariat further steps to be taken toward finalization of the text and, if necessary.

**DRAFT**  
**MEMORANDUM OF UNDERSTANDING**  
**ON THE**  
**CONSERVATION OF MIGRATORY SHARKS**

**THE SIGNATORY STATES,**

**RECALLING** that the 8th meeting to the Conference of the Parties of the Convention on Migratory Species of Wild Animals adopted Recommendation 8.16 calling upon Range States of migratory sharks listed on Appendix I or II to develop a global migratory sharks conservation instrument in accordance with Articles III and V of the Convention;

**NOTING** that three species of migratory sharks, the Basking, Whale and Great White Shark, have priority for conservation actions through listing on the appendices of both the Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

**RECOGNIZING** the critical role that migratory sharks play in marine ecosystems, and concerned about the significant and continuing mortality of sharks listed on Appendix I and II through a range of impacts and threats including targeted (directed) fisheries, fisheries by-catch, illegal, unreported and unregulated (IUU) fishing, trophy hunting, marine debris, habitat destruction – including prey depletion, boat strikes and disturbances, and increasing pressures on the marine environment due to climate change;

**CONVINCED** that the vulnerability of migratory sharks to such threats warrants further development and stronger implementation of conservation measures by States and regional economic integration organisations that exercise sovereignty, or jurisdiction, or both over any part of their range, and by States, flag vessels of which are engaged outside national jurisdictional limits in activities that may affect the conservation of sharks;

**MINDFUL OF** the need to reconcile the provisions of this Memorandum of Understanding with other international shark conservation and management initiatives, including the FAO voluntary IPOA-sharks, which calls upon States to develop and implement complementary NPOA-sharks;

**NOTING** that both the FAO, through IPOA-sharks, and the Convention have embraced a common objective - the need to ensure the conservation and management of migratory sharks and their long-term wise and sustainable use – and that fishermen, fish traders and conservation NGOs have critical complementary roles to play in achieving this objective;

**REALIZING** that RFMOs should be involved in the development and implementation of this Memorandum of Understanding by virtue of their mandate to bring fishing nations together to promote conservation and management of fish stocks, and their knowledge and experience of migratory shark catches, and that it will be necessary to work with and through these bodies to achieve the objectives of this Memorandum of Understanding;

**NOTING** that the remit of the work to be undertaken by CMS should complement and not duplicate the work of RFMOs with regard to fisheries management;

**BELIEVING** that conclusion and implementation of an international agreement in the form of a non-binding Memorandum of Understanding and a supporting Action Plan under Article IV.4 of the Convention will add value and contribute significantly to the conservation of migratory sharks by strengthening the political will to implement migratory shark conservation measures in a coordinated and timely fashion, by bridging migratory shark fisheries and conservation interests, by reinvigorating the implementation of the FAO-IPOA for sharks by linking it to this Memorandum of Understanding and building on it, and by capitalizing on the potential of the Convention's broad membership to add expertise to global conservation efforts in the areas of science, research, monitoring, species identification, data analysis, threat definition and reduction, habitat protection, education and public awareness, information exchange, and capacity building;

**WITH A VIEW TO** improving the conservation status of Appendix I and II listed migratory shark species through concerted and coordinated action on the part of the States that exercise jurisdiction over the range of these populations;

**ACKNOWLEDGING** that, despite past and ongoing scientific research and monitoring, knowledge of the biology, ecology, and population dynamics of migratory sharks is deficient, and that it is necessary to promote stronger co-operation between fishing nations on research and monitoring in order to effectively implement conservation measures;

**NOTING** that other species of sharks not currently listed on Appendices I and II may also benefit from implementation of this Memorandum of Understanding as a consequence of more coordinated conservation efforts among Range States, shark fishing States, and shark trading States;

**EXPRESS** their desire to pursue the actions set forth in this Memorandum of Understanding, in the spirit of mutual cooperation, to achieve and maintain a favourable conservation status for migratory sharks; and

**HAVE DECIDED as follows:**

#### **Relationship with the Convention**

1. This Memorandum of Understanding is an agreement as defined in Article IV paragraph 4 of the Convention, and as further defined by Resolution 2.6 adopted at the Second Meeting of the Parties to the Convention (place), Resolution 3.5 adopted at the Third Meeting of the Parties to the Convention (place), and Resolution 5.2 adopted at the Fifth Meeting of the Parties to the Convention (place).
2. The Annexes form an integral part of this Memorandum of Understanding.
3. This agreement is not legally binding upon the Signatories.

#### **Scope, definitions and interpretation**

4. This Memorandum of Understanding applies to all current and future listings of migratory shark species in Appendices I and II of the Convention.

Or

This Memorandum of Understanding applies to Basking, Whale and Great White Sharks, and to any other species of migratory shark that the Signatories to this instrument agree,

through a process to be decided by them, should be added to the list of migratory sharks in Annex 1.

5. For the purpose of this Memorandum of Understanding:

- a) “Migratory shark” means one of any of the species, subspecies or populations of the migratory sharks currently listed in Appendices I and II of the Convention on Migratory Species of Wild Animals, and to all future listings of migratory shark species under the Convention;

Or

Migratory shark means Basking, Whale and Great White Sharks as listed in Annex 1 to this instrument, and includes any other species of migratory shark that the Signatories to this instrument agree should be added to the list of migratory sharks in Annex 1.

Or

“Migratory shark” means Basking, Whale and Great White Sharks as listed in Annex 1 to this instrument, and any of the species, subspecies or populations in the Class *Chondrichthyes* (which includes sharks, rays, sawfishes and skates) that the Signatories to this instrument agree should be added to the list of migratory *Chondrichthyes* in Annex 1.

- b) “Secretariat” means the body established under Article X of this Memorandum of Understanding to assist in its administration and implementation;
- c) “Convention” means the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn, Germany on 23 June 1979;
- d) “Convention Secretariat” means the body established under Article IX of the Convention;
- e) “UNCLOS” means the United Nations Convention on the Law of the Sea, 1982;
- f) “FAO” means the Food and Agriculture Organisation of the United Nations;
- g) “IPOA-Sharks” means the International Plan of Action for the conservation and management of sharks established under the FAO (date);
- h) “NPOA-Sharks” means a National Plan of Action for the Conservation and Management of Shark Stocks (Shark-plan), developed pursuant to IPOA-sharks;
- i) “Range” means all the areas of water that a migratory shark inhabits, stays in temporarily, or crosses at any time on its normal migration route;
- j) “Habitat” means any area in the range which contains suitable living conditions, particularly known aggregation, feeding and breeding sites, for migratory sharks;
- k) “Signatory” means a State, regional economic integration organisation, or other body that is a Signatory to this Memorandum of Understanding;

- l) “Signatories present and voting” means the Signatories present and casting an affirmative or negative vote; those abstaining will not be counted amongst the Signatories present and voting;
- m) “Advisory Committee” means the committee of persons qualified as experts in migratory shark science and management established under this Memorandum of Understanding;
- n) “Conservation Status of migratory sharks” means the sum of all the influences acting on migratory sharks that may affect their long-term distribution and abundance;
- o) Conservation Status be taken as “favourable” when all of the following conditions are met:
  - i. population dynamics data indicate that migratory sharks are maintaining themselves on a long term basis as a viable component of its ecosystems;
  - ii. the range of the migratory sharks is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
  - iii. there is, and be in the foreseeable future, sufficient habitat to maintain the population of migratory sharks on a long term basis; and
  - iv. the distribution and abundance of migratory sharks approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management;
- p) Conservation status be taken as “unfavourable” if any of the conditions set out in sub paragraph 7. o) is not met;
- q) “Range State” means any State that exercises jurisdiction over any part of the range of migratory sharks, or a State, flag vessels of which are engaged outside its national jurisdictional limits in taking, or which have the potential to take, migratory sharks;
- r) “Taking” means taking, hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct, but excludes sustainable, managed, directed migratory sharks fisheries;
- s) "Regional economic integration organisation" means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by this Memorandum of Understanding and has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Memorandum of Understanding;
- t) “Action Plan” means the Migratory Sharks Conservation and Management Action Plan given in Annex 2 of the Memorandum of Understanding;
- u) “Shark finning” means the practice of removing fins from living migratory sharks, on board fishing vessels, solely for the purpose of harvesting shark fins, where the shark carcass is discarded at sea.; and
- v) “RFMO” means all the regional and sub-regional fisheries management bodies that have exclusive fisheries advisory and management responsibilities within their respective regions. Note: it has been suggested that because there is no

internationally agreed definition of an RFMO, that RFMO not be defined in this instrument.

