



Convention on the Conservation of Migratory Species of Wild Animals

Secretariat provided by the United Nations Environment Programme



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

Rome, Italy, 6-8 December 2008

UNEP/CMS/MS2/Doc.7

Agenda Item 10

INTERSESSIONAL STEERING GROUP COMMENTS ON THE DRAFTS OF PROPOSED LEGALLY AND NON-LEGALLY BINDING AGREEMENTS ON MIGRATORY SHARKS

(Prepared by the CMS Secretariat)

Introduction

1. The meeting to Identify and Elaborate an Option for International Cooperation on Migratory Sharks under the Convention on Migratory Species, held in Mahé, Seychelles from 11-13 December 2007, recommended that the text of an agreement under the Convention on the Conservation of Migratory Species of Wild Animals (CMS), incorporating the conclusions reached at the meeting, should be prepared by the CMS Secretariat in consultation with an Inter-sessional Steering Group (ISG) comprising Australia, Chile, Costa Rica, the European Commission, New Zealand, Seychelles and the United States of America.

2. The meeting in Seychelles did not reach consensus on the final form that the CMS agreement should take (legally or non-legally binding), and therefore the ISG was charged with proposing texts for both types of agreement. The CMS Secretariat provided the ISG with first drafts of both forms of the proposed agreement, and asked the ISG to comment on these drafts. ISG comments received are attached unedited in the Annex to this document. ISG comments were incorporated into the first drafts and second drafts of the proposed agreements were posted on the CMS website (www.cms.int) as meeting document UNEP/CMS/MS2/Doc/ 4/Rev.1, titled Second Drafts of Proposed Legally and Non-Legally Binding Instruments on Migratory Sharks. The ISG was also asked to comment on the second drafts, and their comments are summarized below.

Summary of ISG comments on the second drafts of the proposed CMS agreement

3. ISG members from Chile, the European Commission and the United States responded to the Secretariat's call for comments on the second drafts of the proposed agreement.

a) Chile

1. favours the option for the definition of migratory sharks which reads Migratory shark means Basking, Whale and Great White Sharks as listed in Annex 1 to this

instrument, and includes any other species of migratory shark that the Parties to this instrument agree should be added to the list of migratory sharks in Annex 1.

2. supports the option for the objective of the proposed agreement which reads The objective of this Agreement is to achieve and maintain a favourable conservation status for migratory sharks listed in the Appendices I and II of the Convention, and for those to be listed in the future.
3. suggests that the agreement should refer to the Action Plan as a plan to be developed after the agreement is signed. The rationale is that governments may be reluctant to sign an agreement that includes an Action Plan unless the Action Plan is fully developed in detail and agreed by country representatives.

b) European Commission (*)

1. suggests that the scientific names of the three species of sharks mentioned in the agreement be included in the agreement text.
2. proposes that for consistency either the term migratory sharks or the term sharks be used throughout the text, but not both.
3. recommends that the agreement should apply to the species listed in CMS Appendices I and II and to all future listings of species in the Class Chondrichthyes.
4. notes that the exclusion mentioned in the definition of taking would result, as a consequence of the proposed definition of range state, in states engaged in sustainable, managed and directed migratory shark fisheries not being considered as range states.
5. proposes that the word living be removed from the definition of shark finning.
6. favours the option for the objective of the proposed agreement which reads The objective of this Agreement is to achieve and maintain a favourable conservation status for migratory sharks listed in the Appendices I and II of the Convention, and for those to be listed in the future
7. believes that the paragraph under Fundamental Principles that reads Parties should adopt, where necessary, conservation and management measures for species belonging to the same ecosystem, or associated with or dependent upon a migratory shark or sharks listed in Annex 1 to this instrument (the target stocks), minimizing pollution, waste, discards, catch by lost or abandoned gear, and other threats in accordance with Article 5 of the 1995 UN Fish Stocks Agreement, and the general duty to protect the marine environment is redundant in light of the measures listed in the section in the proposed agreement on Conservation and Management Measures.

