



# CONVENTION ON MIGRATORY SPECIES

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Agenda Item 22.2

## DEVELOPING, RESOURCING AND SERVICING CMS AGREEMENTS: A POLICY APPROACH

*(Prepared by the UNEP/CMS Secretariat)*

1. Resolution 10.16 instructed the Secretariat “to develop for consideration and adoption at COP11 a policy approach to the development, resourcing and servicing of agreements in the context of Resolution 10.9”.
2. A consultant was commissioned to work with the Secretariat to prepare a report which addresses these issues. It is attached at Annex 1.
3. A set of criteria for assessing proposals for new Agreements has been developed in this process. It is envisaged that these criteria will be adopted through the draft resolution attached at Annex 2.
4. Financial support for this work has been provided by the Government of Germany and is gratefully acknowledged.

### **Action requested:**

The Conference of the Parties is requested to:

- Consider the attached Report and adopt the draft resolution attached at Annex 2.



ANNEX 1



*Convention on Migratory Species*

## **Developing, resourcing and servicing CMS Agreements - a policy approach**

CONSULTANT REPORT

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31 July 2014



## Developing, resourcing and servicing CMS Agreements - a policy approach

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## Summary

- S.1 One of the key mechanisms available under the Convention on Migratory Species (CMS) is the conclusion of international Agreements for the conservation and management of particular species or species groups. There are now 26 such instruments.
- S.2 In principle, this system is unified as the CMS “family”, there are certain common principles, and periodically an overall view is taken about issues such as trends and priorities. On the other hand, Agreements are legally autonomous, they have each evolved at different times to meet different types of challenge, and practice is highly variable. While any one Agreement may be a model of best practice in its own right, at a global level there has not been a clear policy attitude to the ultimate desired state of the system.
- S.3 In addition there have been concerns about the implications of continued proliferation of new Agreements. While in a sense such growth represents the Convention achieving what it set out to do, and the conservation need for it has certainly not reduced, enthusiasm to create new structures has sometimes run well ahead of the capacity to operate them properly.
- S.4 The lack of an overall strategic approach to these issues poses risks to the authority, credibility and cost-effectiveness of the Convention. CMS Parties at their Conference (COP10) in 2011 accordingly called for a “policy approach to the development, resourcing and servicing of Agreements”. This report reviews the issues and presents a proposal for such a policy approach.
- S.5 The review takes account of work undertaken in parallel/previously on the viability of CMS Memoranda of Understanding (one of the forms of Agreement) and on the structure and strategies of the CMS family (“Future Shape”).
- S.6 Section 2 of this report summarizes the scope and objectives of CMS Agreements, and section 3 expands on the case for a strategic attitude to needs, resources, coordination and coherence, including reference to aspirations already adopted in the in the Convention’s Strategic Plans. Section 4 analyses the issues of viability and commitment, drawing on a parallel study of the viability of MoUs.
- S.7 The core of the suggested policy approach to developing Agreements is a method for systematically assessing the opportunities, risks, appropriateness and relative priority of any new proposal to develop an Agreement. Drawing partly on principles previously identified by the COP, thirteen criteria are suggested in section 5 as a framework against which to test such proposals.
- S.8 Issues covered in the criteria include conservation need, absence of alternative remedies, feasibility, leadership and funding. Guidance on interpreting each of these is set out.
- S.9 The criteria can be applied with some flexibility, given the diversity of forms that CMS Agreements can take and the variety of situations they address. In principle, however, the more substantiation of the different points that can be provided in support of a proposal, the more likely it is to succeed. The

information compiled should as far as possible provide a balanced assessment of the benefits and risks associated with each issue, rather than being seen solely as a tool for persuasion.

- S.10 The suggested policy approach to resourcing Agreements involves two main elements: assessing the minimum requirements for launching an Agreement, and sustainable resourcing in the longer term. These are discussed in section 6.
- S.11 The suggested policy approach to servicing Agreements also involves two main elements: coordination (section 7), and monitoring and evaluation (section 8).
- S.12 Monitoring and evaluation partly concern the maintenance of an overview at global level, including existing implementation reviews by the COP. It also includes the encouragement expressed in previous COP decisions for Agreements to enhance the consistency and coherence of their reporting processes. Section 8 takes this further by proposing a simple evaluation framework for each Agreement to use, containing seven minimum ingredients.
- S.13 Ultimate results for CMS Agreements must of course relate to the conservation status of migratory species. The Agreements also play a crucial role in holding Governments to observance of international standards and creating a climate of mutuality that prevents new problems arising: these factors too, therefore, are part of judging success. On both counts, the adoption of a more systematic (but also “light touch”) policy approach to the development, resourcing and servicing of Agreements, as described in this report, should considerably enhance the overall effectiveness of this unique and vital system in future.

