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## ENHANCING THE EFFECTIVENESS OF MEASURES TO PROMOTE THE CONSERVATION AND SUSTAINABLE MANAGEMENT OF APPENDIX II SPECIES REFLECTIONS ON THE CMS “COOPERATIVE ACTIONS” PROCESS

*(Prepared by the Secretariat)*

### Scope and purpose of this paper

1. This paper provides a summary of the operation to date and some perspectives for the future of one of the key processes that has evolved under the Convention for stimulating measures for the conservation and sustainable management of species listed on Appendix II, a process which has come to be known as “cooperative actions”. Brief reference is also made to the process that has evolved for stimulating activities in relation to species on Appendix I, which has come to be known as “concerted actions”.

2. The paper recalls the terms of a request by the COP in 2002 (COP7) to clarify some confusions and contradictions concerning this subject, then briefly reviews the use of the cooperative action process to date, and relates this to the use of other mechanisms. It then refers to the work done by the Scientific Council in response to the COP7 request, before summarizing the main issues which have arisen, including those discussed in a document provided to COP9, on which no decisions were made at that time. Reference is made to linked questions being considered in parallel by the Scientific Council concerning the process for initial listing of species on Appendix II. Finally, the paper offers some potential recommendations for discussion.

### A suite of mechanisms

3. Over the years the Convention has evolved the operation of a number of well-practised mechanisms for targeting conservation activity towards particular migratory species, which may be brought into effect from time to time according to need. These include Agreements and Memoranda of Understanding concluded under Article IV, the “concerted actions” for certain species included in CMS Appendix I, and “cooperative actions” for certain species included in Appendix II. A full list of all species listed for concerted and cooperative action illustrating which instrument each species is covered by, if any, can be found in draft Resolution 10.23 (UNEP/CMS/Resolution 10.23).

Concerted actions	Cooperative actions
<ul style="list-style-type: none"> <li>• Conservation measures undertaken for species or groups of species identified for this purpose in decisions of the Conference of Parties.</li> <li>• The species tend to be identified from among those listed on CMS Appendix I.</li> <li>• The conservation measures are the collective responsibility of Parties acting in concert, and tend to be set out in Action Plans.</li> </ul>	<ul style="list-style-type: none"> <li>• Projects or institutional arrangements implemented by Parties cooperating for the conservation of species or groups of species identified for this purpose in decisions of the Conference of Parties.</li> <li>• The species tend to be identified from among those listed on CMS Appendix II.</li> <li>• The actions are typically designed to support the conclusion of an instrument under Article IV of the Convention, and enable conservation measures to be progressed in the meantime.</li> </ul>

### Learning from experience

4. Experience has now accumulated in relation to the strengths and weaknesses in practice of each of these mechanisms, and the factors which may need to be weighed up when deciding whether to undertake a new initiative, including the best choice among the mechanisms. The Scientific Council undertook a review in 2002 of issues relating to concerted actions. In the same year, the Parties at the 7<sup>th</sup> Meeting of the COP asked the Council to undertake a similar review in relation to cooperative actions. The deliberations of the Council on this matter were reported to COP8 and COP9, and although they included suggestions for revising some aspects of the approach, no significant changes have yet been agreed.

5. In the meantime further practical experience has accumulated, and the list of species identified for cooperative action has continued to grow. Some weaknesses and potential confusions are apparent: the present paper therefore aims to provide an updated summary of the thinking so far, and some possible perspectives for enhanced effectiveness in future. The focus here is on cooperative actions for Appendix II species; but reference is also briefly made to the role of concerted actions for Appendix I species and Agreements under Article IV.

### The origins of reviews of cooperative action

6. At its 11<sup>th</sup> Meeting in 2002, the Scientific Council reviewed the operation of the concerted action process and discussed a number of issues impinging on its effectiveness. The Council recommended that a similar review should be developed in relation to the cooperative action process for discussion at its 12<sup>th</sup> Meeting.

