



Convention on the Conservation of Migratory Species of Wild Animals

Secretariat provided by the United Nations Environment Programme



THIRD MEETING ON INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER THE CONVENTION ON MIGRATORY SPECIES

Manila, Philippines, 10-12 February 2010

UNEP/CMS/MS3/Doc.4

REVISED DRAFT OF A PROPOSED NON-LEGALLY BINDING INSTRUMENT ON MIGRATORY SHARKS

(Prepared by the Secretariat)

Introduction

1. The meeting to Identify and Elaborate an Option for International Cooperation on Migratory Sharks under the Convention on the Conservation of Migratory Species of Wild Animals (CMS), held in Mahé, Seychelles from 11- 13 December 2007 considered that an international instrument developed under CMS would add value to current global shark conservation and management efforts. The meeting participants focussed their deliberations on identifying what they considered to be the key elements of a shark conservation agreement; ie. geographic scope, fundamental principles, species covered, conservation and management measures, cooperation with other bodies, and institutional structure and funding. The meeting elaborated on each of these elements, and recommended that the text of an agreement under the CMS, incorporating the conclusions reached at the meeting, be prepared by the CMS Secretariat.

The first drafts of a proposed international instrument under the CMS

2. The meeting in Seychelles did not reach consensus on the final form that the CMS agreement should take (legally or non-legally binding), and therefore agreed that the CMS Secretariat, in consultation with an Intersessional Steering Group on Migratory Sharks (ISGMS) comprising Australia, Chile, Costa Rica, the European Commission, New Zealand, Seychelles and United States of America should continue the process and develop proposed texts for both types of instruments. The CMS Secretariat provided the ISGMS with working drafts of both forms of agreement, and asked the ISGMS to comment on these drafts.

The second drafts of an international instrument

3. ISGMS comments were incorporated into the working drafts by the Secretariat, and revised drafts of legally-binding and non-legally binding instruments on migratory sharks were prepared, which were made available as meeting documents for the second meeting on sharks, held in Rome, Italy on 6-8 December 2008. The second meeting in Rome reached consensus that the instrument to be developed should be a non-legally binding Memorandum of Understanding, and produced a further revised draft of such an instrument, dated 8 December 2008.

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

The third draft of a non-legally binding Memorandum of Understanding

4. The CMS Secretariat, on 26 October 2009, called for comments on the 8 December 2008 draft of the Memorandum of Understanding from participants at the first and second meetings on sharks, as well as from CMS Focal points of Parties that participated in at least one of these meetings. Many thoughtful comments were received, and all were taken into account in preparing a third draft of a non-legally binding Memorandum of Understanding. The third draft is attached to this note.

5. The CMS Secretariat accepted all proposed changes of a non-controversial nature. Where there were doubts about accepting certain proposed changes, the Secretariat exercised judgement and either placed the proposed change in double round brackets ((...)) in the text, or did not accept the proposal. In those few instances where there were conflicting comments from participants, the Secretariat has identified these using double round brackets, and left these for further discussion.¹

6. Some square brackets were removed from the text of the 8 December 2008 version, however some remain, most notably around the name of the plan associated with the Memorandum of Understanding, since there was no consensus on whether the plan should be called an Action Plan or a Conservation and Management Plan.

7. The process followed by the CMS Secretariat in preparing the third draft was first to compile all of the comments received in order to get a good sense of where and how participants felt the draft needed to be modified or strengthened. It became evident to the Secretariat that there was a need to eliminate words and phrases normally associated with a legally binding international agreement; also, to remove substantial amounts of detail on, for example, conservation and management measures, the responsibilities of meetings of the Signatories and functions of the Secretariat; and also to shorten the document as much as possible and to ensure editorial consistency throughout.