* The comments do not necessarily represent the views of the European Commission.

8. suggests adding the words as appropriate to the conservation and management measure that now reads Implement enforcement and compliance measures including observers on fisheries vessels.
9. proposes adding the words in Annex 2 of this Memorandum of Understanding after the words Action Plan where appropriate.
10. recommends that the proposed task for the Advisory Committee that reads Each Signatory should be entitled to appoint one member to the Advisory Committee should precede the task that reads The Advisory Committee should elect a Chair and Vice-chair and establish its own rules of procedure, and that the words members of the be inserted before the word Advisory in describing the latter task.
11. suggests replacing the words in conjunction with with the word before in the task that now reads Unless a Meeting of the Signatories decides otherwise, meetings of the Advisory Committee should be convened by the Agreement Secretariat in conjunction with each ordinary session of the Meeting of the Signatories and at least once between ordinary sessions of the Meeting of the Signatories.
12. suggests replacing the word Signatories in the proposed Secretariat function that now reads to propose for Signatories approval a process for the assessment by Signatories of progress made to implement the Memorandum of Understanding and the Action Plan, including who would conduct the assessment and how it would be carried out with the meeting of the Parties.

c) United States

The United States did not have any further comment on the second draft of the proposed agreement. However, it is worthwhile to reiterate some of the comments provided by the US at the conceptual level on the first draft of the proposed agreement which were not readily incorporated into the text of the second draft.

The United States is guided by the following principles:

1. The regime under consideration must be consistent with the established principles of international law, as outlined in the 1982 UN Convention on the Law of the Sea, and as appropriate, reflect the conservation and management objectives established by the 1995 UN Fish Stocks Agreement and other related instruments.
2. The long-term instrument should provide a comprehensive action plan for the activities under its purview.
3. To the maximum extent possible, the regime should be cost-effective in design and build on existing efforts for shark conservation and management, including those through the FAO IPOA Sharks and RFMOs.

and therefore the United States strongly supports the provisions calling for active engagement with FAO and the RFMOs.

The United States also believes that the draft Memorandum of Understanding is too detailed and attempts should be made to streamline the text, where possible.

The United States suggests that the instrument should include a provision for participation by Chinese Taipei, which is not included in the definition of “State” or “Party”.

With respect to the section on Conservation and management measures:

The United States generally supports the type of conservation and management measures contained in the MOU and Agreement, however, these measures would benefit from some additional detail. For example;

- 1) Who would undertake these tasks?
- 2) What information would be included in the “global shark database”?
- 3) What would be the objective for cooperating with the fishing industry (i.e. managing sustainable harvests, cooperating on stock assessments)?
- 4) What would be the objective for conducting studies (i.e. harvest management, conservation, rebuilding programs, and/or habitat protection)?

The United States believes there is a need to improve data globally on shark catches, including species-specific data, discards and landings, and through undertaking comprehensive stock assessments of sharks.

The drafts should consider promoting cooperative enforcement liaison among the Signatory States as well as producing concrete, actionable conservation recommendations to be carried forward to RFMOs by the nations that are party to both the CMS instrument and the RFMOs.

Improved research, monitoring, compliance and enforcement capacity is needed globally, not just in developing countries.

Both drafts should limit the section on Conservation and Management Measures to general conservation and management principles (and perhaps combine those with General Principles), and leave specific details for the Action Plan, where they can be flushed out in detail.

Many of these conservation and management measures seem to be going into what RFMOs are supposed to be doing, so clarification is needed how these measures will be coordinated between relevant bodies.

With respect to the section on Implementation, the United States strongly supports the concept of transparent performance reviews to assess progress of implementing the MOU or Agreement and its associated Action Plan, however, the United States thinks there needs to be clarification as to how such assessments would be conducted.

- 1) Who would conduct the assessment?

2) How would these assessments be carried out?

Parties should not have a strict obligation to implement all aspects of an Action Plan. The agreement should provide for “progressive implementation” of the Action Plan or some other comparable formulation.