7. At COP7 immediately following the 11<sup>th</sup> Meeting of the Scientific Council, the Parties, acknowledging that some confusions and contradictions were already apparent in the operation of the cooperative action mechanism, adopted Rec.7.1, paragraph 6 of which “instruct[ed] the Scientific Council to review the current practice in relation to the identification and implementation of cooperative actions for Appendix II species and to agree, at its 12<sup>th</sup> Meeting, an amended procedure in this regard, taking into account the comparable

review undertaken at its 11<sup>th</sup> Meeting with respect to concerted action species, to be submitted to the Eighth Meeting of the Conference of the Parties”.

### **The legal foundations of action for Appendix II species**

8. CMS Appendix II is described in Article IV.1 of the Convention as a list of *“migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement.”*

9. If read in isolation, this might be interpreted as contemplating any kind of undertaking which is agreed internationally for the conservation of a relevant species, irrespective of by whom and in what form. When taken together with the heading to the Article, however, the purpose can be understood in a more specific way. The heading reads “Migratory species to be the subject of AGREEMENTS: Appendix II”. Thus it is clear that “international agreements” in Article IV.1 is intended to refer to CMS’s own agreement provisions, which are specified in the remainder of the Article.

10. Furthermore, Article II.3(c) confirms that Parties “shall endeavour to conclude AGREEMENTS covering the conservation and management of migratory species included in Appendix II”.

11. The significance of the capitalization of the word “agreement” in some places and not in others concerns the different forms of agreement provided for in the Convention: the distinction is not material to the present discussion, and the word is used in the form “Agreements” in this paper to refer generically to all forms of CMS instruments concluded under Article IV, including Memoranda of Understanding<sup>1</sup>.

### **Limitations on the use of Agreements, and establishment of the cooperative action mechanism**

12. To date, Agreements (as defined by the Convention text) have been put in place under the CMS for less than 40 per cent of the more than<sup>2</sup> 900 species covered by CMS Appendix II (and in some cases it is not the whole species that is covered by the Agreement concerned but only one or more of its defined populations).

13. The obvious practical limitations on the number of Agreements that can readily be implemented simultaneously for so many species prompted the establishment of “cooperative actions” as an alternative or preliminary course of action. At COP5 in 1997, the Parties adopted Rec.5.2, which introduced the concept and recommended that the Parties undertake cooperative action to improve the conservation status of relevant species or populations of species.

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<sup>1</sup> The typographical presentation of the word “agreement” in CMS texts has tended to follow a convention whereby a distinction is drawn between “AGREEMENTS” (upper case lettering, indicating instruments under Article IV.3 of the Convention), “agreements” (lower case lettering, indicating instruments under Article IV.4 of the Convention) and “Agreements” (upper case initial letter only, for use in a generic sense to apply to any or all CMS instruments established under Article IV). Although usage in practice has not always consistently followed this approach, the form “Agreements” (upper case initial letter) is used in the present document to reflect the generic sense. In any instance where the distinction between types of Agreement is material to an understanding of the text in this document, a specific reference e.g., to “Article IV.3” is made, and no particular reliance is placed upon or should necessarily be inferred from the typographical presentation of the word.

<sup>2</sup> Appendix listings include subspecies, species and higher taxa. In respect of some of the higher taxa, the number of species they include has not been firmly established, for example where taxonomic authorities differ.

14. The Recommendation noted that *“not all [Appendix II species] are currently the object of an Agreement or, given the rate of decline in their populations, can reasonably be expected to become the object of an Agreement to assist with their conservation in a timely manner”*, and described cooperative actions as being directed towards such species. COP8 Rec.8.28 and COP9 Res.9.2 further refer to species or populations for which conclusion of an Agreement is not anticipated during the forthcoming triennium, but which require attention within the triennium.

### **The benefits of cooperative action: complementing and preparing for Agreements**

15. These COP decisions suggest that the main perceived added value of cooperative action was that it would be a mechanism that could be more speedily deployed than the negotiation of an Agreement. It is of course true that Agreements may take many years to negotiate and bring into effect; although it should be noted that this can be done whenever the negotiating parties agree, whereas the launch of cooperative actions is linked to decisions of the COP. There is no reference in the recommendation to other advantages such as greater flexibility of operation; but there is reference to “special attention within the forthcoming triennium”, hinting at the idea that cooperative action might be a short-term or immediate measure whereas Agreements are more permanent, albeit requiring longer to conclude.