6. The interpretation of any term or provision of this Memorandum of Understanding will be made in accordance with the Convention, or relevant Resolutions adopted by its Meeting of the Parties, or both, unless such a term or provision is defined or interpreted differently in this Memorandum of Understanding.

### **Objective**

7. The objective of this Memorandum of Understanding is to achieve and maintain a favourable conservation status for migratory sharks listed in the Appendices I and II of the Convention, and for those to be listed in the future.

Or

The objective of this Memorandum of Understanding is to protect, conserve, replenish and recover migratory sharks and their habitats, based on the best scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of the Signatory states.

### **Fundamental Principles**

8. Successful shark conservation and management requires the fullest possible cooperation among governments, intergovernmental organizations, non-government organizations and local communities, and immediate engagement pursuant to this Memorandum of Understanding with the fisheries industry, FAO, RFMOs and other international organizations that deal with fisheries.
9. The Signatories acknowledge the role and the scientific and political actions of RFMOs (which are responsible for the management of migratory shark fisheries), and the need to strengthen and improve their role, including initiatives on direct and indirect migratory sharks fishery.
10. The Signatories aim to achieve the objective of this Memorandum of Understanding through implementation by Signatories, both individually and collaboratively, of a broad range of migratory shark conservation and management measures. To this end, Signatories will endeavour to implement the measures given in paragraph 18 by carrying out the activities specified in the Action Plan in Annex 2.
11. Migratory shark stocks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information.
12. In implementing the measures given in paragraph 18 the Signatories will apply widely both an ecosystem and a precautionary approach. Lack of scientific certainty is not be used as a reason for postponing measures to enhance the conservation status of migratory sharks.
13. Signatories should adopt, where necessary, conservation and management measures for species belonging to the same ecosystem, or associated with or dependent upon a migratory shark or sharks listed in Annex 1 to this instrument (the target stocks), minimizing pollution, waste, discards, catch by lost or abandoned gear, and other threats in accordance with

Article 5 of the 1995 UN Fish Stocks Agreement, and the general duty to protect the marine environment.

14. Each Signatory State, as appropriate, will implement the Memorandum of Understanding with respect to its nationals and vessels, and marine areas under its jurisdiction.
15. Signatory States may implement more stringent measures domestically than those specified in the Action Plan.
16. Signatory States may establish, by mutual consent, bilateral, sub-regional or regional management plans that are consistent with this Memorandum of Understanding.
17. Actions under this Memorandum of Understanding should be coordinated with Signatory States as well as with sub-regional institutions in the appropriate Region.

### **Conservation and Management Measures**

18. The Signatories cooperatively will strive to adopt, implement and enforce such legal, regulatory and administrative measures as may be appropriate to conserve and manage migratory sharks and their habitat; and to this end will endeavour through the Action Plan to implement as priorities the following specific measures:
  - a) Build research, monitoring, compliance and enforcement capacity globally.
  - b) Identify and protect critical shark habitats and migration routes.
  - c) Create a standardized species-specific global shark database.
  - d) Coordinate stock assessments and research.
  - e) Regulate non-consumptive use of sharks including ecotourism.
  - f) Prohibit shark finning and actively cooperate through RFMOs to ensure that shark finning does not take place.
  - g) Cooperate with the fishing industry.
  - h) Conduct studies of shark aggregation, breeding grounds, ecology and behaviour.
  - i) Prohibit the taking of species listed in Appendix I of the Convention in accordance with Article III of the Convention.
  - j) Regulate the exploitation of species listed in Appendix II to the Convention.
  - k) Encourage relevant bodies to set targets for fish quotas, fishing effort and other restrictions.
  - l) Regulate shark by-catch in non-directed fisheries. Note: It is suggested that this paragraph could be deleted as it is covered by 18 j.
  - m) Implement enforcement and compliance measures including observers on fisheries vessels.

- n) Promote shark conservation and wise use globally.
  - o) Reduce pollution, marine debris and ship strikes.
19. The Signatory States recognize that in order to be successful in these endeavours they must also make every effort, as appropriate, to:
- a) Engage immediately with the fisheries industry, FAO, RFMOs and other international organizations that deal with fisheries to develop a working relationship, analyze the strengths and weaknesses of current conservation and management initiatives, and involve them in the elaboration and execution of the Action Plan.
  - b) Promote concrete, actionable conservation recommendations to be carried forward to RFMOs by the nations (states) that are party to both this instrument and the RFMOs.
  - c) Implement, subject to the availability of necessary resources, the Action Plan in Annex 2 of this Memorandum of Understanding.
  - d) Cooperate with relevant organisations and recognised experts and so as to facilitate the work conducted in relation to the Action Plan.
  - e) Facilitate the timely access to and exchange of information necessary to coordinate conservation and management measures.
  - f) Ensure development and implementation of NPOA- Sharks under the auspices of the FAOs voluntary IPOA-Sharks.
  - g) Take into account, where appropriate, subsistence and customary take of migratory sharks in those States where it is permitted.
  - h) Ratify or accede to those international instruments most relevant to the conservation and management of migratory sharks and their habitats in order to enhance the legal protection of migratory shark species.
  - i) Formulate, review, revise and harmonise national legislation and regulations, as necessary, relevant to the conservation and management of migratory sharks and their habitats.
  - j) Encourage other Range States to sign this Memorandum of Understanding.

### **Action Plan**

20. Annex 2 of this Memorandum of Understanding will have effect as an Action Plan for the achievement of a favourable conservation status for migratory sharks.
21. With due consideration to the capabilities of Signatories to implement these actions, the Action Plan sets out the activities that Signatories will progressively strive to undertake in relation to migratory sharks, and assigns priorities to these activities, consistent with the conservation and management measures specified above.

22. The Secretariat will if necessary establish a technical and advisory body including representatives from the Convention, CITES, IUCN, FAO and RFMOs to advise the Signatories on the implementation of the Action Plan until such time as an Advisory Committee is established under this Memorandum of Understanding.
23. Progress in implementing the Action Plan should be assessed at each ordinary session of the Meeting of the Signatories and the content of the Action Plan reviewed in light of that assessment.
24. The Meeting of the Signatories should consider and may adopt any proposed amendment to the Action Plan.