Action requested:

The second meeting on migratory sharks being held in Rome from 6-8 December 2008 is invited to:

Consider the comments of the ISG on the second drafts of the proposed agreement, and the US comments at the conceptual level, and decide on whether some or all of these comments should be incorporated into the proposed agreement.

ANNEX

**COMMENTS FROM MEMBERS OF THE INTERSESSIONAL STEERING GROUP
ON MIGRATORY SHARKS ON THE FIRST DRAFTS OF PROPOSED LEGALLY
AND NON-LEGALLY BINDING AGREEMENTS ON MIGRATORY SHARKS**

U.S. Views on the draft texts for the Memorandum of Understanding and Agreement on the Conservation of Migratory Sharks

General views

1. We very much appreciate the efforts of the CMS Secretariat in providing a draft text of a memorandum of understanding and a draft text of an Agreement for consideration by the Intersessional Steering Group to provide further consideration and refinement at the Inter-governmental Meeting in Rome in December 2008.

2. Rather than providing line-in / line-out changes to the text, we attempted to provide a range of comments, at the conceptual level, on various elements for both draft texts. We understand the desire to move expeditiously to develop a CMS instrument for Migratory Sharks. However, we also want to ensure the instrument that is finally adopted is sufficient to achieve its objective to protect, conserve, replenish and recover sharks and their habitats.

3. In developing a draft instrument, the United States is guided by the following principles. First, the regime under consideration must be consistent with the established principles of international law, as outlined in the 1982 UN Convention on the Law of the Sea, and as appropriate, reflect the conservation and management objectives established by the 1995 UN Fish Stocks Agreement and other related instruments. Second, the long-term instrument should provide a comprehensive action plan for the activities under its purview. Finally, to the maximum extent possible, the regime should be cost-effective in design and build on existing efforts for shark conservation and management, including those through the FAO IPOA Sharks and RFMOs. Therefore we strongly support the provisions calling for active engagement with FAO and the RFMOs.

4. Generally, while we understand that there will be some difference between the draft MOU and the Agreement texts, due to their respective legal nature, it is unclear why these differences exist in all cases. For example, the list of definitions differs between the two draft texts. The draft Agreement includes a separate paragraph outlining the functions of the Advisory Committee; however the draft MOU does not include this provision. Further, the draft MOU includes a section on capacity building; however the draft Agreement does not include this provision. Generally, we also believe the draft MOU is too detailed and attempts should be made to streamline text, where possible. To that end, IOSEA provides a good model. We also noted the use of legally binding terms (i.e. shall) in the MOU.

5. The following are our initial comments on the draft texts. These comments should not be considered exhaustive and do not preclude further views of the United States as drafting progresses.

Scope, definitions and interpretation

6. We note that the scope of the draft instruments indicates they will apply to “all current and future listings of migratory shark species in Appendices I and II of the Convention on Migratory Species of Wild Animals”. The United States questions why this MOU or Agreement would apply to species listed in CMS Appendices. It is important to note that the membership to CMS and the membership to this MOU or Agreement will likely differ. While we support the use of the three species currently listed on the CMS Appendices as a starting point for this MOU or Agreement, the signatories to this instrument should have the ability to

add or remove species per a process that they decide. We note that other CMS instruments, such as ACAP and IOSEA, have their own stand alone list of species that apply for those instruments. An “automatic” listing of species based on future CMS COP decisions, will deter possible signatories to this Shark MOU or Agreement. In essence, this may create binding obligations for States for future species when they have not had any input to those listings because they are not Party to CMS.