8. With respect to the Annexes to the proposed Memorandum of Understanding, Annex 1 is the list of species covered by the MoU, Annex 2 is the Conservation and Management Plan. Annexes 3, 4, and 5, introduced by the Secretariat, contain text removed from the sections in the 8 December 2008 version of the Memorandum of Understanding on conservation and management measures, the responsibilities of meetings of the Signatories and functions of the Secretariat, respectively, in order to shorten the document. This text was preserved by the CMS Secretariat in Annexes in the present draft because it is text that has been reviewed several times by participants, and therefore may be useful to keep for future reference.

9. The draft Conservation and Management Plan for migratory sharks associated with this Memorandum of Understanding is found in meeting document UNEP/CMS/MS3/Doc.5.

¹ The use of double round brackets aims at differentiating text bracketed by the Secretariat on the basis of the last round of consultations from text already bracketed in the draft version of 8 December 2008.

Actions requested:

The meeting is invited to:

- a. Note the progress made in implementing CMS Recommendation 8.16, and Resolutions 8.5 and 9.2 put forward at the 8th and 9th Meetings of the Conference of the Parties to CMS, which call for the development of a global migratory shark agreement under CMS.
- b. Consider the draft text of a non-legally binding Memorandum of Understanding under CMS found in this document, propose any further modifications and changes that are deemed appropriate to ensure that the objective of the instrument is ultimately achieved, and seek consensus on the final version to be opened for signature.
- c. Recommend to the CMS Secretariat any further steps to be taken toward finalization of the text, if necessary.

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

THE SIGNATORIES,

ARE AWARE that the 8th meeting to the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (the Convention) adopted Recommendation 8.16 calling upon Range States of migratory sharks listed on Appendix I or II of the Convention to develop a global migratory sharks conservation instrument;

RECALL that some species of migratory sharks have priority for conservation actions through listing on the appendices of both the Convention as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

RECOGNIZE the critical role that migratory sharks play in marine ecosystems and local economies, and concerned about the significant and continuing mortality rate of sharks, including those listed on Appendices I and II of the Convention from a range of impacts and threats including ((targeted))/ ((directed)) fisheries, fisheries by-catch, illegal, unreported and unregulated (IUU) fishing, trophy hunting, marine debris, ecosystem modifications, anthropogenic disturbances, and increasing pressures on the marine environment due to climate change;

ARE CONVINCED that the vulnerability of migratory sharks to such threats warrants further development of conservation measures where they do not already exist, enhanced implementation and enforcement of existing 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;

ARE MINDFUL of the need to ensure the provisions of this Memorandum of Understanding are consistent with other international shark conservation and management initiatives, including the Food and Agricultural Organization's voluntary International Plan of Action for sharks, which calls upon States to develop and implement complementary National Plans of Action for sharks, and the 2007 United Nations General Assembly Resolution on Sustainable Fisheries;

NOTE that both the FAO, through IPOA-sharks, and the Convention have embraced a common objective, i.e. the need to ensure the conservation and management of migratory sharks and their long-term sustainable use, and that industry, consumers and conservation NGOs have critical complementary roles to play in achieving this objective;

ARE CONSCIOUS that Regional Fisheries Management Organizations (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, their knowledge and experience of migratory shark catches, and their scientific expertise critical to sound conservation and management decisions and that it will be necessary to work with and through these bodies to achieve the objectives of this Memorandum of Understanding, and to avoid duplication or inconsistency of efforts;

BELIEVE that the conclusion and implementation of an international instrument 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 enhanced conservation of migratory sharks by: (i) strengthening the political will to implement migratory shark conservation measures in a coordinated and timely fashion; (ii) bridging migratory shark fisheries and conservation interests; (iii) ((reinvigorating))/ ((consolidating)) the implementation of the Food and Agricultural Organization's International Plan of Action for sharks by linking it to this Memorandum of Understanding and building on it; and (iv) 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, compliance, enforcement, species identification, data collection and analysis, threat definition and reduction, habitat identification and protection, education and public awareness, information exchange, and capacity building;

