



# CONVENTION ON MIGRATORY SPECIES

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Agenda Item 6.1.1

## IMPROVING THE PROCESS FOR CONCERTED AND COOPERATIVE ACTIONS

### Summary:

Resolution 10.23 made a series of recommendations to the Scientific Council and the Secretariat for improving the process for concerted and cooperative actions under CMS. The draft report included in this document aims at fulfilling part of that mandate, with the following two objectives:

- To develop a rationale, criteria and guidance on the purpose of listing a species for concerted or cooperative actions, and on the outcomes sought when species are proposed for such actions;
- To develop guidelines to assist Parties to identify options for action to take in response to concerted or cooperative action listing.

The draft report is submitted to the 18<sup>th</sup> meeting of the Scientific Council for review.

## **IMPROVING THE PROCESS FOR CONCERTED AND COOPERATIVE ACTIONS**

*(Prepared by the Secretariat)*

1. The 10<sup>th</sup> Meeting of the Conference of the Parties to CMS (COP10) acknowledged the complex evolution of the mechanisms for concerted and cooperative actions, and the need for clear guidelines for their application. Through Resolution 10.23, COP10 made a series of recommendations to the Scientific Council and the Secretariat for enhancing the effectiveness of the concerted and cooperative actions process, and requested the Secretariat, subject to available resources, to implement the actions recommended, and to prepare a report and recommendations on their implementation to the Scientific Council, the Standing Committee and the 11<sup>th</sup> Meeting of the Conference of Parties.
2. The draft report attached to this note has been prepared by Mr. Dave Pritchard under consultancy at the request of the Secretariat. It aims at fulfilling part of the recommendations included in Annex 3 of Resolution 10.23, in particular recommendation (iii) to the Scientific Council and recommendations (i) and (ii) to the Secretariat. Implementation of some of the other recommendations included in Resolution 10.23 is discussed in document UNEP/CMS/ScC18/Doc.6.1.
3. The preparation of this report was made possible thanks to a generous voluntary contribution from the Government of Germany (Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety).

### **Action requested:**

The Scientific Council is invited to:

- (a) Review the draft report attached to this note and provide comments and guidance towards its further development and finalization, with a view to its submission to COP11 for consideration.



*Convention on Migratory Species*

## **Improving the process for concerted and cooperative actions**

CONSULTANT REPORT

***Dave Pritchard***

2nd Draft, 8 May 2014



## Improving the process for concerted and cooperative actions

### 1. Purpose of this report

- 1.1 The “concerted action” and “cooperative action” processes in CMS have evolved organically over many years. From simply-expressed initial concepts, practice has become more complicated. The aims are not always clear, and effectiveness is hard to measure.
- 1.2 Aspects of this have been considered by the CMS Scientific Council and Conference of Parties in the past; and a review in 2011<sup>1</sup> led to COP10 adopting nine recommendations in Resolution 10.23<sup>2</sup>. This report addresses three of these<sup>3</sup>, organised under two objectives:
- **to develop a rationale, criteria and guidance on the purpose of listing a species for concerted or cooperative actions, and on the outcomes sought when species are proposed for such actions;**
  - **to develop guidelines to assist Parties to identify options for action to take in response to concerted or cooperative action listing.**

### 2. Summary of the formal basis for concerted & cooperative actions

- 2.1 The Convention lists, on its Appendix I, migratory species that are endangered. Parties that are Range States for such species are required (Article III) to endeavour to conserve and restore their habitats, tackle obstacles to their migration, prohibit deliberate killing or taking (subject to exceptions) and tackle other factors endangering the species. Under Article III(6) the Conference of the Parties may recommend “further measures considered appropriate to benefit the species”.

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1 CMS Secretariat (2011): Enhancing the effectiveness of measures to promote the conservation and sustainable management of Appendix II species - Reflections on the CMS “Cooperative Actions” process. COP10 document UNEP/CMS/Conf.10.36. *(Although directly concerned only with the cooperative actions process, this document also reflected briefly on concerted actions, and the resulting recommendations were considered by the COP in relation to both processes).*

2 Convention on Migratory Species (2011): Concerted and cooperative actions. UNEP/CMS/Resolution 10.23.

3 In their original formulation, the three recommendations from Annex 3 of Res 10.23 addressed in this report are:  
- An instruction to the Scientific Council to: (iii) develop an expanded rationale, criteria and guidance, as appropriate, for identifying candidate species for concerted or cooperative actions, with a view to improving scientific rigour, objectivity, consistency and transparency in their selection for concerted or cooperative action.  
- A request to the Secretariat to: (i) prepare guidance on the purpose of listing a species for concerted or cooperative action, and the outcomes sought when species are proposed for concerted or cooperative action; and (ii) prepare guidelines to assist Parties to identify options for action to take in response to concerted or cooperative action listing.

- 2.2 Appendix II lists species with an unfavourable conservation status requiring international agreements for their conservation, as well as others whose conservation status “would significantly benefit” from such an agreement. Parties that are Range States for such species are required (Article IV) to endeavour to conclude (international) Agreements<sup>4</sup> where these would benefit the species.
- 2.3 In respect of migratory species in general, under Convention Article VII(5)(e) the Conference of the Parties may make recommendations for improving their conservation status.
- 2.4 Concerted and cooperative actions are not prescribed in the Convention text: they have been devised by the COP in conformity with the provisions mentioned above.