7. Regarding definitions, we note that several could be clarified. For example, the definition for “migratory shark”, as currently drafted, leaves it unclear whether this definition would include rays, sawfishes, guitarfish or skates. The definition should be clear and broad to include all species of sharks, skates, rays and chimaeras (e.g., species in the Class *Chondrichthyes*). Further, the current definition for “taking” does not take into account the existence of legitimate directed shark fisheries. We do not believe the instrument contemplated here should unduly limit or restrict legitimate sustainable managed directed sharks fisheries. Also, the current definition of “shark finning”, does not take into account legitimate shark finning practices as allowed under certain RFMOs (i.e. under a 5% fin to carcass ratio rule). Rather the definition of “shark finning” should be limited to illegal shark finning, meaning fisheries conducted solely for the purpose of harvesting shark fins where the carcass is discarded at sea. This is especially important when the MOU text includes provisions for prohibiting shark finning. Lastly, the instrument should include a provision for participation by Chinese Taipei, which is not included in the definition of “State” or “Party”.

Objective

8. We note that the objective, as written, is quite limited in detail. IOSEA provides a good example of an objective that could be used for this instrument: to protect, conserve, replenish and recover sharks and their habitats, based on the best scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of the signatory States.

Conservation and Management Measures

9. The current text lacks several important elements that the United States believes to be fundamental principles for modern agreements for the conservation and management of living marine resources. In particular, shark stocks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information. Further, the general principles should include provisions for adopting, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, minimizing pollution, waste, discards, catch by lost or abandoned gear, and others, in accordance with Article 5 of the 1995 UN Fish Stocks Agreement, and the general duty to protect the marine environment. The signatories to the MOU, as opposed to the parties to CMS, should be the ones to decide which shark species to add in the future. Further, the list of Conservation and Management Measures differs between the two draft texts.

10. The United States generally supports the type of conservation and management measures contained in the MOU and Agreement. However, these measures would benefit from some additional detail. For example, who would undertake these tasks? What information would be included in the “global shark database”? What would be the objective for cooperating with the fishing industry (i.e. managing sustainable harvests, cooperating on stock assessments)? What would be the objective for conducting studies (i.e. harvest

management, conservation, rebuilding programs, and/or habitat protection)? The United States believes there is a need to improve data globally on shark catches, including species-specific data, discards and landings, and through undertaking comprehensive stock assessments of sharks. The drafts should also consider promoting cooperative enforcement liaison among the Signatory States as well as producing concrete, actionable conservation recommendations to be carried forward to RFMOs by the nations that are party to both the CMS instrument and the RFMOs. Also, improved research, monitoring, compliance and enforcement capacity is needed globally, not just in developing countries. Both drafts should limit this section to general conservation and management principles (and perhaps combine those with General Principles), and leave specific details for the Action Plan, where they can be flushed out in detail. Further, many of these conservation and management measures seem to be going into what RFMOs are supposed to be doing, so clarification is needed how these measures will be coordinated between relevant bodies. Finally, there seems to be something missing in the drafting of Article IV (2), which is a key provision dealing with the prohibition of deliberate taking or, or harmful interference with sharks.

Cooperation with other bodies

11. As noted above, the United States strongly supports the sentiments of this section as we believe the instrument must contain sound provisions for cooperation with the other bodies, including the FAO and RFMOs. This is necessary to prevent duplication of measures, ensure the most efficient use of available resources, in particular with respect to developing a strong and coherent management framework for sharks globally. There should also be an emphasis on the duties/responsibilities of entities that become signatories to a CMS shark instrument to facilitate coordination and cooperation with other instruments to which they are also party. We noted that the provisions related to cooperation and coordination with FAO and RFMOs are very limited in the draft Agreement. The draft MOU does a much better job incorporating this key concept into the text, including incorporating cooperation as a fundamental principle of the draft MOU. Further, it is outlined in the preamble that there is a need for stronger co-operation between the fisheries and conservation communities on research and monitoring in order to effectively implement conservation measures. This is confusing because fisheries and conservationists don't generally do research or monitoring - they do advocacy. Rather, there should be co-operation between fishing nations or parties rather than fisheries and conservation groups to implement conservation measures.