### **Was cooperative action designed to apply to the whole of Appendix II?**

16. Obviously therefore, and logically, cooperative actions were intended to complement Agreements and to be undertaken for species or populations not already covered by an Agreement. In addition however, Rec.5.2 appears (whether or not this was the intention) to address itself not to the whole of the remainder of Annex II, but to a sub-set of it. As noted above, according to Article IV.1, Annex II comprises species which have an unfavourable conservation status and require international cooperation. Rec.5.2 however addresses itself to species or populations which have a “very” unfavourable conservation status and require “urgent” cooperation. Curiously, in the successor Recommendations (discussed further below), the same wording is repeated in the Recommendation from COP6 (Rec.6.2), but in the one from COP7 (Rec.7.1) the word “very” has been dropped, and in the ones from COP8 and COP9 (Rec.8.28 and Res.9.1) both the words “very” and “urgent” have been dropped. In other words, the additional criteria of especially negative status and special urgency have progressively disappeared, but the reasoning behind this does not appear to be documented.

### **Deciding priorities, making proposals and reviewing status: the role of the Scientific Council**

17. Rec.5.2 instructs the Scientific Council to bring a list of species meriting this form of “urgent” attention to each COP; and directs the Scientific Council and the Secretariat to ensure that “a regular update of status is provided”, which presumably refers not only to candidate species but also to those already listed for cooperative action, and thereby presumably provides for follow-up monitoring of the results of such action (although not expressed in those terms). For most of the taxonomic groups concerned, the Scientific Council has identified individual focal points from among its members to be responsible for this work and has (to a greater or lesser extent) reviewed status reports at its meetings.

### **The growing list of species**

18. Rec.5.2 put forward three species for attention at the outset; and then based on Scientific Council proposals as described above, successive meetings of the COP have added others: 47 at COP6 in 1999 (Rec.6.2); 11 at COP7 in 2002 (Rec.7.1); six at COP8 in 2005

(Rec.8.28) and one at COP9 in 2008 (Res.9.1), representing a total of 68 species over the five COPs. Each decision endorses action for the succeeding triennium only; but then the successive decisions have each rolled forward the lists of species from the preceding equivalent decisions, so that action on the earlier-listed species is expected to continue for a further period, and the overall “active” list of species to be reported on at each Scientific Council meeting has thus tended to keep growing.

19. The only occasion to date on which deletions as well as additions have been made was at COP8 in 2005. Twelve albatrosses and seven petrels were removed on the basis that they had become covered by the ACAP Agreement. The dugong was removed on the basis that it was soon to be covered by the Dugong Memorandum of Understanding. Three neo-tropical birds were removed on the basis that they were soon to be covered by the Southern South American Grassland Birds MoU, and the Whale Shark was removed on the basis, even at that early stage, that it was destined to become covered by the Sharks MoU.

20. In addition, the listing for the African elephant was changed from relating to the whole species to relating instead only to Central African populations, presumably at least partly on the basis that West African populations had become covered by the West African Elephant MoU. (The original COP mandate to work on the species was limited to West and Central Africa; hence Eastern and Southern African populations do not feature in this picture.) The African penguin *Spheniscus demersus* was removed because it had been added to the species covered by the AEWA Agreement. The La Plata dolphin or Franciscana *Pontoporia blainvillei* was also removed, although the reasons for this seem unclear. The net remaining total number of species listed for cooperative action, for the period from COP9 to COP10, is 42.

### The coverage of Appendix II species by cooperative actions and by Agreements

21. The complementarity between the cooperative actions lists and species coverage by CMS Agreements is not as clean in practice as might be implied above, since in the current list of cooperative action species there are several which are also covered by long-established Agreements; although in many of these cases (for example some cetaceans) it seems that the Agreements concerned cover only parts of the ranges of the relevant species while the scope of the cooperative action is wider.

22. The degree of coverage of Appendix II species (either partially or totally) by Agreements and by cooperative actions may be roughly compared, as follows:

Taxonomic group	Number of species in CMS Appendix II	Number of species covered by a CMS Agreement/MOU	Number of species currently listed for cooperative action (Resolution 9.1)
Birds	775	267 (35%)	3 (<1%)
Bats	58	50 (86%)	3 (5%)
Other mammals	67	27 (40%)	18 (27%)
Reptiles	10	7 (70%)	0 (0%)
Fish/insects	27	7 (26%)	18 (67%)
Total	937	358 (38%)	42 (5%)

(Note: the two columns on the right cannot simply be added to produce a total, since there is some overlap between them, as described above; as highlighted in footnote 2 above Appendix II listings include subspecies, species and higher taxa, and due to different taxonomic interpretation the figures presented in the table might vary marginally.)