### **Concerted actions**

- 2.5 Concerted actions were established by COP Resolution 3.2 in 1991, which instructed the Secretariat and the Scientific Council to encourage and assist Parties to take such actions to implement the provisions of the Convention (“where possible through existing instruments of bilateral or multilateral cooperation”), and initiated a process for each meeting of the COP to recommend initiatives to benefit a selected number of Appendix I species.

Concerted actions:

- are conservation measures undertaken for species or groups of species identified for this purpose in decisions of the COP;
- involve species listed on CMS Appendix I;
- involve measures that are the collective responsibility of Parties acting in concert, and which tend to be set out in Action Plans.

### **Cooperative actions**

- 2.6 Cooperative actions were established by Recommendation 5.2 in 1997, in response to the practical limits to the number of Agreements that could be developed and implemented simultaneously for the long list of species on Appendix II. The Recommendation encouraged Parties to undertake cooperative action to improve the conservation status of relevant species or populations of species; providing for relatively rapid action either as an alternative to an Agreement or as the precursor to one.

Cooperative actions:

- are projects or institutional arrangements implemented by Parties cooperating for the conservation of species or groups of species identified for this purpose in decisions of the COP;
- involve species listed on CMS Appendix II;

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<sup>4</sup> Typographical presentations of the word “agreement” under CMS vary according to the context. For convenience throughout the present document it is presented informally as “Agreement” (upper case initial letter only), to refer generically to all forms of CMS instruments concluded under Article IV, including Memoranda of Understanding.

- involve actions typically designed to support the conclusion of an instrument under Article IV of the Convention, and enable conservation measures to be progressed in the meantime.

### 3. Proposition: streamlining / rationalisation is possible

- 3.1 Past discussions have highlighted a degree of confusion about the scope and application of the two mechanisms<sup>5</sup>. This arises from the fact that they each evolved at different times, were defined initially in very loose terms, and they overlap considerably in their intent (including one case where action for a group of species was covered by a combination of the two mechanisms<sup>6</sup>).
- 3.2 The overlap can be illustrated as follows:

#### **Differences?**

- Concerted actions address Appendix I, while cooperative actions address Appendix II (but there is some overlap here in relation to species appearing on both Appendices).
- Concerted actions in theory are a responsibility owned by the Convention as a whole (but this distinction from cooperative actions is questionable, given that the latter are effected via collective decisions of the COP).
- Concerted actions are perhaps regarded as a more “weighty” mechanism (but this may vary on a spectrum across both mechanisms rather than being a class distinction).

#### **Similarities**

- Both mechanisms are aimed at improving the conservation status of the species concerned.
- Both convey some kind of expression of priority need.
- Both are based on arguments presented or reviewed by the Scientific Council.
- Both require multilateral action<sup>7</sup>.
- Both can be delivered by Action Plans and/or projects.
- Both can lead to a CMS Agreement.
- Both can substitute for an Agreement, either temporarily or in the longer term.
- Both usually need funding.
- Both mechanisms can be changed by decision of the COP (since they are not defined in the Convention text).

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5 See for example Scientific Council documents ScC.12/Doc.6 (2004) and ScC.13/Doc.6 (2005); COP documents Conf.9.16 (2008) and Conf.10.36 (2011).

6 At COP8 in 2005, three Central Asian arid-land mammals were listed for cooperative action in Recommendation 8.28. The intent in doing so was said (document Conf.9.16) to be to facilitate their inclusion in the concerted action for arid-land species, which indeed subsequently happened.

7 In some contexts, the semantic distinction between “acting in concert” and “acting cooperatively” is meaningful, for example in regulations governing corporate takeovers and shareholder activity. In the CMS context there could potentially be a difference in terms of the degree to which action is “collective” rather than “individual and coordinated”; but in practice this is unlikely to be a helpful basis on which to classify types of migratory species conservation work.

- 3.3 Reviews have increasingly considered both processes together<sup>8</sup>; but while rationalisation has been mooted before, no major decisions in this direction have yet been taken<sup>9</sup>.
- 3.4 Instead of elaborating a more detailed rationale for *choosing between* concerted action and cooperative action, this report suggests (purely for discussion purposes) that it would be possible to conceive of a unified scheme, with a menu (or sliding scale) of options available and criteria to satisfy in any given case. This would improve on the current system by simplifying its logic, and by tightening up the specification, each time it is used, of what the purposes and expected results are intended to be.
- 3.5 To avoid a distracting debate on terminology at this stage, the suggested approach is referred to below simply by the informal working title of “the CMS system for C/C Actions”.

#### 4. A possible framework for a unified scheme

- 4.1 This section considers a way of dealing with opportunities or proposals that may arise for *initiating a new CMS C/C Action*. (If the development of this approach is pursued, there would be some transitional administrative issues relating to the legacy of existing concerted and cooperative actions; but those are not considered further here).
- 4.2 To define a proposal, information would be set out under standard headings such as those listed below. The content of each of these is discussed in the sections that follow.
- A) Target species/population(s), and their status in CMS Appendices
  - B) The case for action (= *list of criteria*)
  - C) Expected outcomes
  - D) Associated benefits
  - E) Timeframe
  - F) Relationship to other CMS actions.
- 4.3 This approach need not affect the continued conduct of the status review and “special attention” processes which were introduced at the same time as concerted and cooperative actions by Res. 3.2 and Rec. 5.2 respectively<sup>10</sup>. Those processes would continue to assist in preparing the ground.

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8 See note 5 above.

9 COP9 in 2008 took a small step however by adopting decisions on concerted and cooperative actions in a single combined Resolution for the first time; and COP10 in 2011 followed suit.