## 1. Mandate and purpose of this report

- 1.1 One of the key mechanisms available under the Convention on Migratory Species (CMS) is the conclusion of international Agreements, each of which has a more specific focus than the Convention itself and typically addresses a particular group of animals in a particular region<sup>1</sup>. Since the conclusion of the first such instrument in 1990, their numbers have progressively grown to a current total of 26.
- 1.2 Each instrument has different origins, shaped by the particular history of the issues it addresses. Certain common principles and approaches apply to them all, and the CMS Conference of Parties (COP) has periodically expressed a view about priorities for new Agreements, sometimes on a basis of analyses by the Convention's Scientific Council.
- 1.3 As section 3 of this report explains however, at a global level there has not been a clear policy attitude to the ultimate desired state of this system, in terms of its size, coverage, structural diversity, sustainability, open-endedness, efficiency and other factors. This poses risks in terms of the Convention's authority, credibility (for example where expectations outstrip capacity) and cost-effectiveness.
- 1.4 Two strands of thinking on this converged at the 10<sup>th</sup> meeting of the COP in 2011. One came from the intersessional process known as "Future Shape", which examined options for the future structure and strategies of CMS and the CMS family. (The "family" refers to the "parent" Convention together with its "daughter" Agreements).
- 1.5 In Resolution 10.9 resulting from Future Shape, the COP endorsed a list of activities, including as item 12.3: "create criteria against which to assess proposed new potential agreements". This also cited six example issues which the criteria should cover (all six now incorporated into section 5 below).
- 1.6 At the same time, Resolution 10.16 (on priorities for CMS Agreements) instructed the Secretariat "to develop for consideration and adoption at COP11 a policy approach to the development, resourcing and servicing of agreements in the context of Resolution 10.9". Resolution 10.16 listed eight considerations which "must be addressed when making any new proposals in the meantime" (all eight now incorporated into section 5 below).
- 1.7 The purpose of this report is to develop the requested policy approach, including criteria for assessing new Agreement proposals. A draft Resolution is provided as a suggested form in which the Parties at COP11 could adopt these criteria for future use.
- 1.8 One category of Agreement is the Memorandum of Understanding (MoU). In 2014 the Secretariat undertook an internal "assessment of MoUs and their viability", in fulfilment of another of the actions listed in Resolution 10.9. The findings of that work have been taken into account in the present report (see in particular section 4).

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<sup>1</sup> Typographical presentations of the word "agreement" under CMS vary according to the context. For convenience throughout the present document, and following the approach in Resolution 10.16, 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.

## 2. The scope and objectives of CMS Agreements

- 2.1 CMS Appendix II lists species with an unfavourable conservation status requiring 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 Agreements where these would benefit the species.
- 2.2 Article IV includes two different provisions for this, in Article IV.3 and Article IV.4. The Convention does not clearly distinguish Article IV.3 Agreements from Article IV.4 Agreements<sup>2</sup>. In practice, however, the Parties have applied Article IV.3 to Agreements that are intended to cover the whole of the range of the species concerned, and Article IV.4 to Agreements that are not intended to do so. Agreements of either type may be legally binding or legally non-binding<sup>3</sup>. Legally binding Agreements tend to have the title “Agreement”, while non-binding agreements tend to have the title “Memorandum of Understanding” (MoU)<sup>4</sup>. The current MoUs are all of the Article IV.4 type. In addition to governments, MoU Signatories can include organizations.
- 2.3 Much has been written elsewhere on the different types of CMS Agreement and their legal status. While not trivial, this issue is not material to the central purpose of the present report, and is for the most part not explored further here.
- 2.4 The “family” model has led to the CMS being described as a “framework Convention”; though it would be more accurate to regard it as a Convention with a major framework component. The CMS Strategic Plan 2006-2014<sup>5</sup> describes Agreements as “important extensions of CMS conservation work at regional and more specialized levels”.
- 2.5 As an enabling provision, Article IV, not unreasonably, creates an open-ended possibility for the development of numerous Agreements. For the Article IV.4 Agreements, Parties are encouraged to “take action with a view to concluding agreements for any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdictional boundaries”.
- 2.6 The open-endedness could be seen as qualified slightly for Article IV.3 Agreements by the Article’s stipulation that priority should be given to species in an unfavourable conservation status. The scope of both Article IV.3 and Article IV.4 however also covers species “which have a conservation status which would significantly benefit from the international co-operation that could be achieved by an international agreement”<sup>6</sup>. Any risk of undue proliferation

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<sup>2</sup> Some of the history of this is discussed in COP11 information document UNEP/CMS/COP11/Inf.31.

