



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/REPORT

REPORT OF THE MEETING

Opening of the meeting

1. The meeting was opened at 3 pm on Saturday, 6 December 2008, by Mr. Robert Hepworth, Executive Secretary of the Convention on the Conservation of Migratory Species of Wild Animals, who welcomed participants.

Agenda item 1: Welcoming remarks

2. Mr. Kevern Cochrane, Fisheries Management and Conservation Service, Food and Agriculture Organization of the United Nations (FAO), welcomed participants to FAO Headquarters on behalf of Mr. Jacques Diouf, Director-General of FAO, and Mr. Ichiro Nomura, Assistant Director-General, FAO Fisheries and Aquaculture Department. He emphasized that the FAO's primary mission was to contribute to food security, an aim that had become ever more challenging, and UNEP was equally committed to sustainable use, so there was every reason for FAO and UNEP to cooperate.

Agenda item 2: Meeting overview and objectives

3. The Executive Secretary thanked the FAO for its support and expressed the hope that it would provide major input to the meeting.

4. He recalled that it was the second meeting held for the purpose of negotiating an international instrument for the conservation of sharks and their habitats and its first decision should be whether a binding or non-binding instrument was desired. Once that had been decided, consideration would have to be given to what type of action plan should be adopted, how it would relate to other action plans and what species should be covered by the instrument. He concluded by thanking the members of the Intersessional Steering Group on Migratory Sharks (ISGMS) for their valuable comments and support during the intersessional period.

Agenda item 3: Adoption of the Rules of Procedure

5. The Executive Secretary introduced the draft rules of procedure contained in document UNEP/CMS/MS2/Doc/6, explaining that, as was customary, they were based on the rules of procedure for meetings of the Conference of the Parties, with a certain number of modifications, to which he drew attention.

6. Concern was expressed at the inclusion of rules on voting as CMS bodies generally adopted decisions by consensus and it was agreed that Part IV of the draft should provide for decision-making by consensus.

7. The rules of procedure, as amended, were adopted.

Agenda item 4: Election of officers

8. Following a proposal by the representative of Seychelles, seconded by other representatives, Ms. Nancy Céspedes (Chile) was elected as Chair.

9. Ms. Theresa Mundita Lim (Philippines), after being nominated by the representative of Belgium and seconded by other representatives, was elected as Vice-Chair.

Agenda item 5: Establishment of the Credentials Committee

10. The meeting elected the representatives of the following countries to serve as the Credentials Committee: Australia, Cameroon (Rapporteur), Republic of Congo, Ecuador, and the Syrian Arab Republic (Chair).

11. The representative of Cameroon, speaking as Rapporteur of the Credentials Committee, presented the Committee's final report, which showed that 28 credentials were in order, ten had been conditionally accepted with the provision that the original document was sent to the Secretariat, four had not been accepted and nine had not been submitted.

Agenda item 6: Adoption of the agenda and meeting schedule

12. The meeting adopted the agenda proposed in document UNEP/CMS/MS2/Doc/1/Rev.1, which is attached as annex I to the present report.

Agenda item 7: Outcome of the first meeting to identify and elaborate an option for international cooperation on migratory sharks under the Convention on Migratory Species (Mahé, Seychelles, 11-13 December 2007)

13. The Executive Secretary introduced the report of the first meeting (Sharks I) (UNEP/CMS/MS1/Report) and the revised draft memorandum of understanding and draft agreement prepared by the CMS Secretariat pursuant to the recommendation made at the first meeting and following consultations with the Intersessional Steering Group on Migratory Sharks (ISGMS) (UNEP/CMS/MS2/DOC/4/Rev.1).

14. A consensus had been reached at the first meeting that the scope of the instrument should be global, with a focus on the three species listed in the appendices to the CMS, but that there should be an enabling mechanism to allow Parties to add species. The three fundamental principles recommended were: the need to address the broad range of measures to deal with shark conservation and management; the ecosystem and precautionary approach; and the cooperation and engagement with stakeholders. As far as the institutional mechanism was concerned, the meeting had recommended the use of existing mechanisms where possible.