10 Res. 3.2 decided “to establish a formal review process, at each meeting of the Conference of the Parties, for a selected number of species listed in Appendix I, with a view to recommending initiatives”. Rec. 5.2 instructed the Scientific Council “to prepare for each meeting of the Conference of the Parties a list of [species or populations of species listed in Appendix II, which have a very unfavourable conservation status and which require urgent cooperation at the international level for their conservation and management] requiring special attention within the

## 4A Specifying target species/population(s), and their status in CMS Appendices

- 4A.1 A C/C Action may address a single species, lower taxon or population, or a group of taxa with needs in common. The target animals in each case should be clearly defined, including by reference to the geographical range(s) concerned.
- 4A.2 The status of the target animals in terms of CMS Appendix listing should be specified. A given C/C Action may address a combination of Appendix I and Appendix II species, provided the needs and objectives for both are sufficiently congruent.
- 4A.3 Exceptionally, the target of a C/C Action may be a species which is not listed on either of the Convention Appendices, in cases where it is a formally proposed candidate for listing<sup>11</sup>.
- 4A.4 Currently, the CMS Scientific Council is asked to nominate a designated expert to lead on reporting progress for each of the species/taxonomic groups listed for concerted or cooperative action<sup>12</sup>. This idea could be extended to designating individuals with lead responsibility for compiling/advising on proposals for new C/C Actions. The individual's name in each case would then be included in the proposal information.

## 4B Specifying the case for action

- 4B.1 Any proponent of a C/C Action, and any body that evaluates it for decision (eg the CMS Scientific Council or COP), would be required to indicate/assess how the proposal meets certain criteria. These could be:

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forthcoming triennium"; and directed the Secretariat to assist the Scientific Council in establishing this review process, ensuring that a regular update of status is provided.

11 Currently, paragraph 4 of Res. 3.2 expresses the purpose of concerted actions very generally, as "to implement the provisions of the Convention". The title of the Resolution however is "Appendix I species", so although there is an ambiguity, the intention was probably to limit the mechanism's application to Appendix I. Rec. 5.2 is clearer in establishing cooperative actions for "these species", following a title and preceding text which refer specifically to Appendix II. Convention Article IV(4) permits CMS Agreements to be concluded for any migratory species whether Appendix-listed or not, and there are examples of the latter (see eg document Conf.10.36). It would seem anomalous to make the C/C Actions process more restrictive than the "higher-order" (legally enshrined) Agreements process; hence the provision suggested in the present report above. Note however that this still expects Appendix-linkage to be the norm. See also section 4(d) below, concerning species which are not the primary target of an Action but may benefit from it.

12 See Resolution 10.23, para 6.



- (i) conservation priority
- (ii) relevance
- (iii) urgency
- (iv) confidence in the science
- (v) absence of better remedies
- (vi) feasibility
- (vii) likelihood of success
- (viii) magnitude of likely impact
- (ix) cost-effectiveness
- (x) prospects for funding
- (xi) prospects for leadership
- (xii) potential for synergy
- (xiii) stakeholder appeal

- 4B.2 Notes on each criterion are given below. The list is not in any particular order.
- 4B.3 While some of the criteria could be regarded as discretionary (eg synergy and stakeholder appeal), meeting others would probably always need to be mandatory (eg conservation priority and relevance).
- 4B.4 A scoring system could be applied to assist in prioritising proposals. Scores could be weighted, according to (for example) whether it was intended to prioritise according to funding needs, or the degree of Secretariat involvement, or timing factors, or geographical/taxonomic balance, or some other aspect.
- 4B.5 The narrative demonstrating qualification against the criteria could, for each of them, also state the risks and assumptions being made ((iv), (vi), (vii) and (x) are probably the easiest examples). The process would thereby simultaneously generate a risk analysis as an integral part of the proposal.

### ***Criterion (i) Conservation priority***

- 4B.6 Conservation priority in terms of endangerment (Appendix I) and/or unfavourable status (Appendix II) should be straightforward to substantiate through well-established CMS scientific processes. Exceptionally this can also apply to candidates for listing on the Appendices. (See also comment under criterion (v) below regarding interpretation of the reference in Rec. 5.2 to Appendix II species with “very” unfavourable status).
- 4B.7 Needs which are defined on a basis of “gaps in current conservation provisions” are a form of conservation priority; but that is also a question about whether remedies already exist, and hence is addressed more appropriately under criterion (v).

- 4B.8 In addition to combating absolute global risks of extinctions and obstructed migrations, it may be important for the Convention also to ensure relative balance in the application of its remedies across different taxonomic groups and geographic regions<sup>13</sup>. This may therefore also play a part in judging “conservation priority”.

### **Criterion (ii) Relevance**

- 4B.9 This would be interpreted to mean “relevance of the Action to CMS purposes”. A first consideration might be the degree to which the particular conservation problem is linked to migration<sup>14</sup>. A second might be the degree to which collective multilateral action is essential for the desired outcome<sup>15,16</sup>. A third might be the role of the Action in delivering CMS mandates<sup>17</sup>.
- 4B.10 Under this criterion (although it could alternatively form a separate criterion of “appropriateness”) would also lie a consideration of conformity with CMS principles and standards (eg on ethics, or other forms of appropriateness); and the absence of any other internal policy conflicts.

### **Criterion (iii) Urgency**

- 4B.11 Urgency may relate to the pressing nature of the need (most likely linked to criterion (i) above, eg in terms of speed of population decline); or to a time-limited window of opportunity for action (eg before an incipient threat gets worse)<sup>18</sup>.
- 4B.12 The choice between a C/C Action and some other remedy may rest on which of them can be more speedily deployed - see discussion under criterion (v) below.