AIM TO improve the conservation status of migratory sharks listed in Appendices I and II of the Convention through concerted and coordinated action, including compliance and enforcement efforts, on the part of the States that exercise jurisdiction over the range of these populations, and states whose flag vessels are engaged outside national jurisdictional limits in activities that may affect these populations;

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

FURTHER NOTE that other species of sharks not currently listed on Appendices I and II of the Convention 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 REACHED THE FOLLOWING UNDERSTANDING:

Section 1 Scope, definitions and interpretation

1. This Memorandum of Understanding is a non-legally binding instrument 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).
2. This Memorandum of Understanding is intended to apply to all migratory species of sharks included in Annex 1 of this Memorandum of Understanding.¹
3. For the purpose of this Memorandum of Understanding:
 - a) “[Action Plan]/ [Conservation and Management Plan]” means the Migratory Sharks [Action Plan]/ [Conservation and Management Plan] contained in Annex 2 of the Memorandum of Understanding;

¹ There was no consensus among those who commented on the 8 December 2008 draft MoU on which species to list in Annex 1 therefore, consistent with the outcome of the second sharks meeting in Rome, Italy, the Secretariat defers any decision on the content of Annex 1 to the third sharks meeting.

- b) “Advisory Committee” means the committee of persons qualified as experts in migratory shark science and management established under this Memorandum of Understanding;
- c) “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;
- d) Conservation Status will be taken as “favourable” when all of the following conditions are met:²
 - 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;
- e) Conservation status will be taken as “unfavourable” if any of the conditions set out in sub paragraph 3. d) above is not met;
- f) “Convention” means the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn, Germany on 23 June 1979;
- g) “Convention Secretariat” means the body established under Article IX of the Convention;
- h) “FAO” means the Food and Agriculture Organisation of the United Nations;
- i) “Habitat” means any area in the range which contains suitable living conditions, particularly known aggregation, feeding and breeding sites, for migratory sharks;
- j) “IPOA-Sharks” means the International Plan of Action for the conservation and management of sharks adopted at the 23rd session of the FAO Committee on Fisheries, February 2009;
- k) “NPOA-Sharks” means a National Plan of Action for the Conservation and Management of Sharks (Shark-plan), developed pursuant to IPOA-sharks;
- l) “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;
- m) “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;

² The Secretariat received some comments suggesting changes to the definition of “favourable” conservation status. It turned out to be difficult to integrate these comments in a revised consistent version of the definition. The Secretariat decided therefore to retain the original text of the 8 December version of the MoU which is taken directly from the Convention, in the understanding that proposals for the amendment of this definition could be put forward and discussed at the meeting.

- n) "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 this Memorandum of Understanding;
- o) ((“RFMO” means any of the regional and sub-regional fisheries management bodies that have exclusive fisheries advisory or management responsibilities, or both within their respective regions;))

((“RFMO” means all the regional and sub-regional fisheries management bodies that have the competence to establish conservation and management measures for fisheries resources;))
- p) “Secretariat” means the body established under paragraph 33 of this Memorandum of Understanding to assist in its administration, implementation and enforcement;
- q) “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;
- r) ((“Shark finning” means the practice of removing any fins, including the tail, from a shark ((on board a fishing vessel))/ ((while at sea)), solely for the purpose of harvesting shark fins, where the shark carcass, or the wounded shark, is discarded at sea;))

or

- ((“Shark finning” means to remove any of the fins of a shark (including the tail) while at sea and discarding the carcass of the shark at sea;))
 - s) “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;
 - t) “Signatory”³ means a State, regional economic integration organisation, or other body or entity that is a Signatory to this Memorandum of Understanding; and
 - u) “Taking” means taking, hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct.
4. The Annexes form an integral part of this Memorandum of Understanding.

Section 2 Objective

5. The objective of this Memorandum of Understanding is to achieve and maintain a favourable conservation status for migratory sharks based on the best available scientific information, taking into account the socio-economic and other values of these species for the people of the Signatories.