Agenda item 8: Update on the conservation status of migratory sharks

15. Ms. Sarah Fowler, Co-Chair of the IUCN Species Survival Commission, Sharks Specialist Group, provided an update on the conservation status of migratory sharks. After explaining the methodology used to prepare the update, she drew attention to the intrinsic vulnerability of migratory sharks because of their low rate of population growth, late maturity and long gestation period, as well as many species' tendency to aggregate in large schools, making them vulnerable to exploitation. There was considerable variation in demography between species and even between populations. Extrinsic factors linked to the decline of shark populations globally included over-exploitation, habitat degradation and loss, depletion of prey species, as well as a lack of coordinated management and reliable data. The IUCN Red List species assessments for 2007 showed that 20 per cent of all the shark species that had been assessed were threatened at the global level. In the case of pelagic sharks, many of which are highly migratory, the figure rose to 58 per cent worldwide. The primary threats to migratory sharks were target fisheries and utilized bycatch for over 90 per cent of the species, while habitat destruction and incidental catch discards were the main secondary threats. Target fisheries and utilized bycatch were notably the primary threats to oceanic and coastal species, while for freshwater species habitat destruction was considered a primary threat in addition to target fisheries. Overexploitation through target fisheries and bycatch was also the main threat for the species on CMS Appendices. Secondary threats for these species included habitat degradation, depletion of prey, and boat strikes.

16. The analysis undertaken by IUCN for CMS had identified about 140 species of Chondrichthyans as migratory or potentially migratory. However, data on movements were still lacking for many species, and many more species might therefore prove to be migratory in the future.

17. Ms. Fowler added that the Shark Specialist Group included experts from over 70 countries, many of whom worked for scientific fisheries bodies or in conservation of biodiversity. In response to a question, she said that lack of data was not restricted to any particular geographical area; worldwide there were pockets where data were deficient just as there were others where data availability was good.

Agenda item 9: Internationally agreed principles and procedures for the conservation and management of sharks

9.1 The FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) and related issues (presentation by FAO)

18. Mr. Cochrane (FAO) introduced the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), drawing attention to the general vulnerability of sharks because of their slow growth, late maturity and low fecundity. Sharks were often taken as bycatch and, except in the case of shark fins, they were of little economic importance. The difficulty of identifying species meant that some might become rare or even disappear without warning. Information on amount of catch and discarded catch, as well as the type of gear used was inadequate and there was little or no trade-related information.

19. After providing an overview of the relevant international instruments, he gave a more detailed presentation of the IPOA-Sharks. He said that the objective of IPOA-Sharks was to ensure the conservation and management of sharks and their long-term sustainable use. The

programme was voluntary and had been elaborated within the framework of the Code of Conduct for Responsible Fisheries.. The guiding principles of the programme were that states that contributed to fishing mortality of a stock or species should participate in its management and that total fishing mortality for each stock should be kept within sustainable levels by applying the precautionary approach. It was recognized that in some countries shark catches represented an important source of food and income and had to be managed sustainably so that they could continue to play that role. States were encouraged to adopt their own national shark plans and to cooperate through regional and sub-regional fisheries organizations or arrangements.

20. Implementation was hampered by the low priority given to the programme when allocating resources and by lack of expertise. To remedy that, the potential of Regional Fisheries Management Organisations (RFMOs) and international organisations could be tapped and industry encouraged to support the management of elasmobranch fisheries. It was a fact that most shark fisheries were currently not managed and FAO had taken a number of measures to meet the growing concern about the possible impact of illegal unreported and unregulated shark catch. The key to progress was to adopt the ecosystem approach to fisheries and to ensure that natural resources did not decrease below their level of maximum productivity. Fisheries should be managed in such a way as to minimize their impact on the ecosystem, and the ecological relationships between the different species within the food web including those that are harvested had to be maintained. Because the understanding of ecosystem functioning was incomplete, it was important to follow the precautionary approach.