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13 Document Conf. 10.36 (2011) commented on imbalances in relation to cooperative actions, noting that every taxonomic group includes some species that have not been covered by such an action (or by an Agreement); but that birds in general are particularly underrepresented, and the family Muscicapidae especially so (many of whose members are endangered and hunted throughout their range and would benefit from cooperation). Geographically, Central and South America are perhaps the most poorly covered regions.

14 For example physical obstacles to migratory movements; loss of connectivity in habitat; threats that jeopardise a critical behaviour or a critical site in the migratory cycle, etc.

15 In some circumstances this might relate to the number of countries involved. “High relevance” in these terms could of course imply low feasibility compared to a C/C Action involving a smaller number of countries (see criterion (vi)) - this is one of many “trade-off” judgements which may need to be made between the different criteria.

16 There is an oddity in Article IV of the Convention whereby paragraph 3 suggests that a judgement needs to be made on a case-by-case basis as to whether an Appendix II species would benefit from international cooperation/an Agreement, while paragraph 1 suggests instead that all such species by definition would benefit. The latter interpretation is perhaps the more logical.

17 Including COP decisions, Strategic Plan targets, and objectives adopted in other CMS initiatives which cannot more effectively be met in other ways (see criterion (v) and section 4F).

18 For cooperative actions, COP Recommendation 5.2 appeared (whether or not this was the intention) to address itself not to the whole of Appendix II, but to those species on the Appendix which particularly require “urgent” cooperation. Curiously, the same wording was repeated in the successor decisions from COP6 and COP7 (Rec. 6.2 and Rec. 7.1), but in the ones from COP8 and COP9 (Rec. 8.28 and Res. 9.1) the word “urgent” was dropped. The reason for this is not explicitly documented, but links probably to discussions held in the Scientific Council about confusion caused by the reference to urgency vis-à-vis the scope of Appendix II and the complementarity between cooperative actions and Agreements, as discussed here under criterion (v). Any potential confusion of this kind hopefully has been removed in the revised construct for C/C Actions put forward in the present report.

### **Criterion (iv) Confidence in the science**

4B.13 Information given under criteria such as (i) - (iii) above may represent a best consensus view, and on that basis may or may not be a sufficient justification for action. Criterion (iv) asks a separate question, namely about the authority, completeness, depth of testing and any other aspect affecting the quality of the underpinning science (and hence the degree to which it can be relied upon as a basis for predictions).

### **Criterion (v) Absence of better remedies**

4B.14 “Better remedies” may be found either within the mechanisms of the CMS or elsewhere. Both possibilities should be examined; either sequentially or in combination.

4B.15 First, this is a question about the proposed C/C Action’s “added value” to what already exists. This would include the findings of any “gap analysis” among current conservation measures.

4B.16 Current measures may include an existing CMS Agreement, and in general a species which is already covered by such an Agreement should not be put forward for a C/C Action<sup>19</sup>. In some cases however an Agreement may cover only part of the range or certain population(s) of a given species, so other parts of the range or other population(s) of the same species might still validly be the subject of a C/C Action; *provided* this is (for some reason) a better option than *extending* the Agreement.

4B.17 Second, once it is clear that there is a gap in current measures which needs addressing, criterion (v) progresses to being a question about the best choice among available options for addressing the gap. In particular this will consider whether a new or extended CMS Agreement would be a better option<sup>20</sup>.

4B.18 The reason for preferring a C/C Action might be that there is no better remedy in terms of *speed*. COP decisions on cooperative actions in the past have suggested that the main added value of the mechanism is that it can be more rapidly deployed than the negotiation of an Agreement<sup>21</sup>.

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19 Acknowledging the need to avoid this kind of duplication, the COP in Res. 10.23 (Annex 3) instructed the Scientific Council to “review the case for retaining on the list of concerted and cooperative actions any species for which the entirety of its range is covered by an existing CMS instrument”. The related background document Conf. 10.36 had further recommended adding “and delete those for which there is no compelling reason to retain them on the list”. The “compelling reason” qualification related to the fact that there have been one or two cases in the past (for reasons that are now not entirely clear) where species were added to the concerted or cooperative actions list even though they were already covered by an Agreement (eg Black Sea bottlenose dolphin was added in 2008 despite already being covered by the ACCOBAMS Agreement).

20 This only concerns a judgement as to whether the best step *from the start* is to embark on a C/C Action or to embark instead on a new/extended Agreement. In the scheme suggested here, the question of whether a C/C Action is best used to *assist in developing a later* Agreement would be considered as part of defining its *purposes* (section 4C), not as part of the case for having a C/C Action at all.

21 COP Recommendation 5.2, echoed by reasoning in Rec. 8.28 and Res. 9.2, described cooperative actions as being directed towards Appendix II species which, *inter alia*, given the rate of decline in their populations, could not reasonably be expected to become the object of an Agreement in a timely enough manner to assist with their conservation. Agreements may indeed take many years to negotiate and bring into effect; although it should be noted that this can be done whenever the negotiating parties agree, whereas the launch of cooperative actions is linked to decisions of the COP.