23. Overall, existing Agreements and the cooperative actions list cover a minority of all the species listed on Appendix II, and every taxonomic group includes some species that have not been covered by either mechanism. Particularly underrepresented groups include birds in general, and the family *Muscicapidae* in particular, many of which are endangered and hunted throughout their range, especially in Southern Europe, and would benefit from cooperation. Only fish are better covered by cooperative action than by Agreements. Geographically, Central and South America are perhaps the most poorly covered regions.

24. It may further be noted that, as is permitted under Article IV.4, there are a few examples of migratory species which are covered by CMS Agreements but which do not appear in Appendix II. These include gorillas (listed in Appendix I), the Andean huemul (listed in Appendix I), eleven species of owls (not listed in either Appendix), and some examples of marine mammals.

### **Action taken in response to listing**

25. There is little systematic documentation at the level of the COP concerning the nature of action taken in response to decisions to list species for cooperative action. Typically, it is assumed to consist of activities undertaken with a view to concluding Agreements; the drafting and implementation of Action Plans; and the sharing of intelligence about actions taken by individual Parties. There is similarly little systematic documentation of the outcome of such action in terms of its effect on species status; notwithstanding the exhortation in Rec.5.2 that regular status updates should be provided. Relevant information is to some extent, however, incorporated into the taxonomic working group reports which are periodically considered by the Scientific Council.

### **The relationship to “concerted actions”**

26. For completeness it is worth making brief reference to the “concerted action” mechanism, which may also be regarded as complementary to cooperative actions, in that it is designed to address species on CMS Appendix I. It has a longer history than cooperative actions, having been introduced by Res.3.2 at COP3 in 1991. Paragraph 1 of the Resolution established a mechanism for the COP to review “a selected number of species listed in Appendix I, with a view to recommending initiatives to benefit those species”, and paragraph 4 instructed the Secretariat and the Scientific Council “to encourage and assist Parties to take concerted actions to implement the provisions of the Convention, where possible through existing instruments of bilateral or multilateral cooperation”.

27. The concerted action process has wider scope than that for cooperative action, in the sense that the obligation to act is assumed by the Convention as a whole, designed specifically to ensure the collective implementation of relevant parts of CMS Articles II, III and VII.5. There is provision for the preparation of review reports, and a strong implication that in most cases some kind of Action Plan will be required. The use of existing bilateral and multilateral instruments is encouraged as a legal context for Action Plans. Some of these develop into MoUs or other instruments under the Convention; and thus the activity concerned may travel on a trajectory that is similar in some cases to cooperative action and/or new Agreements.

28. There are other areas of convergence between the two mechanisms. At COP8 in 2005, three Central Asian arid-land mammals were listed for cooperative action in Rec.8.28. The

intent in doing so was said<sup>3</sup> to be to facilitate their inclusion in the concerted action for arid-land species (which indeed then occurred). Whether this is a necessary or desirable route to follow may be a matter for further discussion.

29. At COP9 in 2008, for the first time the COP decisions updating the two lists were combined into a single decision (Res.9.1) containing two tables. The Resolution identifies 53 species for concerted action in the triennium 2008-11. This seems to be a useful practice, and is recommended for adoption at future COPs.

30. The implementation of concerted actions, as reported by Parties for the 2009-2011 triennium, has been summarized for the present COP in document UNEP/CMS/Conf.10.12, in addition to more detailed information on the concerted actions on Sahelo-Saharan antelopes and Eurasian arid-land mammals.

### **Analysis by the Scientific Council towards a review of the cooperative action process**

31. In response to the request from COP7 in Rec.7.1 mentioned above to review current practice in relation to the identification and implementation of cooperative actions, the Scientific Council at its 12<sup>th</sup> meeting in 2004 discussed a paper on “Concerted actions, Agreements and cooperative actions” (CMS/ScC12/Doc.6) which described how the three processes had come about, and what they were intended to do, in general terms.