21. During the ensuing discussion, it was pointed out that the fact that it was not legally binding was a weakness of the IPOA-Sharks. However, the ecosystem approach meant that sharks should not be managed as a separate species so a binding agreement was not necessarily the best approach. Moreover, as fisheries had to be involved in the conservation effort, a non-binding instrument would be more likely to attract signatures.

22. Several representatives said that countries might be taking measures to protect sharks even if they did not have a national plan of action. The important role played by regional and subregional fishing commissions was also mentioned.

Agenda item 10: Options for international cooperation under CMS

23. The Executive Secretary introduced document UNEP/CMS/MS2/Doc/7 containing the comments of the ISGMS.

24. Mr. Marco Barbieri, Agreements Officer, CMS, explained that the ISGMS, comprising Australia, Chile, Costa Rica, the European Commission, New Zealand, Seychelles, and the United States of America, had considered first drafts of both legally and non-legally binding instruments, prepared by the CMS Secretariat. The members of the group had sent in their comments on the proposed drafts and those had been incorporated into the revised drafts to be discussed under agenda item 10.2. Some members of the ISGMS had commented on the revised drafts and their comments were included in document UNEP/CMS/MS2/Doc/7.

25. After the Chair had called for general comments on the future instrument, several representatives spoke in favour of a non-binding instrument, which would be easier to

implement, but felt that the proposed Memorandum of Understanding (MOU) was too detailed and certain elements could be moved to the Action Plan.

26. Other representatives preferred a legally-binding agreement but in order to speed up adoption they could accept an MOU, provided that serious consideration was given to how it would be implemented.

27. A number of suggestions for inclusion in the MOU were made including a reference to regional and subregional cooperation, technical and financial support for developing countries and synergy with other frameworks. Finally, concern was expressed at the lack of reliable data on shark population and fisheries to guide policy.

28. Following the general round of comments, the Executive Secretary drew attention to the second draft of proposed legally and non-legally-binding instruments on migratory sharks (document UNEP/CMS/MS2/Doc/4/Rev.1), highlighting some salient features. The substantive provisions of the two proposed instruments were very similar, but some basic issues had to be decided: for example, what would be the relationship to the IPOA-sharks, what species would be covered, and most crucially how the operation of the new instrument would be financed because CMS would be unable to cover those costs within its current budget.

29. During the ensuing discussion, a clear preference for an MOU emerged and the Chair asked participants to focus on the draft MOU proposed by the Secretariat.

30. Several divergent views were expressed concerning the species to be covered by the proposed MOU. Some representatives were in favour of limiting the scope of the MOU to the three species originally listed on Appendix II (Whale shark (*Rhincodon typus*), Basking shark (*Cetorhinus maximus*), Great white shark (*Carcharodon carcharias*)), at least in an initial phase. Other representatives considered that the four species added to Appendix II at the Ninth Meeting of the Conference of the Parties (Shortfin mako shark (*Isurus oxyrinchus*), Longfin mako shark (*Isurus paucus*), Porbeagle (*Lamna nasus*), Northern hemisphere populations of Spiny dogfish (*Squalus acanthias*)), should also be covered by the MOU. The issue was raised several times during the meeting, but no consensus could be reached on this point.

31. Representatives also discussed whether it was desired to maintain a link between the *Condriichthyes* species listed in the Appendices to the Convention and the species covered by the MOU. Some delegates foresaw a close link, whereby species listed on CMS Appendices would automatically be added to the MoU Annex. This was however seen as a severe problem for some non-CMS Parties, which openly stated that it would discourage them to sign the MoU in the first place. States that were not a member of CMS tended therefore to favour an independence between the CMS Appendices and the MOU Annex, the decision on the inclusion of species in the Annex to the MOU having to remain the exclusive prerogative of the Signatories to the MOU. A possible compromise between these two diverging positions was suggested, that would leave the prerogative to amend the annex to the MOU to the Meeting of the Signatories, which would however agree to consider any species listed on CMS Appendices by the CMS COP. No consensus was reached on this matter.