³ The present definition is very broad. It might encompass entities such as institutions and organizations which are normally allowed to sign CMS MOUs under a different category (most typically as collaborating organizations). With a view to avoiding confusion, a further clarification of the term ‘Signatory’ might be necessary.

Section 3 Fundamental Principles

6. The Signatories recognize that 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.
7. The Signatories acknowledge the role as well as the scientific and political actions of states and RFMOs, as appropriate, which are responsible for the management of migratory shark fisheries, and the need to strengthen and improve their role in taking measures to improve or restore a favourable conservation status of sharks listed in Annex 1 of the Memorandum of Understanding.
8. Sharks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information.
9. In implementing the measures given in the [Action Plan/Conservation and Management Plan] the Signatories should apply widely both an ecosystem and a precautionary approach. Lack of scientific certainty should not be used as a reason for postponing measures to enhance the conservation status of sharks.
10. Signatories may establish, by mutual consent, bilateral, sub-regional or regional management plans that are consistent with this Memorandum of Understanding.

Section 4 [Action Plan]/[Conservation and Management Plan]⁴

11. The Signatories should cooperatively 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 should endeavour to implement progressively, individually or cooperatively, or both, including by participation in relevant organizations such as RFMOs, those measures and activities described in the [Action Plan]/[Conservation and Management Plan], Annex 2 to this memorandum of Understanding.
12. The [Action Plan]/[Conservation and Management Plan] addresses:
 - a) Improving understanding of migratory shark populations
 - b) Reducing direct and indirect incidental fisheries-related causes of shark mortality
 - c) Improving effectiveness of science-based management of populations
 - d) Increasing public awareness of threats to sharks and their habitats, and public participation in conservation activities
 - e) Enhancing international, national and regional cooperation
 - f) Promoting implementation of the Memorandum of Understanding and the [Action Plan/Conservation and Management Plan]
13. Annex 2 of this Memorandum of Understanding will have effect as an Action Plan/Conservation and Management Plan for the achievement of a favourable conservation status for sharks listed in Annex 1.⁵

⁴ The Secretariat has moved the text in the 8 December 2008 version of the MoU on “Conservation and Management Measures” to an annex (Annex3) of this MoU draft pending resolution of the content of the Action Plan/Conservation and Management Plan at the third sharks meeting. Comments received on this text are included in Annex 3.

⁵ Annex 2 is not included in this draft pending ongoing work of the Conservation and Management Plan contact group.

14. With due consideration to the capabilities and the competencies under domestic law of Signatories to implement these actions, the [Action Plan]/ [Conservation and Management Plan] in Annex 2 sets out the measures and activities that Signatories should progressively strive to undertake in relation to sharks.

15. The Secretariat should, if the signatories deem it necessary, establish a technical and advisory group including representatives from the Parties to the Convention, CITES, IUCN, FAO, international conservation Non-Government Organizations and RFMOs. The technical and advisory body will 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.

Section 5 Implementation, Reporting and Financing⁶

16. Each Signatory should:

- a) Designate a focal point for communication among Signatories and for implementing measures and 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 Convention Secretariat.
- b) Endeavour to 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 should be determined at the first meeting of the Signatories.
- c) Endeavour to finance, from national and other sources, the implementation and enforcement within their jurisdictions of the measures necessary for the conservation and management 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].

17. In order to build capacity, the Signatories should 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 should 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.

18. A fund may be established to meet expenses related to the participation of developing countries at sessions of the Meeting of the Signatories, the Advisory Committee or any other meeting which may be called upon by signatories through its governing body. This does not preclude such expenses being met by other arrangements, bilateral or otherwise.

Section 6 Meeting of the Signatories⁷

19. The Meeting of the Signatories should be the decision-making body of this Memorandum of Understanding. The Convention Secretariat should convene the first Meeting of the Signatories not

⁶ The Secretariat received some comments on the financial aspects of the proposed MoU, but rather than make extensive changes to the existing text, the Secretariat defers discussion of financing to the third sharks meeting.