32. In discussion, Council members noted that cooperative actions had been perceived and implemented in different ways in different places, including some which blurred the distinction between cooperative and concerted actions, and that this suggested a need to specify the respective purposes of each mechanism more clearly. It was noted that views also seemed to have varied over the years in relation to whether cooperative actions were seen as a precursor to the conclusion of an Agreement under Article IV or alternatively as a substitute for developing one. The Council requested the Secretariat to revise the review document in light of the discussion and bring it back to their next meeting.

33. The 13<sup>th</sup> Meeting in 2005 duly discussed the matter again (CMS/ScC.13/Doc.6), and acknowledged the need for a clearer common understanding of the role of cooperative actions, and for inconsistencies in the existing list (relating to the rationale for inclusion of different species) to be corrected. A degree of confusion as to the type of action expected after listing was also considered to have restricted the effective use of the mechanism, comparing unfavourably in that respect with concerted actions.

34. A sub-group was formed to deliberate further, and it concluded that the most fruitful approach would be for the Scientific Council to confirm a definition of the purpose of cooperative actions, based on the original intent of Rec.5.2, and to observe more rigour in undertaking its role as specified in that Recommendation, namely its nomination of Appendix II species for inclusion in the cooperative actions list. The Recommendation itself, however, gave no guidance on how this role should be undertaken, and some clarification could usefully be developed. Once this is done, the list of species itself might then be re-examined.

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<sup>3</sup> Source: Document UNEP/CMS/Conf.9.16: *Operational instruments of the Convention on Migratory Species*.

## Discussion at COP9

35. No further decisions on these points have been taken. COP9 in 2008 considered a detailed paper on “Operational Instruments of the Convention on Migratory Species” (UNEP/CMS/Conf.9.16) which included a number of suggestions for rationalizing the nomenclature and operation of cooperative actions, concerted actions, Agreements and other initiatives, but there was insufficient agreement among Parties at that stage to reach decisions on these issues, and discussion anyway focused mainly on institutional arrangements for Agreements. As noted above however, COP9 changed one aspect of previous practice when it updated the lists of species for concerted and cooperative actions by means of a single Resolution, rather than by adopting a Resolution for concerted actions and a separate Recommendation for cooperative actions.

### Summary of the main issues which have arisen<sup>4</sup>

#### *Issue (i): Clarifying the purpose of listing a species for cooperative action*

36. There is inconsistency and uncertainty as to whether the primary purpose of listing a species for cooperative action is to provide

- (a) a less onerous alternative to developing a CMS Article IV Agreement, perhaps where the need for such an Agreement is less acute, or less feasible, or
- (b) a speedy way of taking immediate actions designed to evolve into an Agreement, where the need is *most* acute.

Decisions over the years have implied different perspectives on this at different times, and individual cases of cooperative action have doubtless varied in terms of whether in practice they increased the impetus towards concluding an Agreement or relieved the pressure for doing so.

37. There may also be hybrid situations (c) where cooperative action is a substitute for an Agreement for so long as given circumstances prevail, which may potentially be indefinitely; but then switches at a given point to become a precursor to an Agreement if those circumstances change or if certain conditions are met (for example if it becomes politically or financially feasible, where it had previously not been, to move to the development of an Agreement).

38. Contracting Parties may wish to decide which of these is the most appropriate way of defining the purpose of cooperative actions. Alternatively all three may be seen as valid, but requiring a more explicit expression than at present of the intended purpose in any given case. (It may also be useful to give examples of the ways in which cooperative actions may be delivered in practice).

#### *Issue (ii): Are cooperative actions best regarded as time-limited or open-ended?*

39. This issue relates to the way in which decisions to list species for cooperative action have tended to be made, referring to action in a specific triennium but then usually being more or less automatically rolled forward into succeeding triennia, which sends an ambiguous signal. It is also linked to Issue (i) above, since if the purpose in a given instance is option (a) or (c) above, the implication would be that the listing is open-ended, whereas if the purpose is option (b) there would presumably be some idea of how long a period might need to be

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<sup>4</sup> Recommendations for actions in response to these issues are given at the end of this paper.

provided for until an Agreement could be concluded. In neither case is there any particular logic in specifying a triennium as the active period.