32. The Chair suggested that the meeting have a first reading of the text proposed by the Secretariat, taking it up section by section.

Preamble

33. Differing views were expressed as to whether the Preamble contained in paragraphs 1 to 6 of the draft was necessary, some representatives speaking in favour of its deletion while others wished to see it retained because it highlighted the plight of sharks.

Objective

34. A number of amendments were proposed to the objective contained in paragraph 7 of the draft with some representatives preferring the first alternative and others the second.

Fundamental Principles

35. Turning to the Fundamental Principles in paragraphs 8 to 17 of the draft, it was proposed that some of the paragraphs either be moved to the Action Plan or be deleted.

36. The Chair proposed that a contact group comprising the representatives of Argentina, Australia, Guinea-Bissau, the European Community and the United States of America be set up to discuss the Fundamental Principles.

37. The representative of the CMS Secretariat presented the report of the contact group on the Fundamental Principles, stating that there had been consensus on many of the elements.

38. The meeting could not reach consensus on whether the Fundamental Principles were needed, although there was general support for including them. After several representatives had said that they would need to consult their capitals before agreeing on any text, the meeting decided to place the text in square brackets and return to it at the next meeting.

Conservation and management measures

39. Some delegations expressed the view that the list of measures contained in paragraphs 18 and 19 of the draft was too ambitious and too detailed. The importance of not duplicating the efforts made by other organizations was also underlined. Moreover, States should not be asked to undertake commitments which they would be unable to fulfil. It was doubtful whether the CMS had the expertise to implement some of the measures proposed.

40. The Chair proposed that a contact group be set up to discuss paragraphs 18 and 19.

41. The representative of the United States of America presented the report of the contact group, stating that it was proposed that all the elements contained therein should be used as a framework for the Action Plan to be annexed to the MOU. An intersessional group should be asked to look at the text in order to determine which elements should be retained. The meeting discussed participation in the proposed intersessional group and agreed that it should be open to all range states and representatives of interested organizations.

Implementation, reporting and financing

42. The Executive Secretary introduced the section contained in paragraphs 25 to 32 of the draft, explaining that the question of whether an existing body should be used to provide

secretariat services to the MOU or a new one created had been left open. The text was flexible and because the CMS Secretariat would be unable to finance the MOU fully, Signatories would have to bear much of the cost. The Indian Ocean – South-East Asian Marine Turtle (IOSEA) MOU was quoted as a successful example of such a non-binding instrument, which was however facing a major problem as regards financing because the text of the MOU did not make proper provision for its funding.

43. With regard to financing, it was emphasized that every effort should be made to implement cost-effective measures and whatever arrangements were made should utilize as few resources as possible so that more could be devoted to implementation itself. It was agreed that the IOSEA MOU provided an important lesson and the effectiveness of an MOU obviously depended on resources being available to implement it.

Meeting of the Signatories

44. The Executive Secretary introduced the relevant section in paragraphs 33 to 46 of the draft, which had been simplified and contained some new text with regard to observers and to the link between the MOU and the CMS.

Advisory Committee

45. Introducing the text contained in paragraph 47 of the draft, the Executive Secretary said that very few changes had been made to the original text submitted at Sharks I.

46. During discussion of the text, concern was expressed that the creation of another body would have financial implications.

47. In response to a question on what kind of emergency was envisaged and whether any emergency plan for sharks already existed, the Executive Secretary said that, to his knowledge, there was no emergency plan for sharks at the global level and it was the intention to allow the Advisory Committee to request the convening of a Meeting of the Signatories concerned by a particular emergency so that they could take the urgent action needed.