Implementation

12. The United States strongly supports the concept of transparent performance reviews to assess progress of implementing the MOU or Agreement and its associated Action Plan, however, we think there needs to be clarification as to how such assessments would be conducted. Who would conduct the assessment? How would these assessments be carried out? Parties should not have a strict obligation to implement all aspects of an Action Plan. Article III (2) should be adjusted to provide for "progressive implementation" of the Action Plan or some other comparable formulation. Further, this cause is duplicated under the Implementation Section of the instrument.

CMS AGREEMENT ON MIGRATORY SHARKS
Inter-sessional Steering Group on a Draft CMS Agreement on Migratory Sharks

As the representatives of the European Commission designated to take part in this ISG, we welcome the co-operation with the Convention on Migratory Species on the issue of migratory sharks and anticipate that the work carried out in this forum will be useful and complementary to the current shark conservation and management efforts taking place inter alia in the European Union. It is necessary to ensure that this co-operation complements but not unnecessarily duplicates ongoing international shark conservation activities such as from Regional Fisheries Management Organisations and FAO.

As regards the legal nature of the future initiative on sharks to be developed within the context of CMS, we would argue that it should have preferably the form of a non-binding action plan or Memorandum of Understanding (MoU). For priority reasons, our comments focus on the draft MoU. However, we agree with point 5) of the Terms of Reference (ToR) that the ISG will not make any recommendation on the nature of the CMS instrument.

Comments to the Terms of Reference for the Group

- Point 7) of the draft ToR: It appears that a reference to Appendices is the simplest way to cover the species. The CMS instrument would apply to all shark species in the Appendices of the Convention and to no other species. Whenever these Appendices are amended, it would produce immediate effects in the CMS instrument. We can not see substantial benefits from a different process.
- Point 8) of the draft ToR: This point should be deleted, as the mission of the ISG is sufficiently ambitious without charging it with the task of additional considerations on an Action Plan, its content, priorities, etc.

Comments to the draft Memorandum of Understanding

Introduction ("THE SIGNATORY STATES,")

- Fourth paragraph: In the second line, replace "or" with "and".
- Fifth paragraph: There is no reason to mention the EU Plan of Action. Why to mention only this one?
- Sixth paragraph: The terms "fisheries and conservation communities" are not defined and the last sentence, since "-and..." should be deleted or replaced by "...fishermen, fish traders and conservation NGOs".
- After the seventh paragraph, add a new paragraph as follows: *"Noting that the remit of the work to be undertaken by CMS should complement and not duplicate the work of Regional Fisheries Management Organisations with regard to fisheries management"*.
- Old eighth paragraph: In the first line, after agreement, insert: "in the form of a non binding Memorandum of Understanding".

Operational text ("HAVE DECIDED as follows:")

- Paragraph 5. a): Instead of "*Migratory shark*" define "shark". This is the word used throughout all the text. Otherwise, the expression used should be "migratory shark" in all the text.
- Paragraph 5. j): replace the square brackets by normal brackets.
- Paragraph 5. u): "*Shark finning*" is not well defined. Shark finning means the practice of removing fins from sharks on board the fishing vessels and discarding the carcass.
- Paragraph 5. v): In the first line, instead of "...the approximately 40..." write: "...all the...".
- After paragraph 8, insert a new paragraph (new 9), as follows: "*The Signatories acknowledge the role, the scientific and political actions of RFMOs which are responsible for the management of migratory shark fisheries and the need to strengthen and improve their role, including initiatives on direct and indirect sharks fishery*".
- Paragraph 15. e): Why should States promote additional uses of sharks? This should be up to the private initiative. However, should such initiatives arise, they should be regulated to avoid disturbing shark populations. Non-consumptive uses should not be sought as an alternative to consumptive uses for shark species in good biological shape. For shark species in bad shape, fisheries should be restricted. The words "*Promote and...*" should be deleted.
- Paragraph 15. f): The practice of "finning" as defined above should be prohibited. The following wording is proposed: "*Prohibit shark finning and actively cooperate through RFMOs to ensure that finning does not take place*".
- Paragraph 15. i): To consider what value, if any, this measure would add to Article III of the Convention.
- Paragraph 15. l): Why should shark by-catch be restricted? By-catch of sharks is a valuable component of the catches in many fisheries and there is no reason to restrict by-catches more than directed fisheries. Both directed catches and by-catches should be regulated, but not necessarily restricted. This is already covered by paragraph 15. j); therefore 15. l) should be deleted.
- Paragraph 46: The sentence "consider species covered by this Agreement;..." should be deleted. As stated in paragraph 4, the MoU applies to all current and future listing of migratory shark species in Appendices I and II of the CMS and derogations to this Article must not be allowed.
- Paragraph 51: In order to allow more time to the Signatories to make the necessary internal arrangements, this paragraph should be redrafted as follows: "*This Memorandum of Understanding will take effect on the last day of the month following the month on which...*".