⁷ Some of the proposed functions of the Meeting of the Signatories found in the 8 December 2008 version of the proposed MoU have been placed in Annex 4 of this draft in response to comments to eliminate detail. Some comments were received suggesting that various paragraphs in other sections of the 8 December 2008 version more appropriately belong in this section, and they have been incorporated accordingly.

later than one year after the date on which this Memorandum of Understanding comes into effect. The Meeting of Signatories should decide on the frequency of its meetings thereafter.

20. 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.

21. 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.

22. 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.

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

24. The Meeting of the Signatories should consider and may adopt any proposed amendment to the [Action Plan]/ [Conservation and Management Plan] proposed in accordance with rules of procedure established by the Signatories.

25. Endeavour to assess in accordance with their capabilities 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 Signatories and by persons or organisations technically qualified in shark conservation and management.

26. 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.

27. The Meeting of the Signatories may request any information relevant to the effective functioning of this Memorandum of Understanding to be supplied to the Signatories through the Secretariat.

28. The Meeting of the Signatories should review the effectiveness of the Secretariat in facilitating the enforcement and achievement of the objectives of this Memorandum of Understanding. The previous session of the Meeting of the Signatories should agree the Terms of Reference and schedule for the review.

29. At each of its ordinary sessions, the Meeting of the Signatories may also wish to consider undertaking activities given in Annex 4 to this Memorandum of Understanding.

Section 7 Advisory Committee

30. The first Meeting of the Signatories should establish an Advisory Committee, comprising persons qualified as experts in migratory shark conservation science and management. The tasks of the Advisory Committee should be 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 Memorandum of Understanding;
- b) ((conduct))/ ((as necessary analyze)) 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 relating to sharks, 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 Memorandum of Understanding;
- f) prepare for each ordinary session of the Meeting of the Signatories a report on its activities, which should be submitted to the 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 Secretariat to the Signatories;
- g) Request the Secretariat to convene an urgent meeting of the Signatories where, in the opinion of the Advisory Committee, an emergency has arisen which requires the Signatories to adopt immediate measures to prevent the deterioration of the conservation status of one or more species of shark, and⁸
- h) carry out any other tasks referred to it by Meetings of the Signatories.

31. Each Signatory should be entitled to appoint a qualified expert as a member to the Advisory Committee. The Meeting of the Signatories may also select and appoint by consensus qualified experts as members of the Advisory Committee⁹. The Advisory Committee should elect a Chair and Vice-chair and establish its own rules of procedure ((to be approved by the Signatories)). 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.

⁸ The Secretariat accepted the proposal to insert this paragraph on “emergencies” into the section on the Advisory Committee, allowing the section on “Emergencies” in the 8 December 2008 version to be eliminated.

⁹ The present version corresponds to the procedure in place for the nomination of members of the CMS Scientific Council. It is proposed as a compromise between the provisions of the previous draft, envisaging only members appointed by individual Signatories, and comments received from States on the desirability of consensus selection of member by the Signatories based on expertise. It is to be noted that the procedure currently proposed could, depending on the number of Signatories, lead to a rather large Committee.

32. Unless a Meeting of the Signatories decides otherwise, meetings of the Advisory Committee should be convened by the Secretariat ((in conjunction with))/((before)) each ordinary session of the Meeting of the Signatories.

Section 8 Secretariat¹⁰

33. The Signatories to this Memorandum of Understanding share the view that:

- 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; and
- c) The functions of the Secretariat could include those given in Annex 5.

((Section 9 Cooperation with other bodies¹¹

34. The Signatories, recognizing their intention as Signatories to this instrument to facilitate coordination and cooperation with other instruments to which they are also a signatory or a party, will endeavour to 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.