Secretariat

48. The meeting considered the question of the establishment of a Secretariat as provided in paragraphs 48 and 49 of the draft. It was emphasized that the balance sought was to establish a Secretariat that was sufficient to comply with the requirements of the MOU while at the same time was as cost-effective as possible. One representative considered that the creation of a Secretariat, or even an advisory body, was contrary to what should be contained in a non-binding instrument because it had financial implications.

Cooperation with other bodies

49. In considering the cooperation described in paragraphs 50 to 53 of the report, it was proposed that UNEP be added to the list of secretariats with which the MOU secretariat would consult and cooperate on matters of common interest.

Effect of this agreement on international conventions and legislation

50. When the meeting took up paragraphs 54 and 55 of the draft, one representative said that it would reserve its position on the effect of the agreement until it had had an opportunity to consult its department of legal affairs.

Other provisions

51. The meeting discussed paragraphs 56 to 63 of the draft, including the number of range states that would have to sign the MOU before it could come into effect and whether the MOU should be open to non-range states.

52. In response, the Executive Secretary said that in his view ten range states constituted the minimum.

53. It was suggested that the clause on termination be made more explicit, stating to whom notice of termination should be sent.

Outcome of the meeting

54. The Secretariat undertook to produce a revised draft of the MOU taking into account the comments made at the meeting. The revised draft MoU is attached to this report as Annex II.

55. Following the first reading of the text, it was emphasized that much work remained to be done and it was necessary to decide on the intersessional procedure immediately. In order to assist work at the next negotiating meeting, the Executive Secretary introduced a draft statement on the outcome of the meeting, which set out the consensus reached at the meeting and made provision for an open-ended Inter-Sessional Drafting Group, to be chaired by the United States of America, to prepare a draft Conservation and Management Plan by the end of July 2009. It also reaffirmed that the common objective was to complete an instrument on migratory sharks, which could be open for signature before the end of 2009.

56. The meeting discussed the draft statement in detail and made a number of oral amendments. The final text is attached as Annex III to the present report.

57. One representative expressed disappointment that more rapid progress had not been made and another said that the MOU had lost many of the elements agreed at Sharks I and had been weakened. There was a need for an instrument that would not have to be renegotiated within a couple of years and consideration should be given to a more rapid mechanism capable of saving those shark species that had unfavourable conservation status.

Agenda item 11: Any other business

58. Mr. Roy Bikram Jit, Scientific Officer, Marine Fisheries Survey Unit, Bangladesh, made a presentation on the present status of shark fisheries in Bangladesh.

59. The representative of India described the programme for the conservation of the Whale shark on the west coast of India, emphasizing that all stakeholders had been made aware of the need to protect sharks.

Agenda item 12: Closure of the meeting

60. The representative of the Philippines expressed an interest in hosting the third meeting on International Cooperation on Migratory Sharks under the Convention on Migratory Species (Sharks III), which was tentatively scheduled for winter 2009/2010.

61. Following the customary exchange of courtesies, the Chair declared the meeting closed at 5.45 p.m. on Monday, 8 December 2008.



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Annex I

AGENDA

1. Welcoming remarks
2. Meeting overview and objectives
3. Adoption of the Rules of Procedure
4. Election of officers
5. Establishment of Credentials Committee
6. Adoption of the agenda and meeting schedule
7. Outcome of the first meeting to identify and elaborate an option for international cooperation on migratory sharks under the Convention on Migratory Species (Mahé, Seychelles, 11-13 December 2007)
8. Update on the conservation status of migratory sharks
9. Internationally agreed principles and procedures for the conservation and management of sharks
 - 9.1 The FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) and related issues (presentation by FAO)
10. Options for international cooperation under CMS
 - 10.1 Presentation of the Report/Comments of the Inter-sessional Steering Group for Migratory Sharks (ISGMS)
 - 10.2 Presentation of drafts of a non legally binding Memorandum of Understanding and a legally binding Agreement
 - 10.3 Identification of the preferred CMS instrument
 - 10.4 Review, further elaboration [and finalization] of the preferred instrument
11. Any other business
12. Closure of the meeting