Comments to the draft Agreement

For priority reasons, our comments focus on the draft MoU.

C H I L E

COMMENTS RELATED TO BOTH INSTRUMENTS PRESENTED BY CMS SECRETARIAT TO IDENTIFY AND ELABORATE AN OPTION FOR INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER CMS

We thank CMS Secretariat very much for the great contribution in sending us these two drafts documents related to the achievement of an agreement on migratory sharks we are working on.

- UNEP/CMS/MS/ISG.1

Draft MOU on the conservation of migratory sharks

Objective

7.- There is no mention to those species which are going to be listed in the future.

.... in the Appendices I and II of the Convention... *and for those to be listed in the future.*

Cooperation with other bodies

There is no mention to CITES

Implementation

It would be possible to include some CMS secretariat or other body administrative actions to support countries in the search of financial resources ?

- UNEP/CMS/MS/ISG.2

Draft Agreement on the conservation of migratory sharks

Article IV

General Conservation Measures

This is not clear: there will be two plan of action? Or there will be an international plan of action based on the international plan of action (FAO) ?

“g) support the implementation of actions elaborated in the International Plan of Action for International Plan for the Conservation and Management of Sharks which complement the objectives of this Agreement”.

Article VII

Meeting of the Parties

6.- Any relevant scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources..... Rules of procedure in relation to this paragraph, including provision for the attendance of observers may include provision for

voting different from that in paragraph 9 to this article.

Concerning “Rules of procedure in relation to may include provision for voting different from that in paragraph 9 to this article”

Are you referring to the vote to accept the observers’ attendance and participation?

Article VIII
Implementation and Financing

2.- a) b) c) *are very important to be kept in this Agreement, taking into account the Parties’ asymmetries, especially in their national budgets.*

Article IX
Advisory Committee

It is not clear if Parties may submit the inclusion of new species directly to the Meeting of the Parties, or through the Advisory Committee.

Article XI
Relations with Relevant International Bodies

2.- The Secretariat shall consult and cooperate, where appropriate, with:

Should be useful to include CITES?

Article XIII
Effect of this Agreement on International Conventions and Legislation

2.- The provisions of this Agreement shall in no way affect the right of any Party to maintain or adopt – **at the national level**- stricter measures for the conservation of migratory sharks.

Should be useful to point out ... *at the national level* ?

Article XIX
Depositary

1.- The original of this Agreement shall be deposited with the Government of :

It shall be discussed during the COP? Anyway, *could be Germany or Australia (but this country is depositary of ACAP).*

July, 2008

*Comentarios de la Argentina a textos presentados por la Secretaría de CMS
(21 de julio 2008)*

La Argentina agradece el trabajo realizado por la Secretaría de CMS y por el Grupo Intersesional con miras a la próxima reunión para la negociación de un instrumento de cooperación para la conservación de los tiburones.

Sin perjuicio de ulteriores comentarios que serán remitidos a los representantes de la región en el Grupo Intersesional, se indican a continuación los elementos que la Argentina considera oportuno transmitir al Grupo.