40. In the scenarios as described above, the only end-point envisaged for a cooperative action is where it is “taken over” by an Agreement, which is then assumed to continue indefinitely. In theory there could be other end-points. For example, cooperative action could be found in practice to be unworkable in a given case and the prospects of concluding an Agreement to be nil, such that no useful purpose is served by keeping the species on the list. Alternatively, the results of the cooperative action could be so successful that the species achieves a favourable conservation status which is self-maintaining without the need for further international cooperation. This would then imply a need to remove the species from Appendix II. These are much less likely scenarios than the ones described above but they should not be ignored, especially in the latter case given that achieving favourable conservation status is in fact the ultimate objective. (In any event, improved ways of systematically reviewing actual outcomes of this kind would be desirable).

41. There is an oddity in Article IV of the Convention whereby paragraph 1 suggests that all Appendix II species by definition would benefit from international cooperation/Agreements, while paragraph 3 suggests on the other hand that whether or not an Appendix II species would benefit from international cooperation/an Agreement is a judgement to be made on a case-by-case basis. The interpretation suggested by paragraph 1 is perhaps the more logical. Apart from the last theoretical end-point described in the preceding paragraph therefore, the implication is that the list of species covered by either cooperative actions or Agreements can be allowed to continue to expand until it covers the entirety of Appendix II. (The practical manageability of such a situation is an issue that lies beyond the scope of the present paper).

***Issue (iii): Balancing the focus of attention across Appendix II***

42. Appendix II includes species which are:

- covered by cooperative action;
- covered by a single species action plan;
- covered by an Agreement;
- not covered by cooperative action, but already the focus of efforts towards the direct conclusion of an Agreement;
- not covered by any of the categories listed above but are the focus of active proposals being developed to do so; and
- the remainder, not yet the focus of any special attention (but requiring it, by one definition - see paragraph 41 above).

43. The figures and examples in paragraphs 22-23 above give some information on the application of the various actions. This is a picture that has grown organically, rather than being the product of a decided strategy or scheme of priorities. The overall scale of what is feasible at any given time has also not been a prominent guiding factor. The development of a more strategic forward vision of how different efforts might be balanced across Appendix II and programmed over an appropriate time-span (for example that of a CMS Strategic Plan) might offer a way forward. This would be worth further discussion.

***Issue (iv): The process for putting proposals forward***

44. The discussion at the 13<sup>th</sup> meeting of the Scientific Council in 2005 referred to inconsistencies in the rationale for the inclusion of different species in the cooperative actions list, the need for more rigour in the Council's own part in the process, and the lack of guidance on how it should be approached. There appears to be scope to improve the consistency, objectivity, completeness and transparency of this process, and the development of some kind of guidance document might be a useful step.

***Issue (v): Species included both in an Agreement and in the cooperative action list***

45. This may appear as an aberration, but in most cases arises because of differences in geographical scope, in terms of whether the whole of a species' range or only part of it is covered by the mechanism concerned. There may in theory be a rational case for deploying the different mechanisms in different parts of the range of a species. In principle, normally the deployment of either one of them should be in respect of the entire range of the species concerned, if listing is at the species level; but ways of making more explicit provision for alternative approaches in certain circumstances may be worth exploring.

***Issue (vi): Clarifying the type(s) of action expected after listing***

46. It is not enough to list a species for cooperative action simply on the basis that it meets whatever test may be articulated concerning the seriousness of its unfavourable conservation status. A second test must also be addressed, namely to define the way in which the species will benefit from international cooperation. Individual cases have varied over the years in terms of how much detail was provided at the time of listing concerning this second aspect, and there has been some lack of clarity (for example regarding the role of Agreements, as discussed above) about the types of action expected after listing.

47. Action Plans are a common ingredient of the work which can follow cooperative action listing. The many contexts in which Action Plans can evolve in the framework of the CMS have the potential for confusion, since they may arise:

- from the outset as an integral part of an Agreement;
- as a response to listing for concerted action in relation to Appendix I species;
- as a response to listing for cooperative action in relation to Appendix II species, without needing an Agreement in order to become operative;
- as a spontaneous initiative unlinked to any of the above categories;

and in theory at least it is possible to have overlaps and hybrid situations among these (e.g. Plans which address species on both Appendices).