### **Implementation and Financing**

25. Each Signatory State should:
26. Designate a competent national authority to serve as a focal point for communication among Signatory States and for implementing activities under this Memorandum of Understanding and the Action Plan, and communicate the complete contact details of this authority, and any subsequent changes thereto, to the Secretariat.
27. Provide to the Secretariat a regular national report on the implementation of this Memorandum of Understanding and the Action Plan, the frequency and timing of which will be determined at the first meeting of the Signatory States.
28. Assess the overall implementation of this Memorandum of Understanding, including the Action Plan, at each ordinary session of the Meeting of the Signatories to be attended by representatives of each of the Signatory States and by persons or organisations technically qualified in migratory shark conservation and management.
29. Assess at the first meeting of Signatory States, and review periodically, the need for and possibilities of obtaining financial resources, as well as the establishment of a special fund or funds for purposes such as contributing towards any expenses required to operate the Secretariat, for activities carried out by the Secretariat at the request of Signatories, and for assisting the Signatory States to carry out their responsibilities under this Memorandum of Understanding.
30. Endeavour to finance, from national and other sources, the implementation within their jurisdictions of the measures necessary for the conservation of migratory sharks. In addition they will endeavour to assist each other in the implementation and financing of the activities under the Action Plan.
31. In order to build capacity, the Signatories will endeavour to provide training, technical and financial support on a multilateral or bilateral basis to assist developing countries in implementing the provisions of this Memorandum of Understanding. No surcharge will be levied on the costs of such training, technical or financial support to meet administrative overheads of the Secretariat or any organisation providing services to it.
32. A fund may be established to meet expenses related to the participation of developing countries at sessions of the Meeting of the Signatories and the Advisory Committee. This does not preclude such expenses being met by other arrangements, bilateral or otherwise.

## Meeting of the Signatories

33. The Meeting of the Signatories will be the decision-making body of this Memorandum of Understanding.
34. Unless provided otherwise in this Memorandum of Understanding, decisions of the Meeting of the Signatories will be adopted by consensus or, if consensus cannot be achieved, by a two-thirds majority of the Signatories present and voting.
35. Each Signatory will have one vote, but regional economic integration organisations which are Signatories to this Memorandum of Understanding, in matters within their competence, may exercise their right to vote with a number of votes equal to the number of their Member States which are Signatories to this Memorandum of Understanding. A regional economic integration organisation will not exercise its right to vote if its Member States exercise theirs, and *vice versa*.
36. The Convention Secretariat will convene the first Meeting of the Signatories not later than one year after the date of the entry into force of this Memorandum of Understanding.
37. Ordinary sessions of the Meeting of the Signatories should be held at intervals of not more than three years, unless the Meeting of the Signatories decides otherwise.
38. On the written request of at least one third of the Signatories, the Secretariat will convene an extraordinary session of the Meeting of the Signatories.
39. At its first session, the Meeting of the Signatories should elect a Chair; adopt its rules of procedure taking into account potential costs; establish a Secretariat; establish an Advisory Committee; and adopt criteria to define emergency situations that require urgent conservation measures and determine the modalities for assigning responsibility for action to be taken.
40. The first Meeting of the Signatories should adopt rules of procedure governing, among other matters, the attendance and participation of observers, and make provision for transparency in the activities relating to the Memorandum of Understanding and timely access to the records and reports relating to the Memorandum of Understanding. Such rules should not be unduly restrictive.
41. Any State not a Signatory to the Memorandum of Understanding, the United Nations, any specialised Agency of the United Nations, any regional economic integration organisation, and any secretariat of relevant international conventions, particularly those concerned with the conservation and management of marine living resources or conservation and management of migratory sharks, may participate as observers at the first session of the Meeting of the Signatories and its subsidiary bodies. For future sessions, such participation should be subject to the rules of procedure.
42. Any relevant scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation and management of migratory sharks, may participate as an observer at the first session of the Meeting of the Signatories and its subsidiary bodies. For future sessions, such participation should be subject to the rules of procedure.

43. The Meeting of the Signatories may require any information relevant to the effective functioning of this Memorandum of Understanding to be supplied to the Signatories by way of the Secretariat.
44. At each of its ordinary sessions, the Meeting of the Signatories will consider reports, advice and information from any of its subsidiary bodies; consider actual and potential changes in the conservation status of migratory sharks and the habitats important for their survival, as well as the factors that affect them; review any difficulty encountered in the implementation of this Memorandum of Understanding including financial matters; deal with any matters relating to the Secretariat, the Advisory Committee and the membership; adopt a meeting report to be communicated to the Signatories to this Memorandum of Understanding and to the Conference of the Parties of the Convention; and determine the time and venue of its next session.
45. At any of its sessions, the Meeting of the Signatories may amend the rules of procedure; make such recommendations as it deems necessary or appropriate; adopt measures to improve the effectiveness of this Memorandum of Understanding; adopt measures to improve the effectiveness of emergency measures; consider and decide upon proposals to amend this Memorandum of Understanding; consider species covered by this [J1]Memorandum of Understanding; amend the Action Plan; establish such subsidiary bodies as it deems necessary to assist in the implementation of this Memorandum of Understanding, in particular for coordination with bodies established under other relevant international treaties; vary any time limits set in this Memorandum of Understanding for the submission of documents or otherwise; and decide on any other matter relating to the implementation of this Memorandum of Understanding.
46. At every session of the Meeting of the Signatories, it should review the effectiveness of the Secretariat in facilitating the achievement of the objectives of this Memorandum of Understanding. The previous session of the Meeting of the Signatories should agree the Terms of Reference for the review.

#### **Advisory Committee**

47. The first Meeting of the Signatories should establish an Advisory Committee, comprising persons qualified as experts in migratory shark conservation science and management to:
  - a) provide expert advice and information to the Secretariat and the Signatories on conservation and management of migratory sharks and on other matters in relation to the Agreement;
  - b) conduct scientific assessments of the conservation status of migratory shark populations listed in Annex 1.
  - c) advise on the development and coordination of international research and monitoring programmes, and make recommendations to Meetings of the Signatories concerning further research to be carried out;
  - d) facilitate the exchange of scientific and management information, and techniques and new initiatives promoting the conservation of migratory sharks amongst Signatories;

- e) make recommendations to the Meetings of the Signatories concerning the Action Plan and implementation of the Agreement;
- f) prepare for each ordinary session of the Meeting of the Signatories a report on its activities, which be submitted to the Agreement Secretariat not less than one hundred and twenty days before the session of the Meeting of the Signatories, and with copies to be circulated forthwith by the Agreement Secretariat to the Signatories; and
- g) carry out any other tasks referred to it by Meetings of the Signatories.

The Advisory Committee should elect a Chair and Vice-chair and establish its own rules of procedure.

Each Signatory should be entitled to appoint one member to the Advisory Committee.

Each Committee member may be accompanied at meetings of the Signatories by one or more advisers.

The Advisory Committee may invite other experts to attend its meetings.

The Advisory Committee may establish working groups as necessary to undertake specific tasks.

Unless a Meeting of the Signatories decides otherwise, meetings of the Advisory Committee should be convened by the Agreement Secretariat in conjunction with each ordinary session of the Meeting of the Signatories and at least once between ordinary sessions of the Meeting of the Signatories.

Where in the opinion of the Advisory Committee an emergency has arisen which requires the adoption of immediate measures to avoid deterioration of the conservation status of one or more species of migratory shark, the Advisory Committee may request the Agreement Secretariat to convene urgently a meeting of the Signatories concerned. These Signatories should meet as soon as possible thereafter to establish rapidly a mechanism to give protection to the species identified as being subject to a particularly adverse threat or threats. Where a recommendation has been adopted at such a meeting, the Signatories concerned should inform each other, other Signatories and the Agreement Secretariat of the recommendation and the measures they have taken to implement it, or of the reasons why the recommendation could not be implemented

## **Secretariat**

48. The Signatories to this Memorandum of Understanding agree:

- a) A Secretariat should be established, based in an appropriate organisation or institution, to be decided by consensus at the first meeting of the Signatory States, to assist in the administration and implementation of this Memorandum of Understanding by coordinating, communicating, facilitating and reporting on relevant activities and events, and performing such other functions as may be assigned by the Signatory States.