<sup>3</sup> Legally binding agreements take the form of treaties which must be ratified. Non-binding agreements are designed not to formulate new legally-binding commitments but to provide a mechanism for more targeted and coordinated implementation of the Convention’s existing provisions. Of the 26 CMS agreements, seven are legally binding and have the title “agreement”. Four of these were concluded under Article IV.3 (ACAP, AEW, EUROBATS and Gorillas), while three were concluded under Article IV.4 (ACCOBAMS, ASCOBANS and Wadden Sea Seals). The 19 non-binding agreements have the title “memorandum of understanding” and all of these were concluded under Article IV.4.

<sup>4</sup> COP Resolution 2.6 (1988) suggested that mechanisms for implementing Art. IV.4 might take the form of COP Resolutions, administrative agreements or memoranda of understanding.

<sup>5</sup> Updated version annexed to COP Resolution 10.5 (2011).

<sup>6</sup> Views differ on how distinguishable such a “capability to benefit” is from a need for conservation status to be improved, and on the extent to which Appendix II should cater for species in favourable conservation status. These issues have been discussed within the Scientific Council, and proposals are due to be put to COP11 - see



of Agreements might be tempered slightly in the case of Article IV.3 Agreements by Article V.3, which urges that these “should, wherever possible, deal with more than one migratory species”.

- 2.7 Two important principles originally stated for Article IV.3 Agreements (in Article V.2) were subsequently applied to Article IV.4 Agreements too<sup>7</sup>. One is that each Agreement should cover the whole of the range of the species concerned (although this has tended in practice to continue to be seen as mainly a feature of Article IV.3 Agreements). The second is that Agreements should be open to accession by all Range States of the species concerned, whether or not they are Parties to the CMS.
- 2.8 The primary objective of all Agreements is to restore the species they cover to a “favourable conservation status”, and then to maintain this status. Favourable conservation status is defined in Article I.1 of the Convention<sup>8</sup>, though what it means in a given case would be elaborated further under the Agreement concerned.
- 2.9 The general objective is stated explicitly for Article IV.3 Agreements, in Article V.1: “The object of each [Article VI.3] agreement shall be to restore the migratory species concerned to a favourable conservation status or to maintain it in such a status. Each [such] agreement should deal with those aspects of the conservation and management of the migratory species concerned which serve to achieve that object”.
- 2.10 Article IV.4, by lacking an explicit reference to Appendix II species, could be read as applying to any migratory species; but it is generally understood that Article IV.4 Agreements are intended for Appendix II species. Given that such species are by definition those that have a conservation status (unfavourable) that requires or would benefit from an Agreement, the implied objective for Article IV.4 Agreements amounts to the same thing as that described for the Article IV.3 ones.
- 2.11 Agreements are versatile and take varied forms, as this report illustrates. They are, however, not the only formally adopted action instrument available under the CMS. Depending on the circumstances, options also exist for “concerted actions” (Resolution 3.2), “cooperative actions” (Recommendation 5.2), programmes of work, single species action plans and multi-species action plans. A broad spectrum of tools is therefore available for different needs. Coherence in this overall system, and up-to-date guidance on its optimal use, are subjects that lie beyond the scope of this report. They will however be increasingly important subjects as the Convention continues to grow.

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Scientific Council document Doc.7.1/Rev.2 (2014): “Using the IUCN Red List categories in assessing listing proposals to Appendix I and II of the Convention”.

<sup>7</sup> By COP Resolution 2.6 (1988) on the implementation of Articles IV and V of the Convention.

<sup>8</sup> Conservation status will be taken as favourable when (i) population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems; (ii) the range of the migratory species 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 the migratory species on a long-term basis; and (iv) the distribution and abundance of the migratory species approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management. Conservation status will be taken as unfavourable if *any* of the conditions set out above is not met. [Emphasis added].