35. 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 and the FAO;
- c) the Secretariats of other relevant conventions, including the Convention on International Trade in Endangered Species (CITES) and the Convention on Biological Diversity (CBD), and international instruments in respect of matters of common interest; and
- d) other organisations or institutions with competence in the field of conservation of sharks, as well as in the fields of research, education and raising awareness.

36. The Secretariat may enter into arrangements, with the approval of the Meeting of the Signatories, with other organisations and institutions as may be appropriate.

¹⁰ Detail on the Secretariat's functions have been moved to Annex 5 of this draft MoU.

¹¹ It was proposed that this section (comprising paragraphs 34 – 37) could be replaced by a single sentence as proposed on page 10 in [], since the fundamentals of the section are captured elsewhere in the text.

37. 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, and in accordance with the rules of procedure established by the Signatories, invite these bodies to send observers to relevant meetings.))

or

((The Secretariat could consult and cooperate with other relevant organizations, as appropriate, to assist in the implementation of this Memorandum of Understanding, including through the exchange of information.))

Section 10 Final Provisions

38. 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.

39. 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].

40. This Memorandum of Understanding will take effect on the first day of the month following the month on which there are at least [10] Range State signatures. Thereafter it will become effective for any other Signatory on the first day of the month following the date of signature by that Signatory.

41. This Memorandum of Understanding will remain open for signature indefinitely at the seat of the Convention Secretariat. The cooperation of the Signatories should continue indefinitely but any Signatory State may terminate its participation by providing one year's written notice to all other signatories.

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

43. The Memorandum of Understanding, including the Annexes, may be modified by Signatories. Such modifications and all other decisions taken by the Signatories should be by consensus.

44. ((The original text of this Memorandum of Understanding in the English, French, ((German, Russian)) and Spanish languages, each version being equally authentic, will be deposited with the Convention Secretariat, which should act as the Depository. In the event of any discrepancies, the English version should be considered authoritative. The working language for all matters related to this Memorandum of Understanding should be English, [Spanish and French])).

Opened for signature atthis.....day of2010

Annex 1: Species covered by this Memorandum of Understanding 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

Annex 3

(for possible incorporation into the Action Plan/Conservation and Management Plan)

Conservation and Management Measures

1. The Signatories should cooperatively 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 should endeavour to implement progressively, individually or cooperatively, or both, including by participation in relevant organizations such as RFMOs, those measures and activities described in the [Action Plan]/[Conservation and Management Plan] to implement as priorities the following specific measures:

- a. Build research, data collection, monitoring, compliance and enforcement capacity ((globally))/ ((in countries that are Range States, fishing states or trading states of migratory sharks.))
- b. Identify and to the extent practicable, protect critical shark habitats and migration routes.
- c. Create a standardized species-specific global shark database.
- d. Promote and coordinate national stock assessments and research in collaboration with appropriate fishery management and scientific bodies.
- e. Regulate non-consumptive use of sharks including ecotourism.
- f. Prohibit shark finning and actively cooperate with RFMOs to prevent shark finning ((ideally by requiring that all sharks be landed with each fin naturally attached.))
- g. Conduct studies of shark aggregation, breeding grounds, ecology and behaviour.
- h. Prohibit the taking of species listed in Appendix I of the Convention in accordance with Article III of the Convention as appropriate.
- i. Regulate the exploitation and by-catch in non-directed fisheries to maintain the population of species listed in Appendix II to the Convention at a favourable conservation status consistent with this Memorandum of Understanding.
- j. ((In shark directed fisheries encourage relevant bodies to set targets based on the best available science for fish quotas, fishing effort and other restrictions to help achieve sustainable use.))

or

- k. ((Encourage states and relevant international organizations, as appropriate, to set targets consistent with the use at maximum sustainable performance level for the establishment of quotas, fishing effort, and other restrictive measures.))

or

- l. ((Encourage as a matter of priority relevant bodies to set targets for fish quotas for all species included in Annex 1 of this Memorandum of Understanding, control fishing effort in line with scientific advice, and use other restrictions where appropriate.))