- 4B.19 The reason for preferring a C/C Action might be that there is no better remedy in terms of *flexibility/informality*, although strictly speaking there is nothing in the Convention text that prevents the type of CMS Agreement provided for by Article IV(4) from being as flexible/informal as required.
- 4B.20 The reason for preferring a C/C Action might be that there is no better remedy in terms of the *severity of conservation need* (see criterion (i)). This line of reasoning may be best avoided, as there has been confusion about it in the past, arising from uncertain interpretation of Rec. 5.2. (The Recommendation has given conflicting signals as to whether cooperative actions were intended to address needs that were *more* severe than those meriting an Agreement, or *less* severe than those meriting an Agreement)<sup>22</sup>.
- 4B.21 In cases where the above tests fail to be satisfied, a new or extended Agreement may be a better remedy. An equivalent “mirror-image” set of tests would apply to the process of considering proposals for new or extended Agreements, ie to show the reasons why a C/C Action is not a better remedy. (Clearly the question of proposing new or extended Agreements involves wider considerations too; but there should be close harmonisation of those aspects which both judgement processes share in common)<sup>23,24</sup>.
- 4B.22 The system suggested above does not propose a starting presumption in favour of one mechanism or the other (ie C/C Action or Agreement). The decision framework could in theory be entered first by testing the case for a C/C Action, or first by testing the case for an Agreement<sup>25</sup> (see diagram in section 5 below). Each framework offers triggers for switching to the other, depending on which tests are met.

### **Criterion (vi) Feasibility**

- 4B.23 This concerns practical constraints to implementation of the C/C Action (other than funding, covered separately under criterion (x)), and how readily they will be overcome. Feasibility is probably most meaningfully expressed by reference to a defined timeframe (see section 4E below). Questions of the

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22 For cooperative actions, Rec. 5.2 on the one hand appears to establish what was later described (document Conf. 9.16, 2008) as a “lesser instrument” than Agreements; while on the other hand it appears to address itself to a sub-set of Appendix II species having a “very” unfavourable conservation status and requiring “urgent” cooperation; ie cases that are *more acute* than the generality of those benefiting from Agreements. (For discussion of “urgency” see criterion (iii) above). Curiously, in the successor decisions, the same wording about urgency and very unfavourable status was repeated in the Recommendation from COP6 (Rec. 6.2), but in the one from COP7 (Rec. 7.1) the word “very” was dropped, and in the ones from COP8 and COP9 (Rec. 8.28 and Res. 9.1) both the words “very” and “urgent” were dropped. The additional criteria of especially negative status and special urgency have thus progressively disappeared. The reasoning behind this does not appear to be documented, apart from discussions which took place in the Scientific Council on the problematic interpretation of Rec. 5.2 in general.

23 Similar issues concerning more systematic definition of the purposes, rationale and criteria for selecting target species etc arise in respect of both Agreements and C/C Actions, and there should be a coherent approach to this across both processes. For Agreements, some factors already mirroring those in the present report were suggested in COP Resolution 10.9 (on the Future Shape of CMS), namely scientific need, the added value of CMS involvement, existing and potential synergies (internally and externally), funding criteria and the existence of a coordinator. During 2014 in parallel with the drafting of the present report, a separate document is in preparation which addresses the task defined in Res 10.9 and Res 10.16 concerning a policy approach to the development, resourcing and servicing of CMS Agreements, including criteria against which to assess new proposals. Ultimately it is envisaged that the systems put forward by these two documents would operate in tandem (see diagram in section 5).

24 Where a C/C Action is designed as a precursor to an Agreement, then addressing any separate “new Agreements criteria” will be an integral part of that C/C Action; but as part of its implementation, rather than part of the justification for embarking on it in the first place.

25 In the latter case, using the criteria in the separate document mentioned in note 23 above.

overall scale of what is feasible to achieve are probably better dealt with under criterion (viii).

### **Criterion (vii) Likelihood of success**

4B.24 Satisfying the feasibility criterion (vi) shows only that an action is likely to be *implementable*. Criterion (vii), by contrast, seeks to assess *whether such implementation is likely to lead to the intended outcome*. Risk factors here include such things as uncertainty about the ecological effects of the activities undertaken; lack of a “legacy mechanism” by which results can be sustained; and activities by others that may undermine or negate the results of the Action.

### **Criterion (viii) Magnitude of likely impact**

4B.25 If a choice must be made between two proposals that are equal in other respects, this might be done by comparing the number of species, number of countries or extent of area that will benefit in each case. Actions which address multiple problems simultaneously might be favoured over those with a narrower focus. Actions likely to have a good catalytic or “multiplier” effect will almost always be favoured<sup>26</sup>.

### **Criterion (ix) Cost-effectiveness**

4B.26 Proposals should specify the resources they require, but should also relate these to the scale of impact expected, so that cost-effectiveness can be judged. Evidence used for criterion (xii) on synergy may also be relevant here.

### **Criterion (x) Prospects for funding**

4B.27 This criterion may sometimes be a decisive one. If the chances of finding the necessary funds for a given proposal are competently judged to be nearly nil, it could be unwise to invest time and effort in developing it<sup>27</sup>.

4B.28 There is some risk of circularity in addressing this criterion for any proposed C/C Actions whose purposes expressly include being a device to help to leverage new funding; so care would be required in such cases.

### **Criterion (xi) Prospects for leadership**

4B.29 This would involve confirming the existence of a named entity/entities which is/are reliably offering (preferably guaranteeing) to lead or coordinate the

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26 Criterion (viii) considers some issues that are similar to those considered under section 4D on “associated benefits” below. The difference is that here the question is about whether it is wise and worthwhile to allow a particular C/C Action to be launched; whereas in section 4D it is about seeking opportunities to add value to Actions which are already judged to have met the criteria for launching.