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

(MS2 Final Draft as at 8 December 2008)

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]/ [Conservation and Management 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:

Scope, definitions and interpretation

1. This agreement is not legally binding upon the Signatories.
2. This Memorandum of Understanding applies to all migratory species of sharks included in Annex 1.
3. For the purpose of this Memorandum of Understanding:
 - a) "Shark" means any of the migratory species, subspecies or populations in the Class *Chondrichthyes* (which includes sharks, rays, skates and chimaeras) that are included in Annex 1 of this Memorandum of Understanding;
 - 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 (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 will 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 will 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 will 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]/ [Conservation and Management Plan]” means the Migratory Sharks Conservation and Management [Action Plan]/ [Conservation and Management Plan] contained in Annex 2 of the Memorandum of Understanding;
 - u) “Shark finning” means the practice of removing fins from 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.
4. The interpretation of any term or provision of this Memorandum of Understanding will be made in accordance with the Convention, or 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.
5. This Memorandum of Understanding is a legally non-binding agreement under Article IV paragraph 4 of the Convention, as defined by Resolution 2.6 adopted at the Second Meeting of the Parties to the Convention (Geneva, 11-14 October 1988).
6. The Annexes form an integral part of 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 and their habitats, based on the best scientific evidence, taking into account the socio-economic and other values of these species for the people of the Signatory states.

Fundamental Principles

8. [The signatories acknowledge 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 relevant international organizations.]

9. The Signatories acknowledge the role and the scientific and political actions of states and RFMO/As (Arrangements), as appropriate, (which are responsible for the management of migratory shark [fisheries]/[species]), and the need to strengthen and improve their role.

10. Sharks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information.

11. In implementing the measures given in paragraphs 14-15 the Signatories will apply widely both an ecosystem and a precautionary approach [in a participatory manner]. Lack of scientific certainty [should]/ [is] not [to] be used as a reason for postponing measures to enhance the conservation status of sharks.

12. Signatories should have regard for the general duty to protect the marine environment and therefore should adopt, where necessary, conservation and management measures for minimizing pollution, waste, discards, catch by lost or abandoned gear and other threats [Signatories [are to]/[should] adopt, where necessary, conservation and management measures for minimizing pollution, waste, discards, catch by lost or abandoned gear and other threats, to protect the marine environment].

13. [Signatory States may establish, by mutual consent, bilateral, sub-regional or regional management plans that are consistent with this Memorandum of Understanding.]

Conservation and Management Measures

14. [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]/[Conservation and Management 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 j above.
- 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.]

15. The Signatory States recognize that in order to be successful in these endeavours they must also make every effort, as appropriate, to:

- a. Implement, subject to the availability of necessary resources, the [Action Plan]/[Conservation and Management Plan] in Annex 2 of this Memorandum of Understanding.
- b. Cooperate with relevant organisations and recognised experts and so as to facilitate the work conducted in relation to the [Action Plan]/[Conservation and Management Plan].
- c. 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]/[Conservation and Management Plan].
- d. 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.
- 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]/ [Conservation and Management Plan]

16. Annex 2 of this Memorandum of Understanding will have effect as an Action Plan for the achievement of a favourable conservation status for sharks.

17. With due consideration to the capabilities of Signatories to implement these actions, the [Action Plan]/ [Conservation and Management Plan] sets out the activities that Signatories will progressively strive to undertake in relation to sharks, and assigns priorities to these activities, consistent with the conservation and management measures specified above.

18. 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]/ [Conservation and Management Plan] until such time as an Advisory Committee is established under this Memorandum of Understanding.

19. Progress in implementing the [Action Plan]/ [Conservation and Management Plan] should be assessed at each ordinary session of the Meeting of the Signatories and the content of the [Action Plan]/ [Conservation and Management Plan] reviewed in light of that assessment.