- m. ((Implement))/ ((facilitate)) compliance and enforcement measures adopted by the Signatories, consistent with this Memorandum of Understanding, including through the use of observers schemes on fisheries vessels when appropriate.
 - n. Promote shark conservation and sustainable use globally.
 - o. Reduce pollution, marine debris and ship strikes that may affect the conservation status of migratory sharks.
 - p. Signatories ((should have regard for the general duty to protect))/((declare the importance of protecting)) the marine environment and therefore should endeavour to adopt, in accordance with their capabilities, where necessary, conservation and management measures for minimizing pollution, waste, discards, catch by lost or abandoned gear and other threats.
2. The Signatories recognize that in order to be successful in these endeavours they should 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, conservation NGOs 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 and enforceable conservation recommendations to be carried forward to RFMOs by the Signatories to this Memorandum of Understanding that are members of the RFMOs.
 - e. Facilitate the timely access to and exchange of information necessary to coordinate conservation and management measures, and facilitate training in data quality.
 - f. Ensure development and implementation of NPOA- Sharks under the auspices of the FAOs voluntary IPOA-Sharks.
 - g. Take into account, where appropriate, subsistence take of migratory sharks other than for the purpose of international trade, 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; and
 - k. Create and maintain species-specific national records of shark catches, landings and discards.

Annex 4

At each of its ordinary sessions, the Meeting of the Signatories may:

- a. consider making amendments to Annex I of this Memorandum of Understanding [based on]/[having regard to] any changes to Appendix I or II of the Convention.
- b. consider reports, advice and information from any of its subsidiary bodies;
- c. 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;
- d. review any difficulty encountered in the implementation of this Memorandum of Understanding including financial matters;
- e. address any matters relating to the Secretariat, the Advisory Committee and the membership;
- f. 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;
- g. determine the time and venue of its next session;
- h. consider other matters related to the objective of this Memorandum of Understanding, as appropriate;
- i. amend the rules of procedure; make such recommendations as it deems necessary or appropriate;
- j. adopt measures to improve the effectiveness of this Memorandum of Understanding;
- k. adopt measures to improve the effectiveness of emergency response measures;
- l. consider and decide upon proposals to amend this Memorandum of Understanding;
- m. consider species covered by this Memorandum of Understanding; amend the [Action Plan]/ [Conservation and Management Plan];
- n. 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;
- o. vary any time limits set in this Memorandum of Understanding for the submission of documents or otherwise; and
- p. decide on any other matter relating to the implementation of this Memorandum of Understanding.

Annex 5

POSSIBLE FUNCTIONS OF THE SECRETARIAT

- b. to arrange and service the sessions of the Meeting of the Signatories as well as the meetings of the Advisory Committee and any other meeting called for by the Meeting of Signatories;
- c. to execute the decisions addressed to it by the Meeting of the Signatories;
- d. to promote and coordinate activities under the Memorandum of Understanding and the [Action Plan]/[Conservation and Management Plan], in accordance with decisions of the Meeting of the Signatories;
- e. to liaise with non-Signatory Range States, shark fishing states, shark trading states, and regional economic integration organisations and to facilitate coordination between Signatory and non-Signatory 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;
- f. to make available to the Signatories, relevant RFMOs and FAO 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];
- g. 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;
- h. to invite the attention of the Meeting of the Signatories to other matters pertaining to the objectives of this Memorandum of Understanding;
- i. to provide to each ordinary session of the Meeting of the Signatories a report on its work;
- j. 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;
- k. to administer the budget for the Memorandum of Understanding;
- l. to provide information to the general public concerning the Memorandum of Understanding and its objectives, and promote the objectives of this Memorandum of Understanding;
- m. 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;
- n. to collate and distribute as appropriate information provided by Signatories to the Secretariat;
- o. to support countries in search of financial resources to implement this agreement; and
- p. to perform such other functions as may be entrusted to it by or under this Memorandum of Understanding.