48. The reasons for choosing one of these courses of action or another are not clearly prescribed, and the pros and cons of different options (for example mixing or not mixing Appendix I and Appendix II species) are probably not well understood, including the different legal nuances that may apply. Uncertainties may also arise in relation to situations where a free-standing Action Plan which implements a cooperative action decision becomes later integrated into an Agreement designed to enhance the response. There may be a case for developing guidance on matters of this kind, organized perhaps as a broad menu of options covering all the types of action that can potentially be a valid response to cooperative action listings.

***Issue (vii): Discovering and assessing the outcomes of cooperative action***

49. This issue concerns monitoring the results of actions undertaken in response to listing a species for cooperative action, and feeding information back to the Scientific Council and the COP so that activities can be compared to objectives, their effectiveness assessed, further decisions taken as necessary, and lessons learned from experience. This is no more than good programme management, but appears to be somewhat *ad hoc* and variably complete at present, to put it at its mildest. Again there may be a case for guidance, and for a suitably streamlined standard reporting process to be defined.

***Issue (viii): Rationalizing the different processes and their names***

50. COP document Conf.9.16, which has been mentioned above, presented some discussion on the terminology which has grown up around the CMS processes for Agreements, concerted actions, cooperative actions and Action Plans, and suggested a rationalization of the various mechanisms into three, with the simpler titles of “CMS Agreements”, “Concerted Actions” and “Initiatives”. The Parties have not reached a decision on this and the arguments are not developed further here, but the question remains a valid one.

***Issue (ix): The most appropriate form for future COP decisions concerning the cooperative actions list***

51. As noted above, the approach to designing COP decisions for cooperative action listing has changed over the years. At COP9 the cooperative action decision and the concerted action decision were combined into a single Resolution, and this appears to have improved the coherence with which the two processes can be considered.

52. Some of the other issues discussed above might also usefully inform the crafting of these decisions in future, with input from the Scientific Council, for example:

- being clear as to the purpose and timeframe involved in each case (avoiding the spurious default option of a triennium);
- being clear as to the fate of any species which may be being removed from the list;
- giving indications as to the type of action expected as a consequence of listing, where known; and
- setting out clear expectations as to monitoring and reporting.

Points might also usefully be made on the position in respect of other priority concerns regarding Appendix II species, so that, for example, early prompts for future attention, or the complementarity between cooperative actions and other mechanisms, might be made clear.

53. As background to the Resolution the COP might find it useful to have a document at each of its meetings (compiled by the Secretariat, working in conjunction with the Scientific Council) which reviews the status of the whole of Appendix II in terms of action being taken for the species listed there, along the lines of the categories mentioned in paragraph 42 above.

**Links to the process for initial listing on Appendix II itself**

54. As mentioned in paragraph 8 above, the Convention text defines two criteria for listing a species on Appendix II, namely (i) that it should have an unfavourable conservation status

and (ii) that it should either require or be capable of benefiting from international cooperation, which can include “international agreements” as understood in the CMS context.

55. “Unfavourable conservation status” is defined in the Convention itself, but there is otherwise little elaboration of the basis on which judgements should be made against these two criteria. The Scientific Council in its report to COP7 in 2002 discussed the interpretation of unfavourable conservation status in relation specifically to the criteria for assigning species to categories of global threat as operated by IUCN for the Red Listing process. While the IUCN system was seen to offer some directly applicable assistance in making judgements regarding listing of species on CMS Appendix I, it was only partly relevant to the judgements which need to be made against the two criteria for listing on Appendix II. For example, a particular subpopulation of a species may not be considered in the IUCN Red List but may require special conservation action in the opinion of CMS Parties.

### **Conclusion and recommendations**

56. There are many successes to report in the operation of measures under the CMS to promote the conservation and sustainable management of Appendix II species, including the impressive array of Agreements, Memoranda of Understanding and other instruments that are now in effect. In relation to the “cooperative action” mechanism which has been the focus of this paper, there are undoubted successes to report too, including actions that have led in due course to the species concerned becoming covered by an Agreement.