20. The Meeting of the Signatories should consider and may adopt any proposed amendment to the [Action Plan]/ [Conservation and Management Plan].

Implementation, Reporting and Financing

21. Each Signatory State should:

- a) Designate a focal point for communication among Signatory States and for implementing activities under this Memorandum of Understanding and the [Action Plan]/ [Conservation and Management Plan], and communicate the complete contact details of this authority, and any subsequent changes thereto, to the Secretariat.
- b) Provide to the Secretariat a regular national report on the implementation of this Memorandum of Understanding and the [Action Plan]/ [Conservation and Management Plan], the frequency and timing of which will be determined at the first meeting of the Signatory States.
- c) Assess the overall implementation of this Memorandum of Understanding, including the [Action Plan]/ [Conservation and Management 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 shark conservation and management.
- d) 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.
- e) Endeavour to finance, from national and other sources, the implementation within their jurisdictions of the measures necessary for the conservation of sharks. In addition they will endeavour to assist each other in the implementation and financing of the activities under the [Action Plan]/ [Conservation and Management Plan].

22. 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.

23. 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

24. The Meeting of the Signatories will be the decision-making body of this Memorandum of Understanding. 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. The Meeting of Signatories should decide on the frequency of its meetings thereafter.

25. At its first session, the Meeting of the Signatories should adopt its own 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. The first session should [create facilities for a Secretariat]/[ensure that Secretariat functions are provided]/[also establish a Secretariat] and set up an Advisory Committee.

26. 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 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.

27. Any relevant scientific, environmental, cultural, fisheries or technical body concerned with the conservation and management of marine living resources or the conservation and management of 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.

28. 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.

29. At each of its ordinary sessions, the Meeting of the Signatories will consider making amendments to Annex I [based on]/[having regard to] any changes to Appendix I or II of the Convention. The meeting will also consider reports, advice and information from any of its subsidiary bodies; consider actual and potential changes in the conservation status of 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.

30. 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 response measures; consider and decide upon proposals to amend this Memorandum of Understanding; consider species covered by this Memorandum of Understanding; amend the [Action Plan]/ [Conservation and Management 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.

31. 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

32. 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 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 sharks amongst Signatories;
- e) make recommendations to the Meetings of the Signatories concerning the [Action Plan]/ [Conservation and Management 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.

33. Each Signatory should be entitled to appoint one member to the Advisory Committee. The Advisory Committee should elect a Chair and Vice-chair and establish its own rules of procedure. 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, and may establish working groups as necessary to undertake specific tasks.

34. 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.

Emergencies

35. Where in the opinion of the Meeting of Signatories or 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 shark, either body 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

36. 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.

37. 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]/ [Conservation and Management 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]/ [Conservation and Management Plan];
 - f. to propose for approval a process for the assessment by Signatories of progress made to implement the Memorandum of Understanding and the [Action Plan]/ [Conservation and Management 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 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; and
 - o. to perform such other functions as may be entrusted to it by or under this Memorandum of Understanding.

Cooperation with other bodies

38. 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 shark species and other marine living resources, particularly the FAO and RFMOs.

39. 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 sharks;
 - b. The Secretariats of relevant RFMOs;
 - c. the secretariats of other relevant conventions, in particular the Convention on International Trade in Endangered Species (CITES) and the Convention on Biological Diversity (CBD) [and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)], and international instruments in respect of matters of common interest; and
 - d. other organisations or institutions with competence in the field of conservation of sharks, as well as in the fields of research, education and raising awareness.
40. The Secretariat will enter into arrangements, with the approval of the Meeting of the Signatories, with other organisations and institutions as may be appropriate.
41. 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

42. 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.
43. 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 sharks.