- b) The Convention Secretariat should act as the interim Secretariat to this Memorandum of Understanding until a permanent Secretariat is established and may, subject to the availability of resources, use the services of any reliable organisation to support the coordination of this Memorandum of Understanding.

49. The functions of the Secretariat should include:

- a) to arrange and service the sessions of the Meeting of the Signatories as well as the meetings of the Advisory Committee;
- b) to execute the decisions addressed to it by the Meeting of the Signatories;
- c) to promote and coordinate activities under the Memorandum of Understanding and Action Plan, in accordance with decisions of the Meeting of the Signatories;
- d) to liaise with non-Party Range States, shark fishing States, shark trading States, and regional economic integration organisations and to facilitate coordination between Parties and non-Party Range States, shark fishing States, shark trading States, and international and national organisations and institutions whose activities are directly or indirectly relevant to the conservation, including the protection and management, of migratory shark species;
- e) to make available to the Signatory States the national implementation reports received and prepare a periodic review of progress made to implement the Memorandum of Understanding and the Action Plan;
- f) to propose for Signatories approval a process for the assessment by Signatories of progress made to implement the Memorandum of Understanding and the Action Plan, including who would conduct the assessment and how it would be carried out;
- g) to invite the attention of the Meeting of the Signatories to other matters pertaining to the objectives of this Memorandum of Understanding;
- h) to provide to each ordinary session of the Meeting of the Signatories a report on its work;
- i) to provide to each ordinary session of the Meeting of the Signatories an overview report based on all the information at its disposal pertaining to migratory sharks
- j) to administer the budget for the Memorandum of Understanding;
- k) to provide information to the general public concerning the Memorandum of Understanding and its objectives, and promote the objectives of this Memorandum of Understanding;
- l) to develop a system of performance indicators to measure the effectiveness and efficiency of the Secretariat and report to each ordinary session of the Meeting of the Signatories in terms of these;
- m) to collate and distribute as appropriate information provided by Signatories to the Secretariat;

- n) to support countries in search of financial resources to implement this agreement,
- o) to perform such other functions as may be entrusted to it by or under this Memorandum of Understanding.

### **Cooperation with other bodies**

- 50. The Signatories, recognizing their duty and responsibility as Signatories to this instrument to facilitate coordination and cooperation with other instruments to which they are also a party, should promote the objectives of this Memorandum of Understanding and develop and maintain coordinated and complementary working relationships with all relevant international, regional and sub-regional bodies, including those concerned with the conservation and management of migratory shark species and other marine living resources, particularly the FAO and RFMOs.
- 51. The Secretariat should consult and cooperate, where appropriate, with:
  - a) the Convention Secretariat and the bodies responsible for secretariat functions under other agreements concluded pursuant to Article IV (3) and (4) of the Convention that are relevant to migratory sharks;
  - b) RFMOs;
  - c) the secretariats of other relevant conventions, in particular CITES and CBD, and international instruments in respect of matters of common interest; and
  - d) other organisations or institutions with competence in the field of conservation of migratory sharks, as well as in the fields of research, education and raising awareness.
- 52. The Secretariat will enter into arrangements, with the approval of the Meeting of the Signatories, with other organisations and institutions as may be appropriate.
- 53. The Secretariat should consult and cooperate with these bodies in exchanging information and data, and may, with the consent of the Chair of the Advisory Committee, invite these bodies to send observers to relevant meetings.

### **Effect of this Agreement on International Conventions and Legislation**

- 54. The provisions of this Memorandum of Understanding do not affect the rights and obligations of any Signatory deriving from existing international treaties, conventions or agreements.
- 55. The provisions of this Memorandum of Understanding in no way affect the right of any Signatory to maintain or adopt, at the national level, stricter measures for the conservation of migratory sharks.

### **Other Provisions**

- 56. This Memorandum of Understanding is open for signature by the Range States of the migratory shark species listed in the Appendices of the Convention.

57. This Memorandum of Understanding will take effect on the first (last[J2]) day of the month following the date (month) on which there are at least X Range State signatures, including at least two signatures from regions X, Y and Z.
58. It will become effective for each subsequent Signatory on the first (last) day of the month following the date (month) of signature by that Signatory.
59. This Memorandum of Understanding will remain open for signature indefinitely at the seat of the CMS Secretariat and will remain in effect indefinitely subject to the right of any Signatory State to terminate its participation by providing one year's written notice to all other signatories.
60. Inter-governmental and international and national non-government organizations may associate themselves with this Memorandum of Understanding through their signatures as cooperating partners, in particular with respect to the implementation of the Action Plan.
61. The Convention Secretariat should be the Depository for this Memorandum of Understanding.
62. The Memorandum of Understanding, including the Action Plan, may be amended by a consensus of Signatory States.
63. The original text of this Memorandum of Understanding in the English, French, German, Russian and Spanish languages will be deposited with the CMS Secretariat, which should act as the Depository. In the event of any discrepancies, the English version will be considered definitive. The working language for all matters related to this Memorandum of Understanding will be English.

Done at .....this.....day of .....2008

Annex 1 - List of species covered by this agreement and their ranges

Annex 2 – Migratory sharks conservation and management plan

**DRAFT AGREEMENT ON THE CONSERVATION OF  
MIGRATORY SHARKS**

THE CONTRACTING PARTIES,

**RECALLING** that the 8th meeting to the Conference of the Parties of the Convention on Migratory Species of Wild Animals adopted Recommendation 8.16 calling upon Range States of migratory sharks listed on Appendix I or II to develop a global migratory sharks conservation instrument in accordance with Articles III and V of the Convention;

**NOTING** that three species of migratory sharks, the Basking, Whale and Great White Shark, have priority for conservation actions through listing on the appendices of both the Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

**RECOGNIZING** the critical role that migratory sharks play in marine ecosystems, and concerned about the significant and continuing mortality of sharks listed on Appendix I and II through a range of impacts and threats including targeted (directed) fisheries, fisheries by-catch, illegal, unreported and unregulated (IUU) fishing, trophy hunting, marine debris, habitat destruction – including prey depletion, boat strikes and disturbances, and increasing pressures on the marine environment due to climate change;

**CONVINCED** that the vulnerability of migratory sharks to such threats warrants further development and stronger implementation of conservation measures by States and regional economic integration organisations that exercise sovereignty, or jurisdiction, or both over any part of their range, and by States, flag vessels of which are engaged outside national jurisdictional limits in activities that may affect the conservation of sharks;

**MINDFUL OF** the need to reconcile the provisions of this Agreement with other international shark conservation and management initiatives, including the FAO voluntary IPOA-sharks, which calls upon States to develop and implement complementary NPOA-sharks;

**NOTING** that both the FAO, through IPOA-sharks, and the Convention have embraced a common objective - the need to ensure the conservation and management of migratory sharks and their long-term wise and sustainable use – and that fishermen, fish traders and conservation NGOs have critical complementary roles to play in achieving this objective;

**REALIZING** that RFMOs should be involved in the development and implementation of this Agreement by virtue of their mandate to bring fishing nations together to promote conservation and management of fish stocks, and their knowledge and experience of migratory shark catches, and that it will be necessary to work with and through these bodies to achieve the objectives of this Agreement;

**NOTING** that the remit of the work to be undertaken by CMS should complement and not duplicate the work of RFMOs with regard to fisheries management;

**BELIEVING** that conclusion and implementation of an international agreement in the form of a legally binding Agreement and a supporting Action Plan under Article IV.4 of the Convention will add value and contribute significantly to the conservation of migratory sharks by strengthening the political will to implement migratory shark conservation measures in a coordinated and timely

fashion, by bridging migratory shark fisheries and conservation interests, by reinvigorating the implementation of the FAO-IPOA for sharks by linking it to this Agreement and building on it, and by capitalizing on the potential of the Convention's broad membership to add expertise to global conservation efforts in the areas of science, research, monitoring, species identification, data analysis, threat definition and reduction, habitat protection, education and public awareness, information exchange, and capacity building;