57. Five successive COPs so far have adopted decisions aimed at giving special attention to selected Appendix II species by means of cooperative action, and this has become a practised mechanism for signalling priorities and stimulating action of this kind. The cumulative total of 68 species listed over the five COPs so far (see paragraph 18 above) however represent less than 10 per cent of Appendix II as a whole, and not much more than 10 cent of those species currently falling outside the scope of existing Agreements. Agreements themselves cover less than 40 per cent of Appendix II species (see figures in paragraph 22 above). The Convention therefore appears so far to have been unable to give active attention to the conservation needs of the majority of species on the Appendix.

58. In relation to the cooperative actions process itself, it is clear that despite high levels of motivation and interest, there are a number of confusions and contradictions which may be regarded as weaknesses in the design of the system. The present paper has reviewed a number of these, with a view to stimulating thoughts about potential improvements. Some of the possibilities which emerge from this are expressed in the following non-exhaustive list of ten key recommendations:

- i) Conduct an analysis of Appendix II as a whole to indicate which species have so far been addressed (and to what extent) by which relevant CMS response mechanism, and to summarize the future conservation action needs of each species (and their relative priority) in terms of the mechanisms available. (*Secretariat*).
- ii) Review the case for retaining on the list of concerted or cooperative actions any species for which the entirety of its range is covered by an existing CMS instrument, and delete those for which there is no compelling reason to retain them on the list. (*Scientific Council; COP*).

- iii) Develop an expanded rationale, criteria and guidance as appropriate for identifying candidate species for cooperative action, with a view to improving scientific rigour, objectivity, consistency, completeness and transparency. (*Scientific Council; Parties; Secretariat*).
- iv) Make explicit the purpose of listing a species for cooperative action in each case when a listing proposal is made and when a listing decision is made, for example whether it is expected that cooperative action will constitute an urgent precursor to concluding a CMS Agreement, or an indefinitely-applicable substitute for such an Agreement, or a substitute for such an Agreement until certain specified conditions are met. (*Scientific Council; COP*).
- v) Develop guidelines to assist Parties in considering the menu of options available for action in response to cooperative action listings. (*Secretariat*).
- vi) Develop a process for collating information on the outcomes of previous COP decisions to nominate particular species for cooperative action, including impacts on the conservation status of the species concerned, and for reporting on these outcomes to the COP. (*Scientific Council; collaborating organizations; Secretariat*).
- vii) Commission an independent overall assessment of the utility and impact of the cooperative actions mechanism in terms of the conservation status of the species concerned, as well as in terms of the effectiveness of the governance and operation of the process vis-à-vis other CMS processes, with a view to recommending further improvements or appropriate system reforms. (*Secretariat*).
- viii) Develop a strategic vision for the use of available CMS mechanisms for the conservation and sustainable management of Appendix II species, linked as appropriate to the Strategic Plan and covering *inter alia* the complementary roles of these mechanisms, their taxonomic and geographical coverage, their relationship to concerted actions for species on Appendix I, and options for rationalising the suite of mechanisms available for both Appendices. (*Secretariat; Scientific Council; Standing Committee; Parties*).
- ix) Produce a plain-language guide to the operation of the concerted and cooperative actions process, for use by Parties and collaborating partners. (*Secretariat*).
- x) Develop and adopt a template for COP decisions on the listing of species for cooperative and concerted action, providing for both lists to be annexed to a single Resolution and incorporating *inter alia* the other points made on this issue in paragraph 52 of the present document. (*Secretariat; Scientific Council; Standing Committee*).

**Action requested:**

The Conference of the Parties is requested to:

- a. discuss the analysis presented in the present paper, and its implications for future operation of CMS mechanisms available for promoting the conservation and sustainable management of Appendix II species;

- b. endorse the ten recommendations presented in paragraph 58 of the present document, giving guidance as appropriate on the detailed approach to follow in each case;
- c. offer additional voluntary funding contributions or other appropriate forms of support for undertaking the work described in the recommendations referred to above; and
- d. adopt the draft Resolution on concerted and cooperative actions contained in document UNEP/CMS/Res.10.23, including any associated recommendations arising from the 17<sup>th</sup> Meeting of the Scientific Council concerning deletion of species from the concerted and cooperative actions lists where the entire range of such species is covered by an existing CMS instrument.