Other Provisions

44. This Memorandum of Understanding is open for signature by the Range States and regional economic integration organisations of the shark species listed in Annex I of this Memorandum of Understanding.
45. This Memorandum of Understanding will take effect on the first (last) day of the month following the date (month) on which there are at least [10] Range State signatures.
46. It will take effect for each subsequent Signatory on the first (last) day of the month following the date (month) of signature by that Signatory.
47. 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.
48. Non-range states, 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]/ [Conservation and Management Plan].

49. The Convention Secretariat should be the Depository for this Memorandum of Understanding.

50. The Memorandum of Understanding, including the Annexes, may be amended by a consensus of Signatory States.

51. 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, [Spanish and French].

Done atthis.....day of2008

DRAFT

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

Rhincodontidae	<i>Rhincodon typus</i>
Cetorhinidae	<i>Cetorhinus maximus</i>
Lamnidae	<i>Carcharodon carcharias</i>
	[<i>Isurus oxyrinchus</i>]
	[<i>Isurus paucus</i>]
	[<i>Lamna nasus</i>]
Squalidae	[<i>Squalus acanthias</i> (Northern Hemisphere populations)]

Annex 2: Migratory sharks conservation and management plan

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STATEMENT ON THE OUTCOME OF THE MEETING

1. The second official inter-governmental meeting concerning international co-operation on migratory sharks under the Convention on Migratory Species (CMS) took place on 6-8 December 2008 at FAO, Rome, and was convened by the CMS Secretariat.
2. 51 representatives of shark Range States attended the meeting, together with other relevant bodies including FAO, RFMOs, IUCN Species Survival Commission, NGOs, and advisers such as the Chairman of the CMS Scientific Council (ScC) and the CMS Appointed Councillor for Fish (ScC). Chile was elected as Chair of the meeting, and Philippines as Vice-Chair.
3. Following presentations by IUCN and FAO, and a summary report of progress made at the first meeting in the Seychelles (11-13 December 2007), the meeting considered possible texts for a CMS instrument on sharks under Article IV of the Convention, which had been refined in an inter-sessional group.
4. The main progress made in negotiations was as follows:
 - (i) there was a consensus amongst states present that the shark instrument should be a Memorandum of Understanding, in non-binding form;
 - (ii) two states did support a binding agreement but agreed to work with the other participants towards a non-binding Memorandum of Understanding within the next year;
 - (iii) the MoU should definitely apply to the 3 species of the Basking, Great White and Whale Sharks. Four further species listed on Appendix II of the Convention at CMS COP9 should also be considered for inclusion in the MoU. A final decision on this will be taken at the next negotiating meeting (“SHARKS III”);
 - (iv) new wording was tentatively agreed for the objective of the MoU: “*The objective of this Memorandum of Understanding is to achieve and maintain a favourable conservation status¹ for migratory sharks² and their habitats, based on the best scientific evidence, taking into account the socio-economic and other values of these species for the people of the Signatory states.*”;
 - (v) a contact group prepared revised text for the Fundamental Principles of the MoU. A final decision to confirm, omit or amend this text will be taken at SHARKS III;
 - (vi) a contact group concluded that the text on Conservation and Management Measures should be transferred to act as the framework for the Action Plan, now named “Conservation and Management Plan”(CMP). This is subject to confirmation at SHARKS III;
 - (vii) a series of amendments was also made to other paragraphs of the draft MoU;
 - (viii) the meeting established an open-ended Inter-Sessional Drafting Group under the chairmanship of the USA to prepare a draft CMP by the end of July 2009, in liaison with other bodies such as FAO, IUCN and the CMS Scientific Council;
 - (ix) the meeting accepted an offer by the Philippines to host further meetings of the Inter-Sessional Drafting Group and SHARKS III in 2009;
 - (x) the common objective is to complete an instrument on migratory sharks so that it can be opened for signature before the end of 2009.

¹ As defined in this Memorandum of Understanding (MoU).

² .e. those sharks covered by the MoU; see paragraph 4) (iii) above.



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/REPORT

Annex IV

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