27 The position here may not necessarily bear any relationship to the conservation merits of the case or to the other criteria listed here; so again there may sometimes be difficult “trade-off” judgements to make between the different possible grounds for proceeding.

implementation of the Action. It cannot be assumed that the CMS Secretariat will play such a role.

### **Criterion (xii) Potential for synergy**

4B.30 Opportunities should be sought for C/C Actions to link with other initiatives in such a way that the value of both/all of them is enhanced. This could happen either with CMS Family initiatives (including Agreements) or with initiatives led by others.

### **Criterion (xiii) Stakeholder appeal**

4B.31 Certain C/C Actions may have high intrinsic popular or political appeal, or great potential as “flagship” cases for broadening outreach. This should obviously be considered as part of the possible “associated benefits” of proposals which qualify against the other criteria here (see section 4D below) - but also, while it should not override any of these other criteria, it may be an important contributory factor in deciding whether to proceed.

## **4C Specifying expected outcomes**

4C.1 The CMS text expects Appendix II species to be restored to favourable conservation status (through international cooperation), and expects Appendix I species to benefit from various protections applied under the Convention, including particular actions to tackle the factors endangering them. In addition (Article II(2)), it expects the endangerment of all migratory species to be avoided.

4C.2 Although the term is specifically employed in the context of Appendix II, “favourable conservation status” loosely describes the outcome sought for migratory species through all these strands of the Convention. It is therefore some kind of assumed aim within which to frame the objectives of any C/C Action.

4C.3 The key principle for the future will be to be more systematic and explicit than before in defining the expected conservation outcomes for any adopted C/C Action; so that progress can be assessed, adaptive course-corrections applied and success recognised. Following the SMART standard (Specific, Measurable, Achievable, Relevant, Time-bound) will help; adding perhaps also U (Uncomplicated).

4C.4 It would be consistent with the origins of concerted and cooperative actions (Res. 3.2 and Rec. 5.2), as well as Article IV (for Appendix II species), for C/C Action objectives also to define the way in which the species is/are intended to benefit particularly from international cooperation.

- 4C.5 Parties at the most recent CMS COP in 2011 instructed the Scientific Council *inter alia* “to summarize the future conservation action needs of each of [the species currently listed for concerted and cooperative action] (and their relative priority) in terms of the CMS mechanisms available” (Res. 10.23 Annex 3). Processes of his kind should make an important contribution to increasing the rigour of objective-setting for C/C Actions in future.
- 4C.6 Understanding has been inconsistent in the past as to whether the primary purpose of cooperative actions is to provide an alternative to developing a CMS Agreement or a precursor to one, and hence whether they are best designed to increase the impetus towards concluding an Agreement or to relieve the pressure for doing so. Both purposes may remain legitimate for future C/C Actions, but in each case the aim in this respect should be explicit.

#### **4D Specifying associated benefits**

- 4D.1 There may be potential benefits of a C/C Action which are not part of the case for proceeding (ie against the criteria above), but which should be identified and incorporated into implementation plans once it has been decided to proceed. In other words, opportunities should be taken to maximise added value where possible.
- 4D.2 It will be important for example to recognise instances where Actions targeting certain migratory animals may incidentally benefit other migratory species/taxa/populations which use the same habitat or suffer the same threats.
- 4D.3 It will also be important to make good use of opportunities presented by C/C Actions for awareness-raising, capacity-building, encouraging new Party accessions and catalysing other associated activities.

#### **4E Specifying timeframes**

- 4E.1 As mentioned above, it is good practice for individual objectives within a C/C Action to be time-bound. This may also apply to the expected duration of the Action itself.
- 4E.2 If a given C/C Action is designed as an alternative cooperation mechanism to a CMS Article IV Agreement, it could in principle have an indefinite life-span. This would be compatible with objectives seeking to “maintain” favourable conservation status of the target species. If on the other hand the purpose is to eliminate a particular threat, or achieve a restoration scheme, or undertake

preparatory measures for an Agreement, it might be reasonable at the outset to have some idea of when this would be completed.

- 4E.3 The COP has tended to endorse lists of species for concerted and cooperative actions for a “default” period of a triennium at a time, rolled forward by successive COPs. Action on earlier-listed species thus tends to be expected to continue for a further period, and the overall list of species to be reported on at each Scientific Council meeting has thus tended to keep growing<sup>28</sup>. There is a lack of clarity about logical end-points in this system, and about what should be the appropriate total scale of activity at any one time.
- 4E.4 Better practice in future would be to specify an expected timeframe (or alternatively to be clear that the C/C Action is deliberately open-ended) in each case. Linking to the triennial COP cycle provides an appropriate horizon for reporting, and for reconfirmation if required. Where the Action is linked to targets in the Strategic Plan (which may be a useful idea) then it might be appropriate for its timeframe to match that of the Plan.
- 4E.5 More specification of timeframes would also imply a more structured vision for C/C Action list *removals* as well as list additions, so that the list at any one time will reflect only truly “active” C/C Actions.