**WITH A VIEW TO** improving the conservation status of Appendix I and II listed migratory shark species through concerted and coordinated action on the part of the States that exercise jurisdiction over the range of these populations;

**ACKNOWLEDGING** that, despite past and ongoing scientific research and monitoring, knowledge of the biology, ecology, and population dynamics of migratory sharks is deficient, and that it is necessary to promote stronger co-operation between fishing nations on research and monitoring in order to effectively implement conservation measures;

**NOTING** that other species of sharks not currently listed on Appendices I and II may also benefit from implementation of this Agreement as a consequence of more coordinated conservation efforts among Range States, shark fishing States, and shark trading States;

**EXPRESS** their desire to pursue the actions set forth in this Agreement, in the spirit of mutual cooperation, to achieve and maintain a favourable conservation status for migratory sharks; and

**HAVE AGREED AS FOLLOWS:**

## **ARTICLE I**

### **Relationship with the Convention**

1. This Agreement is an AGREEMENT as defined in Article I, paragraph j) and Article V of the Convention.
2. The Annexes form an integral part of this Agreement.
3. This agreement is legally binding upon the Parties.
4. Any regional economic integration organisation which becomes a Party to the Agreement without any of its member States being a Party to the Agreement shall be bound by all the obligations under the Agreement. Where one or more member States of such an organisation are also Party to the Agreement, the organisation and its member States shall decide on their respective responsibilities for the performance of their obligations under the Agreement. In such cases, the organisation and the member States shall not be entitled to exercise rights under the Agreement concurrently.
5. In their instruments of ratification, acceptance, approval or accession, regional economic integration organisations shall declare the extent of their competence with respect to the matters governed by the Agreement. They shall also promptly inform the Depository, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

## ARTICLE II

### Scope, definitions and interpretation

6. This Agreement applies to all current and future listings of migratory shark species in Appendices I and II of the Convention on Migratory Species of Wild Animals.

Or

This Agreement applies to Basking, Whale and Great White Sharks, and to any other species of migratory shark that the Parties to this instrument agree, through a process to be decided by them, should be added to the list of migratory sharks in Annex 1.

7. For the purpose of this Agreement:

- a) “Migratory shark” means one of any of the species, subspecies or populations of the migratory sharks currently listed in Appendices I and II of the Convention, and to all future listings of migratory shark species under the Convention;

Or

Migratory shark means Basking, Whale and Great White Sharks as listed in Annex 1 to this instrument, and includes any other species of migratory shark that the Parties to this instrument agree should be added to the list of migratory sharks in Annex 1.

Or

“Migratory shark” means Basking, Whale and Great White Sharks as listed in Annex 1 to this instrument, and any of the species, subspecies or populations in the Class *Chondrichthyes* (which includes sharks, rays, sawfishes and skates) that the Parties to this instrument agree should be added to the list of migratory *Chondrichthyes* in Annex 1.

- b) “Secretariat” means the body established under Article X of this Agreement to assist in its administration and implementation;
- c) “Convention” means the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn, Germany on 23 June 1979;
- d) “Convention Secretariat” means the body established under Article IX of the Convention;
- e) “UNCLOS” means the United Nations Convention on the Law of the Sea, 1982;
- f) “FAO” means the Food and Agriculture Organisation of the United Nations;
- g) “IPOA-Sharks” means the International Plan of Action for the conservation and management of sharks established under the FAO (date);
- h) “NPOA-Sharks” means a National Plan of Action for the Conservation and Management of Shark Stocks (Shark-plan), developed pursuant to IPOA-sharks;

- i) “Range” means all the areas of water that a migratory shark inhabits, stays in temporarily, or crosses at any time on its normal migration route;
- j) “Habitat” means any area in the range which contains suitable living conditions, particularly known aggregation, feeding and breeding sites, for migratory sharks;
- k) “Party” means a State, regional economic integration organisation, or other body that is a Party to this Agreement;
- l) “Parties present and voting” means the Parties present and casting an affirmative or negative vote; those abstaining shall not be counted amongst the Parties present and voting;
- m) “Advisory Committee” means the committee of persons qualified as experts in migratory shark science and management established under this Agreement;
- n) “Conservation Status of migratory sharks” means the sum of all the influences acting on migratory sharks that may affect their long-term distribution and abundance;
- o) Conservation Status shall be taken as “favourable” when all of the following conditions are met:
  - i. population dynamics data indicate that migratory sharks are maintaining themselves on a long term basis as a viable component of its ecosystems;
  - ii. the range of the migratory sharks is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
  - iii. there is, and shall be in the foreseeable future, sufficient habitat to maintain the population of migratory sharks on a long term basis; and
  - iv. the distribution and abundance of migratory sharks approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management;
- p) Conservation status shall be taken as “unfavourable” if any of the conditions set out in sub paragraph 7. o) is not met;
- q) “Range State” means any State that exercises jurisdiction over any part of the range of migratory sharks, or a State, flag vessels of which are engaged outside its national jurisdictional limits in taking, or which have the potential to take, migratory sharks;
- r) “Taking” means taking, hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct, but excludes sustainable, managed, directed migratory sharks fisheries;
- s) "Regional economic integration organisation" means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by this Agreement and has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Agreement;
- t) “Action Plan” means the Migratory Sharks Conservation and Management Action Plan given in Annex 2 of the Agreement;

- u) “Shark finning” means the practice of removing fins from living migratory sharks, on board fishing vessels, solely for the purpose of harvesting shark fins, where the shark carcass is discarded at sea.; and
  - v) “RFMO” means all the regional and sub-regional fisheries management bodies that have exclusive fisheries advisory and management responsibilities within their respective regions. Note: it has been suggested that because there is no internationally agreed definition of an RFMO, that RFMO not be defined in this instrument.
8. The interpretation of any term or provision of this Agreement will be made in accordance with the Convention, or relevant Resolutions adopted by its Meeting of the Parties, or both, unless such a term or provision is defined or interpreted differently in this Agreement.

### **ARTICLE III**

#### **Objective**

The objective of this Agreement is to achieve and maintain a favourable conservation status for migratory sharks listed in the Appendices I and II of the Convention, and for those to be listed in the future.

Or

The objective of this Agreement is to protect, conserve, replenish and recover migratory sharks and their habitats, based on the best scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of the Party states.

### **ARTICLE IV**

#### **Fundamental Principles**

- 9. Successful shark conservation and management requires the fullest possible cooperation among governments, intergovernmental organizations, non-government organizations and local communities, and immediate engagement pursuant to this Agreement with the fisheries industry, FAO, RFMOs and other international organizations that deal with fisheries.
- 10. The Parties acknowledge the role and the scientific and political actions of RFMOs (which are responsible for the management of migratory shark fisheries), and the need to strengthen and improve their role, including initiatives on direct and indirect migratory sharks fishery.
- 11. The Parties aim to achieve the objective of this Agreement through implementation by Parties, both individually and collaboratively, of a broad range of migratory shark conservation and management measures. To this end, Parties will endeavour to implement the measures given in Article V of this Agreement by carrying out the activities specified in the Action Plan in Annex 2.
- 12. Migratory shark stocks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information.