En primer lugar, desea recordar que en ocasión de la Reunión de Seychelles, varias Delegaciones expresaron su preocupación por la decisión de realizarla sólo en uno de los idiomas de la CMS. En particular, la Delegación chilena hizo referencia a que el documento de negociación no había sido distribuido en español. La Secretaría se comprometió a realizar gestiones para que las próximas reuniones se realicen en los 3 idiomas de la Convención (inglés, francés y español) y que los documentos estén disponibles también en los 3 idiomas. Por ello, se agradecerá que los textos de negociación se distribuyan también en idioma español, por cuanto redundará en una mayor participación de los Estados del área de distribución, que entendemos es el objetivo de encuentro.

En segundo lugar y no obstante lo sugerido por la Secretaría de CMS en relación al tipo de instrumento que se quiere alcanzar, desea recordar a las Partes que en la Reunión de Seychelles la mayor parte de los participantes de la reunión se pronunciaron a favor de un instrumento no vinculante en forma de Memorandum de Entendimiento, tanto en sus alocuciones en Plenario y en el Grupo de Trabajo 1, como en el cuestionario voluntario elaborado por la Secretaría de CMS y que la mayoría de las Partes completó.

Por ello, la Argentina reitera lo ya expresado por su Delegación en oportunidad de la Reunión de Seychelles, a favor de un instrumento no vinculante jurídicamente del tipo Memorandum de Entendimiento propuesto como una de las opciones en el documento de trabajo presentado por la Secretaría, porque puede proporcionar una coordinación internacional más rápida para especies en peligro; no requiere de ratificación y por lo tanto pueden entrar en vigencia de inmediato y ser fácilmente enmendado; puede aplicarse aisladamente o como un paso preliminar en la negociación de un acuerdo; no establece requerimientos financieros o institucionales.

Varias fueron las razones por las cuales la DA no se expidió a favor de un instrumento jurídicamente vinculante en esa oportunidad. En primer lugar, su puesta en vigor requerirá la ratificación de los Estados signatarios, lo que conllevaría un largo y engorroso proceso que conspiraría contra el objetivo propuesto que es brindar una solución cooperativa e inmediata al problema de conservación de ciertas especies de tiburones migratorios. En segundo lugar, un acuerdo vinculante presupone el establecimiento de una secretaria permanente, reuniones periódicas, financiamiento de iniciativas diversas etc., con la consecuente necesidad de que los Estados partes efectúen contribuciones financieras anuales y deban realizar provisiones presupuestarias para la asistencia de sus delegaciones a las reuniones del nuevo organismo, lo cual atenta también contra el objetivo de universalidad que idealmente requiere el instrumento que se propone.

Con relación a las especies objeto de conservación, habiendo evaluado la situación de sustentabilidad de las tres especies indicadas en el instrumento, cualquier inclusión futura corresponderá a los mismos criterios y al nivel de sustentabilidad y amenaza de estas tres especies. Por ello, el tratamiento deberá hacerse caso por caso y en la eventualidad de que la nueva especie presente más de una población genéticamente separada, se deberán tener en cuenta los criterios ya establecidos para las 3 especies incluidas, tanto en lo que se refiere a su estado crítico como a que no presenten diversidad intraespecífica comprobada.

Finalmente y en relación con las organizaciones regionales de pesca (RFMO/OROPs), la Argentina prefiere no incluir ninguna definición sobre estas entidades, por cuanto ni siquiera en los distintos instrumentos internacionales más específicos y más universales se ha brindado una definición unívoca sobre las OROPs. En este sentido, ni el Plan de Acción Internacional para la Prevenir, Desalentar y Eliminar la Pesca no Declarada ni Reglamentada, ni el Acuerdo para Promover el Cumplimiento de las Medidas Internacionales de Conservación y Ordenamiento por los Buques Pesqueros que Pescan en Alta Mar (Acuerdo 1993-FAO) ni el Código de Conducta de Pesca Responsable de FAO, ni tampoco CONVEMAR, acordaron definiciones sobre estas entidades.

- a. Se reitera una vez más, el agradecimiento al Grupo Intersesional y a la Secretaría de CMS por los trabajos realizados..