#### **4F Specifying the relationship to other CMS actions**

- 4F.1 Aspects of the potential relationship between a proposed C/C Action and other CMS actions have featured in the discussions above about testing whether it should be an Agreement instead (criterion (v)) and the scope for getting better synergistic value out of existing Agreements (criterion (xii)).
- 4F.2 In addition to qualification against the criteria, more detail should be given for any qualifying C/C Action on how its implementation will relate to other areas of CMS activity. This may form part of its purposes, for example if the Action is designed to lead to an Agreement (see section 4C). It may involve showing how the Action will support the Strategic Plan or particular COP decisions (see also criterion (ii)). It may also be necessary to show how different individual C/C Actions, existing concerted and cooperative actions and any free-standing single species action plans etc all complement or interact with each other.
- 4F.3 As well as setting an improved context for each Action, this will improve the strategic overview of the suite of mechanisms available for different

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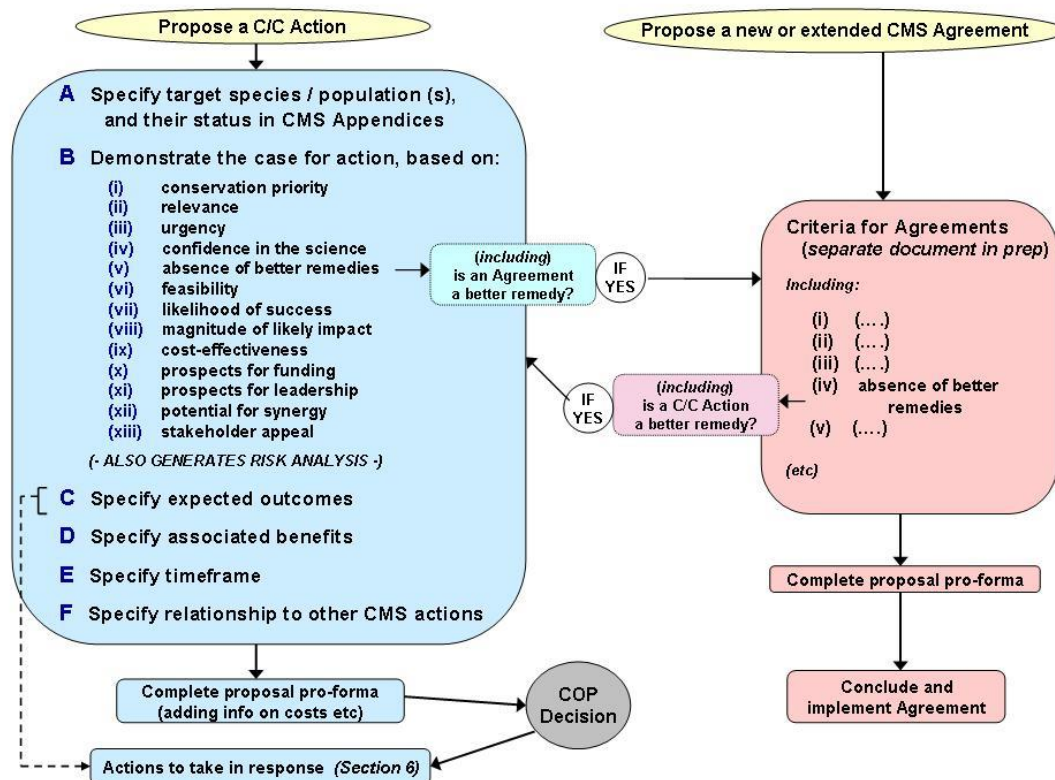
<sup>28</sup> The Parties in Res. 10.23 noted that “the list of species designated for concerted and cooperative actions had grown cumulatively from each meeting of the Conference of the Parties to the next, with the exception only of COP8 where some species were removed as a result of their incorporation into an agreement”.



complementary purposes under the CMS, and how they should all work coherently alongside each other<sup>29</sup>.

## 5. The process for making proposals

5.1 The process suggested in this report is summarised in the figure below.



5.2 A standard pro-forma could be designed, perhaps in the style of a questionnaire, to capture the information needed for scrutiny of each proposal by the Scientific Council, Standing Committee and COP. Together with information on how the proposal meets the C/C Action criteria, and the other specifications A-F above, this would add details of lead individuals, cost estimates etc.

<sup>29</sup> One recommendation made in COP document Conf. 10.36 (2011), but not picked up in Res. 10.23, was for "a strategic vision for the use of available CMS mechanisms for the conservation and sustainable management of Appendix II species, linked as appropriate to the Strategic Plan and covering *inter alia* the complementary roles of these mechanisms, their taxonomic and geographical coverage, and their relationship to concerted actions for species on Appendix I".

## 6. Identifying options for action to take in response to concerted or cooperative action listing

- 6.1 In general, the COP decisions adopting the lists of species for concerted and cooperative actions have done little more than that. In 2004-2005 the Scientific Council noted confusion about the type of action expected after cooperative action listing, and this was considered to have limited the effective use of the mechanism (although the position with concerted actions is better).
- 6.2 Resolution 10.23 in 2011 (covering both concerted and cooperative actions) gave some general pointers, encouraging actions that would constitute “steps to improve the conservation status” of the listed species, including (as appropriate) “the preparation of species action plans and support for the development of Agreements”; and “provision of the in-kind and financial means required to support targeted conservation measures” for the species concerned.
- 6.3 The Resolution also encouraged Parties to ensure that all such actions “must include a specification of the conservation and institutional outcomes expected and the timeframes within which these outcomes should be achieved”<sup>30</sup>. Both of these aspects have been incorporated into the scheme suggested in this report. In principle, the “identification of actions to take in response to listing” should begin from (and in some cases may be very largely defined by) what is specified under section 4C of the proposal framework suggested here.
- 6.4 In many cases, further detail will derive from the information provided in addressing some of the “C/C Action qualifying criteria” proposed above: for example criterion (i) (on conservation need) should reveal which threats to the animals need combating; and criterion (v) (on other remedies) should reveal which gaps in existing measures need filling. Support on this is likely to come from various status reviews and gap analyses undertaken from time to time by the Scientific Council and Secretariat<sup>31</sup>.
- 6.5 Further assistance in identifying options could usefully come from digests and case studies of examples of concerted and cooperative actions in practice, showing a range of “real life” implementation possibilities.