13. In implementing the measures given in Article V the Parties will apply widely both an ecosystem and a precautionary approach. Lack of scientific certainty is not be used as a reason for postponing measures to enhance the conservation status of migratory sharks.
14. Parties should adopt, where necessary, conservation and management measures for species belonging to the same ecosystem, or associated with or dependent upon a migratory shark or sharks listed in Annex 1 to this instrument (the target stocks), minimizing pollution, waste, discards, catch by lost or abandoned gear, and other threats in accordance with Article 5 of the 1995 UN Fish Stocks Agreement, and the general duty to protect the marine environment.
15. Each Party State, as appropriate, will implement the Agreement with respect to its nationals and vessels, and marine areas under its jurisdiction.
16. Party States may implement more stringent measures domestically than those specified in the Action Plan.
17. States may establish, by mutual consent, bilateral, sub-regional or regional management plans that are consistent with this Agreement.
18. Actions under this Agreement should be coordinated with States as well as with sub-regional institutions in the appropriate Region.

## **ARTICLE V**

### **Conservation and Management Measures**

19. The Parties cooperatively will adopt, implement and enforce such legal, regulatory and administrative measures as may be appropriate to conserve and manage migratory sharks and their habitat; and to this end will through the Action Plan implement as priorities the following specific measures:
  - a) Build research, monitoring, compliance and enforcement capacity globally.
  - b) Identify and protect critical shark habitats and migration routes.
  - c) Create a standardized species-specific global shark database.
  - d) Coordinate stock assessments and research.
  - e) Regulate non-consumptive use of sharks including ecotourism.
  - f) Prohibit shark finning and actively cooperate through RFMOs to ensure that shark finning does not take place. .
  - g) Cooperate with the fishing industry.
  - h) Conduct studies of shark aggregation, breeding grounds, ecology and behaviour.

- i) Prohibit the taking of species listed in Appendix I of the Convention in accordance with Article III of the Convention.
  - j) Regulate the exploitation of species listed in Appendix II to the Convention.
  - k) Encourage relevant bodies to set targets for fish quotas, fishing effort and other restrictions.
  - l) Regulate shark by-catch in non-directed fisheries. Note: It is suggested that this paragraph could be deleted as it is covered by 18 j.
  - m) Implement enforcement and compliance measures including observers on fisheries vessels.
  - n) Promote shark conservation and wise use globally.
  - o) Reduce pollution, marine debris and ship strikes.
20. The Parties recognize that in order to be successful in these endeavours they must also as appropriate:
- a) Engage immediately with the fisheries industry, FAO, RFMOs and other international organizations that deal with fisheries to develop a working relationship, analyze the strengths and weaknesses of current conservation and management initiatives, and involve them in the elaboration and execution of the Action Plan.
  - b) Promote concrete, actionable conservation recommendations to be carried forward to RFMOs by the nations (states) that are party to both this instrument and the RFMOs.
  - c) Implement, subject to the availability of necessary resources, the Action Plan in Annex 2 of this Agreement.
  - d) Cooperate with relevant organisations and recognised experts and so as to facilitate the work conducted in relation to the Action Plan.
  - e) Facilitate the timely access to and exchange of information necessary to coordinate conservation and management measures.
  - f) Ensure development and implementation of NPOA- Sharks under the auspices of the FAOs voluntary IPOA-Sharks.
  - g) Take into account, where appropriate, subsistence and customary take of migratory sharks in those States where it is permitted.
  - h) Ratify or accede to those international instruments most relevant to the conservation and management of migratory sharks and their habitats in order to enhance the legal protection of migratory shark species.
  - i) Formulate, review, revise and harmonise national legislation and regulations, as necessary, relevant to the conservation and management of migratory sharks and their habitats.

- j) Encourage other Range States to sign this Agreement.

## ARTICLE VI

### Action Plan

21. Annex 2 of this Agreement shall have effect as an Action Plan for the achievement of a favourable conservation status for migratory sharks.
22. With due consideration to the capabilities of Parties to implement these actions, the Action Plan sets out the activities that Parties shall progressively undertake in relation to migratory sharks, and assigns priorities to these activities, consistent with the conservation and management measures specified above.
23. The Secretariat shall establish a technical and advisory body including representatives from the Convention, CITES, IUCN, FAO and RFMOs to advise the Parties on the implementation of the Action Plan until such time as an Advisory Committee is established under this Agreement.
24. Progress in implementing the Action Plan shall be assessed at each ordinary session of the Meeting of the Parties and the content of the Action Plan reviewed in light of that assessment.
25. The Meeting of the Parties shall consider and may adopt any proposed amendment to the Action Plan.

## ARTICLE VII

### Implementation and Financing

1. Each Party shall:
  - a) identify and pursue funding sources to facilitate increased research efforts;
  - b) designate an Authority or Authorities to undertake, monitor and control all activities carried on with a view to the supervision, application and enforcement of this Agreement. Such Authority or Authorities shall, *inter alia*, monitor all activities that may have an impact on the conservation status of those migratory sharks for which the Party is a Range State;
  - c) designate a Contact Point and communicate without delay its name and address to the Secretariat to be circulated forthwith to other Parties;
  - d) such an Authority or Authorities and Contact Point shall be the central Government Agency, as the case may be, responsible for the administration of this Agreement.;
  - e) in relation to each ordinary session of the Meeting of the Parties, starting with the second session, provide information through the Secretariat to the Advisory Committee so that it may prepare a synthesised report on the implementation of the Agreement;

2.
  - a) Decisions relating to the budget and any scale of contributions shall be adopted by the Meeting of the Parties by consensus, having regard to the differing resources of the Parties.
  - b) If consensus cannot be reached, the previously approved budget shall continue to apply until superseded by a new, agreed budget.
  - c) Following the accession of any new Party, the Meeting of the Parties shall, at its next session, review and replace the scale of contributions unless it agrees such review and replacement to be inappropriate.
3. The Meeting of the Parties may establish a fund from voluntary contributions of Parties or from any other source for the purpose of work relating to the conservation of migratory sharks, including monitoring, research, technical development, training, education and habitat management. No surcharge shall be levied on such voluntary contributions or on such a fund to meet administrative overheads of the Secretariat or any organisation providing service to it.
4. In order to build capacity, the Parties shall endeavour to provide training, technical and financial support to other Parties on a multilateral or bilateral basis to assist them in implementing the provisions of this Agreement. No surcharge shall be levied on the costs of such training, technical or financial support to meet administrative overheads of the Secretariat or any organisation providing services to it.
5. A fund may be established to meet expenses related to the participation of Party representatives in sessions of the Meeting of the Parties and the Advisory Committee. This shall not preclude such expenses being met by other arrangements, bilateral or otherwise.

## **ARTICLE VIII**

### **Meeting of the Parties**

1. The Meeting of the Parties shall be the decision-making body of this Agreement.
2. The Depositary shall, in consultation with the Convention Secretariat, convene a session of the meeting of the Parties not later than one year after the date of the entry into force of this Agreement. Ordinary sessions of the Meeting of the Parties shall be held at intervals of not more than three years, unless the Meeting of the Parties decides otherwise.
3. On the written request of at least one third of the Parties, the Secretariat shall convene an extraordinary session of the Meeting of the Parties.
4. The Meeting of the Parties shall make provision in its rules of procedure, adopted in accordance with paragraph 11 of this Article, for governing the attendance and participation of observers and to provide for transparency in the activities relating to the Agreement. Such rules shall not be unduly restrictive in this respect and shall provide for timely access to the records and reports relating to the Agreement. The Meeting of the Parties shall adopt such rules of procedure, taking account of potential costs, as soon as possible.

5. Any State not a Party to the Agreement, the United Nations, any specialised Agency of the United Nations, any regional economic integration organisation, and any secretariat of relevant international conventions, particularly those concerned with the conservation and management of marine living resources or conservation and management of migratory sharks, may participate as observers in sessions of the Meeting of the Parties and its subsidiary bodies. Such participation shall be subject to the rules of procedure.