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<sup>30</sup> The implication is that this should be included in the text of the COP decision that adopts the listing. This clause of the Resolution was drawn from COP document Conf. 10.36, which makes this more apparent by recommending (para 58(iv)) to “make explicit the purpose of listing a species for cooperative action in each case when a listing proposal is made and when a listing decision is made”, and by suggesting (para 51) that “giving indications as to the type of action expected as a consequence of listing” would be one way to improve the COP decisions.

<sup>31</sup> Such reviews/analyses may be either ecological, or institutional, or both.

### **Pooling intelligence**

- 6.6 A C/C Action might provide a useful platform or stimulus for sharing, comparing and combining knowledge and advice between countries which have separate programmes addressing the species concerned. This could constitute a “low intensity” or “low cost” form of action.

### **Demonstrating agreed priorities for funding**

- 6.7 A C/C Action might provide a formal vehicle by which a group of countries can indicate a shared perspective on priorities for funding (and other support), perhaps as the basis for a joint approach to donors.

### **Developing and implementing Action Plans**

- 6.8 Species-based Action Plans are a common ingredient of the work which can follow cooperative or concerted action listing (although this is not the only way such plans can arise in the CMS context). Several examples exist as potential models of what may be possible; and generic guidance on certain types of plan is also available<sup>32</sup>. Adopting an Action Plan may sometimes constitute one stage towards the development of an MoU or other form of Agreement (see below)<sup>33</sup>.

### **Activities towards the development of CMS Agreements**

- 6.9 This has been discussed already above as a potential purpose for C/C Actions. Current context for defining the approach is provided by general considerations agreed in Resolution 10.16 (2011) on *Priorities for new Agreements*; and these are due to be further elaborated in 2014 through work responding to the COP’s request<sup>34</sup> for development of “a policy approach to the development, resourcing and servicing of Agreements”.

### **Reporting**

- 6.10 A key benefit of undertaking actions in a Convention context is that implementation can be related to broader agendas, experience and lessons learned from it can be digested on a comparable basis and shared more widely, and processes for initiating appropriate new policy responses where necessary can be available.
- 6.11 This all depends on good reporting. Currently, progress reports on concerted and cooperative actions do come through Scientific Council to the COP; but

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32 For example the *Guidelines on the preparation of National Single Species Action Plans for migratory waterbirds* compiled by Wetlands International and published in 2005 as Volume 1 in the AEWA Conservation Guidelines series.

33 Devising the appropriate legal status for an Action Plan has not always been straightforward. The revised C/C Actions regime put forward in this report may help to streamline some of the choices involved; but otherwise these legal aspects are not addressed further here.

34 (In the same Resolution, 10.16). Proposals are expected to be submitted for consideration and adoption at COP11.

these rarely go far into attributing outcomes to the value added by the action, or assessing effectiveness at national level.

- 6.12 Resolution 10.23 (2011) recognised that “it is not currently possible to evaluate systematically the effectiveness of concerted and cooperative actions, and that there is no standardized reporting format available to assist in doing so”, and urged Parties to “review and amend the format of the national report system produced by the Secretariat in order to measure the effectiveness of the implementation of concerted and cooperative actions by the 11th Meeting of the Conference of the Parties”<sup>35</sup>. Annex 3 of the Resolution asked the Secretariat to “develop a process for collating information on the outcomes of previous listing decisions, including the outcomes of action taken”<sup>36</sup>.
- 6.13 Logically, as suggested by document Conf. 10.36, such moves should be matched by clear monitoring and reporting expectations being set out in the COP decisions that approve new C/C Actions;<sup>37</sup> and then being elaborated further in the design of each individual Action.

### **Effectiveness**

- 6.14 There has historically been little systematic consideration (at least at COP level) of what attributable impacts on species status are being achieved by concerted and cooperative actions. In Res. 10.23, the most recent COP called for an independent assessment of the utility and impact of the mechanism, “with particular regard to whether the process is leading to positive conservation outcomes”<sup>38</sup>.
- 6.15 A better appreciation of this issue in future would come from more explicitly including a monitoring & evaluation regime as an integral part of the design of each C/C Action. This would include specifying in each case some outcome-oriented indicators of effectiveness, linked to the purposes of the Action as defined under section 4C, and to reporting provisions as mentioned above.

## **7. Conclusion**

- 7.1 Building on the consensus desire at COP10 for more clarity and coherence in the concerted/cooperative actions system, this report has suggested some ways in which this might be achieved - principally by streamlining aspects of the process and being more explicit about aims and justifications. The CMS Secretariat, Scientific Council and Contracting Parties are invited to enrich these ideas with their own suggestions, with a view to making the mechanism as effective as possible for the migratory species it serves.

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35 It is not clear whether this meant that the format should be revised by the time of COP11 (ie be ready for use in reporting to COP12), or whether it should be revised in time to be used for the reports to be submitted to COP11.

36 This work is outside the scope of the present report.

37 The same document also suggested that the COP might find it useful at each of its meetings to have an overview of the status of the whole of Appendices I and II in terms of the different types of action being taken for the listed species.

38 This work is outside the scope of the present report.