6. Any relevant scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation and management of migratory sharks, may participate as an observer in sessions of the Meeting of the Parties and its subsidiary bodies. Such participation shall be subject to the rules of procedure. Rules of procedure in relation to this paragraph, including provision for the attendance of observers, may include provision for voting different from that in paragraph 9 of this Article.

7. Each Party shall have one vote, but regional economic integration organisations which are Parties to this Agreement shall, in matters within their competence, exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to the Agreement. A regional economic integration organisation shall not exercise its right to vote if its Member States exercise theirs, and *vice versa*.

8. The Meeting of the Parties shall establish and keep under review the financial regulations of this Agreement. The Meeting of the Parties shall, at each of its ordinary sessions, adopt a budget for the next financial period. Financial regulations, including the provisions of the budget and scale of contributions as well as their modifications, shall be adopted by consensus.

9. Unless provided otherwise in this Agreement, decisions of the Meeting of the Parties shall be adopted by consensus or, if consensus cannot be achieved, by a two-thirds majority of the Parties present and voting.

10. The Meeting of the Parties may require any information relevant to the effective functioning of this Agreement to be supplied to the Parties by way of the Secretariat, in addition to the information provided by Article VII (1) e).

11. At its first session, the Meeting of the Parties shall:

- a) adopt its rules of procedure by consensus;
- b) determine the financial arrangements, a scale of contributions and a budget by consensus;
- c) establish a Secretariat to perform the Secretariat functions listed in Article X of this Agreement;
- d) establish the Advisory Committee provided for in Article IX of this Agreement; and
- e) adopt criteria to define emergency situations that require urgent conservation measures and determine the modalities for assigning responsibility for action to be taken.

12. At each of its ordinary sessions, the Meeting of the Parties shall:

- a) consider reports, advice and information from any of its subsidiary bodies;

- b) consider actual and potential changes in the conservation status of migratory sharks and the habitats important for their survival, as well as the factors that affect them;
  - c) review any difficulty encountered in the implementation of this Agreement;
  - d) consider any matters relating to the financial arrangements for this Agreement in accordance with Article VIII (2), and adopt a budget by consensus;
  - e) deal with any matter relating to the Secretariat, and membership and funding of the Advisory Committee;
  - f) adopt a report to be communicated to the Parties to this Agreement and to the Conference of the Parties of the Convention; and
  - g) determine the time and venue of its next session.
13. At any of its sessions, the Meeting of the Parties may:
- a) amend the rules of procedure;
  - b) make such recommendations as it deems necessary or appropriate;
  - c) adopt measures to improve the effectiveness of this Agreement and, as the case may be, emergency measures as provided for in Article IX (7) of this Agreement;
  - d) consider and decide upon proposals to amend this Agreement;
  - e) amend Annex 1 (list of species covered by this Agreement);
  - f) amend the Action Plan (Annex 2) in accordance with Article VI (4) of this Agreement;
  - g) establish such subsidiary bodies as it deems necessary to assist in the implementation of this Agreement, in particular for coordination with bodies established under other relevant international treaties;
  - h) vary any time limits set in this Agreement for the submission of documents or otherwise; and
  - i) decide on any other matter relating to the implementation of this Agreement.
14. At every (?) session of the Meeting of the Parties, it shall review the effectiveness of the Secretariat in facilitating the achievement of the objectives of this Agreement. The previous session of the Meeting of the Parties shall agree the Terms of Reference for the review.

## **ARTICLE IX**

### **Advisory Committee**

The first Meeting of the Parties shall establish an Advisory Committee, comprising persons qualified as experts in migratory shark conservation science and management to:

- a) provide expert advice and information to the Secretariat and the Parties on conservation and management of migratory sharks and on other matters in relation to this Agreement;
- b) conduct scientific assessments of the conservation status of migratory shark populations listed in Annex 1.
- c) advise on the development and coordination of international research and monitoring programmes, and make recommendations to Meetings of the Parties concerning further research to be carried out;
- d) facilitate the exchange of scientific and management information, and techniques and new initiatives promoting the conservation of migratory sharks amongst Parties;
- e) make recommendations to the Meetings of the Parties concerning the Action Plan and implementation of the Agreement;
- f) prepare for each ordinary session of the Meeting of the Parties a report on its activities, which shall be submitted to the Agreement Secretariat not less than one hundred and twenty days before the session of the Meeting of the Parties, and with copies to be circulated forthwith by the Agreement Secretariat to the Parties; and
- g) carry out any other tasks referred to it by Meetings of the Parties.

The Advisory Committee shall elect a Chair and Vice-chair and establish its own rules of procedure.

Each shall be entitled to appoint one member to the Advisory Committee.

Each Committee member may be accompanied at meetings of the Parties by one or more advisers.

The Advisory Committee may invite other experts to attend its meetings.

The Advisory Committee may establish working groups as necessary to undertake specific tasks.

Unless a Meeting of the Parties decides otherwise, meetings of the Advisory Committee shall be convened by the Agreement Secretariat in conjunction with each ordinary session of the Meeting of the Parties and at least once between ordinary sessions of the Meeting of the Parties.

Where in the opinion of the Advisory Committee an emergency has arisen which requires the adoption of immediate measures to avoid deterioration of the conservation status of one or more species of migratory shark, the Advisory Committee may request the Agreement Secretariat to convene urgently a meeting of the Parties concerned. These Parties shall meet as soon as possible thereafter to establish rapidly a mechanism to give protection to the species identified as being subject to a particularly adverse threat or threats. Where a recommendation has been adopted at such a meeting, the Parties concerned shall inform each other, other Parties and the Agreement Secretariat of the recommendation and the

measures they have taken to implement it, or of the reasons why the recommendation could not be implemented.

## ARTICLE X

### Secretariat

26. The Parties to this Agreement agree:

- a) A Secretariat shall be established, based in an appropriate organisation or institution, to be decided by consensus at the first meeting of the Parties, to assist in the administration and implementation of this Agreement by coordinating, communicating, facilitating and reporting on relevant activities and events, and performing such other functions as may be assigned by the Parties.
- b) The Convention Secretariat shall act as the interim secretariat to this Agreement until a permanent Secretariat is established and may, subject to the availability of resources, use the services of any reliable organisation to support the coordination of this Agreement.

27. The functions of the Secretariat shall include:

- a) to arrange and service the sessions of the Meeting of the Parties as well as the meetings of the Advisory Committee;
- b) to execute the decisions addressed to it by the Meeting of the Parties;
- c) to promote and coordinate activities under the Agreement and Action Plan, in accordance with decisions of the Meeting of the Parties;
- d) to liaise with non-Party Range States, shark fishing States, shark trading States, and regional economic integration organisations and to facilitate coordination between Parties and non-Party Range States, shark fishing States, shark trading States, and international and national organisations and institutions whose activities are directly or indirectly relevant to the conservation, including the protection and management, of migratory shark species;
- e) to make available to the States the national implementation reports received and prepare a periodic review of progress made to implement the Agreement and the Action Plan;
- f) to propose for Parties approval a process for the assessment by Parties of progress made to implement the Agreement and the Action Plan, including who would conduct the assessment and how it would be carried out;
- g) to invite the attention of the Meeting of the Parties to other matters pertaining to the objectives of this Agreement;
- h) to provide to each ordinary session of the Meeting of the Parties a report on its work;

- i) to provide to each ordinary session of the Meeting of the Parties an overview report based on all the information at its disposal pertaining to migratory sharks
- j) to administer the budget for the Agreement;
- k) to provide information to the general public concerning the Agreement and its objectives, and promote the objectives of this Agreement;
- l) to develop a system of performance indicators to measure the effectiveness and efficiency of the Secretariat and report to each ordinary session of the Meeting of the Parties in terms of these;
- m) to collate and distribute as appropriate information provided by Parties to the Secretariat;
- n) to support countries in search of financial resources to implement this agreement,
- o) to perform such other functions as may be entrusted to it by or under this Agreement.

## **ARTICLE XI**

### **Cooperation with other bodies**

28. The Parties, recognizing their duty and responsibility as Parties to this instrument to facilitate coordination and cooperation with other instruments to which they are also a party, will promote the objectives of this Agreement and develop and maintain coordinated and complementary working relationships with all relevant international, regional and sub-regional bodies, including those concerned with the conservation and management of migratory shark species and other marine living resources, particularly the FAO and RFMOs.
29. The Secretariat shall consult and cooperate, where appropriate, with:
- a) the Convention Secretariat and the bodies responsible for secretariat functions under other agreements concluded pursuant to Article IV (3) and (4) of the Convention that are relevant to migratory sharks;
  - b) RFMOs;
  - c) the secretariats of other relevant conventions, in particular CITES and CBD, and international instruments in respect of matters of common interest; and
  - d) other organisations or institutions with competence in the field of conservation of migratory sharks, as well as in the fields of research, education and raising awareness.
30. The Secretariat may enter into arrangements, with the approval of the Meeting of the Parties, with other organisations and institutions as may be appropriate.

31. The Secretariat shall consult and cooperate with these bodies in exchanging information and data, and may, with the consent of the Chair of the Advisory Committee, invite these bodies to send observers to relevant meetings.

## **ARTICLE XII**

### **Amendment of the Agreement**

1. This Agreement may be amended at any ordinary or extraordinary session of the Meeting of the Parties.
2. Any Party may make proposals for amendment.
3. The text of any proposed amendment and the reasons for it shall be communicated to the Secretariat not less than one hundred and fifty days before the opening of the session. The Secretariat shall transmit copies of any proposed amendment forthwith to the Parties. Any comments on a proposed amendment by the Parties shall be communicated to the Secretariat not less than sixty days before the opening of the session. The Secretariat shall, as soon as possible after the last day for submission of comments, communicate to the Parties all comments submitted by that day.
4. An amendment to the Agreement, other than an amendment to its annexes, shall be adopted by a two-thirds majority of the Parties present and voting. Parties accepting the amendment shall deposit their instruments of acceptance with the Depository. Amendments enter into force for accepting Parties on the thirtieth day after the date on which two-thirds of the Parties to the Agreement on the date of the amendment's adoption have deposited their instruments of acceptance. For each Party that deposits an instrument of acceptance after the date on which two-thirds of the Parties have deposited their instruments of acceptance, the amendment shall enter into force on the thirtieth day after the date on which it deposits its instruments of acceptance.
5. Any additional annex or amendment to an annex shall be adopted by a two-thirds majority of the Parties present and voting and shall enter into force for all Parties on the ninetieth day after the date of its adoption by the Meeting of the Parties, except for Parties that have entered a reservation in accordance with paragraph 6 of this Article.
6. During the period of ninety days provided for in paragraph 5 of this Article, any Party may, by written notification to the Depository, enter a reservation with respect to any additional annex or an amendment to an annex. Such reservation may be withdrawn at any time by written notification to the Depository, and the additional annex or the amendment shall enter into force for that Party on the thirtieth day after the date of withdrawal of the reservation.

## **ARTICLE XIII**

### **Effect of this Agreement on International Conventions and Legislation**

1. The provisions of this Agreement do not affect the rights and obligations of any Party deriving from existing international treaties, conventions or agreements.
2. The provisions of this Agreement shall in no way affect the right of any Party to maintain or adopt, at the national level, stricter measures for the conservation of migratory sharks.

## **ARTICLE XIV**

### **Settlement of Disputes**

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of this Agreement shall be subject to negotiation between the Parties involved in the dispute.
2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

## **ARTICLE XV**

### **Signature, Ratification, Acceptance, Approval, Accession**

1. This Agreement shall be open for signature by any Range State or regional economic integration organisation, whether or not areas under its jurisdiction lie within the area of this Agreement, by:
  - a) Signature without reservation in respect of ratification, acceptance or approval; or
  - b) Signature with reservation in respect to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. This Agreement shall remain open for signature at the seat of the Depositary until the date of its entry into force.
3. This Agreement shall be open for accession by any Range State or regional economic integration organisation on and after the date of its entry into force.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

## **ARTICLE XVI**

### **Entry into Force**

1. This Agreement shall enter into force on the first day of the third month after at least 5 Range States, shark fishing States, shark trading States, or regional economic integration organisations have signed without reservation in respect of ratification, acceptance or approval, or have deposited their instruments of ratification, acceptance or approval in accordance with Article XV.
2. For any Range State or regional economic integration organisation which has:
  - a) signed without reservation in respect of ratification, acceptance, or approval;

- b) ratified, accepted or approved; or
- c) acceded to`

this Agreement after the date on which the number of Range States, shark fishing States, shark trading States, or regional economic integration organisations necessary to enable entry into force have signed it without reservation or have ratified, accepted or approved it, this Agreement shall enter into force on the first day of the third month following the signature without reservation, or deposit, by that State or regional economic integration organisation of its instrument or ratification, acceptance, approval or accession.

## **ARTICLE XVII**

### **Reservations**

1. The provisions of this Agreement shall not be subject to general reservations.
2. However, a specific reservation in respect of any species covered by the Agreement or any specific provision of the Action Plan may be entered by any Range State or regional economic integration organisation on signature without qualification in respect of ratification, acceptance or approval or, as the case may be, on depositing its instrument of ratification, acceptance, approval or accession.
3. Such a reservation may be withdrawn at any time by the Range State or regional economic integration organisation which had entered it, by notification in writing to the Depositary. Such a State or regional economic integration organisation shall not be bound by the provisions that are the object of the reservation until thirty days after the date on which the reservation has been withdrawn.
4. The provisions contained in paragraph 1 of this Article do not preclude a Party to this Agreement that is not a Party to the Convention from making declarations or statements to the effect of clarifying its status *vis-à-vis* each instrument, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that Party.

## **ARTICLE XVIII**

### **Denunciation**

A Party may denounce this Agreement by written notification to the Depositary at any time. The denunciation shall take effect twelve months after the date on which the Depositary has received the notification.

## **ARTICLE XIX**

### **Depositary**

1. The original of this Agreement, in the English, French, German, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of [?](#),

which shall be the Depositary. The Depositary shall transmit certified copies of these versions to all Range States, shark fishing States, shark trading States, and regional economic integration organisations referred to in Article XV (1) of this Agreement, and to the Secretariat after it has been established.

2. As soon as this Agreement enters into force, a certified copy thereof shall be transmitted by the Depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

3. The Depositary shall inform all Range States, shark fishing States, shark trading States, and regional economic integration organisations that have signed or acceded to the Agreement, and the Secretariat, of:

- a) any signature;
- b) any deposit of instruments of ratification, acceptance, approval or accession;
- c) the date of entry into force of this Agreement as well as any amendment to the Agreement;
- d) any reservation with respect to the Agreement;
- e) any notification of withdrawal of a reservation; and
- f) any notification of denunciation of the Agreement.

4. The Depositary shall immediately transmit to all Range States, shark fishing States, shark trading States and regional economic integration organisations that have signed or acceded to this Agreement, and the Secretariat, the text of any reservation, any additional annex or amendment to the Agreement or to its annexes.

In witness whereof the undersigned, being duly authorised to that effect, have signed this Agreement.

Done at ..... this .....day of.....2007

Annex 1 - List of species covered by agreement and their ranges.  
Annex 2 - Migratory Sharks Conservation and Management Plan