### **3. The need for a policy approach**

#### **Variability, and concerns about proliferation**

- 3.1 The existing 26 Agreements show a very wide variety, from those covering just a single species to those covering hundreds, and those involving as few as two Range States to those with over 150. Some were conceived to consolidate existing self-sustaining cooperation arrangements, while others represented the launch of a major new effort. Administrative and budgetary dimensions vary accordingly.
- 3.2 The CMS “Future Shape” process, mentioned in section 1 above, arose from a growing concern about the implications of continued proliferation of new Agreements. While in a sense such growth represents the Convention achieving what it set out to do, and the conservation need for this has certainly not reduced, the lack of an overall strategic approach can lead to inefficient use of resources, and sometimes to the creation of systems that lack the capacity to operate properly.
- 3.3 In Resolution 9.2 (2008) the Parties decided that the focus for the 2009-2011 triennium should be on implementation of existing Agreements, and that the development of further new ones should be linked to the outcomes of Future Shape, whilst acknowledging the importance of maintaining momentum on proposals that were already in development.
- 3.4 The work on Future Shape quantified some of the capacity dimensions, and looked at options such as taxonomic or geographical clustering as possible ways to increase efficiency, balanced against sensitivities of identity and ownership. The question of a more strategic and systematic rationale for the use of Agreements, and for deciding priorities, was flagged as needing more thought.

#### **The strain on Agreement servicing**

- 3.5 Some Agreement texts or Meetings of Parties/Signatories have specified the administrative and budgetary measures they need, and have either set assessed levels of expected financial contributions or have called for voluntary contributions.
- 3.6 This by itself, however, does not guarantee that the specified resources will materialize, and (as with the Convention itself) there is often a shortfall. One stark example is the Agreement on Gorillas and their Habitats, where the Parties are currently paying in total only around one-third of the agreed contributions they should pay. The available budget is thus too small to undertake the implementation required (though even full payments would still amount to less than is required).
- 3.7 Many Agreements (principally MoUs) do not have their own staff resource and rely instead on the CMS Secretariat to provide coordination services. Between 1997 (COP5) and 2005 (COP8) the Convention’s core budget dedicated to MoU implementation grew in step with the increasing number of MoUs, allowing a basic central service to be maintained.

- 3.8 At COP8 however, although the number of MoUs was continuing to grow, CMS Parties cut the coordination budget by half and subsequently reduced it still further. This had a radical impact on the levels of support that were available. Recent internal reorganization (2014) has improved the position somewhat; but this is partly supported by temporary staff positions that are due to terminate at the end of 2014.
- 3.9 Temporary funding from donors has been obtained by some MoUs, and this is extremely valuable. While it may help to deliver projects, it is however less likely to secure coordination functions; and even where it does so, it cannot substitute for an ability to operate in a planned way on a continuing basis. The MoUs on West African Elephants and African Atlantic Marine Turtles, for example, had implementation arrangements which came to an end when this kind of funding and partner capacity ran out.
- 3.10 Moreover, where voluntary contributions are provided for activities that have not been mandated directly by Parties/Signatories, the new coordination overheads they create can put a further strain on the capacity available to administer core programmes.

### **Guidance in Strategic Plans**

- 3.11 To the extent that a “policy approach” has been expressed on this subject to date, one might expect to find it at least partly in the Convention’s Strategic Plans.
- 3.12 The first Plan, for 1998-2000 (Resolution 5.4, 1997) provided that “Activities to lay [the] basis for the identification and development of new agreements should be continued and intensified, as far as resources are available. Parties, including regional economic integration organizations, should take the lead in developing and/or sponsoring agreements and in hosting interim secretariats; sponsors should specify clearly to the Standing Committee how they intend to proceed in this regard. Developed Party States, whether or not they are Range States, should be encouraged to facilitate initiatives of developing countries by providing technical, scientific and financial assistance on request. The Secretariat’s capacity to assist in the development of new agreements should be strengthened”.
- 3.13 It further provided that “Support to existing agreements (including Memoranda of Understanding) should be provided by the Secretariat to the extent [that] these activities contribute significantly to the conservation of the species concerned and help to raise the profile of the Convention”.
- 3.14 The second Plan, for 2000-2005 (Res. 6.4, 1999), included a target to “identify systematically those taxonomic groups which should be priorities for the development of agreements”, adding that “Parties and the Secretariat should give priority to the development of new agreements, particularly in regions where CMS initiatives are not well advanced”. It further provided that “the organs of the Convention [...] ought to be reviewed as the Convention attracts a greater membership of Parties and as the number of related agreements grows”.
- 3.15 The third Plan, extended and updated to cover 2006-2014 (latterly in an annex to Res. 10.5, 2011) includes as target 2.5: “Appendix II regularly reviewed, and opportunities for international collaborative arrangements

(including agreements) at an appropriate scale and resulting in the greatest possible conservation gain, actively pursued”.

- 3.16 Target 4.2 seeks the “contribution of agreements and memoranda of understanding towards delivery of the CMS Strategic Plan targets [to be] jointly reviewed and appropriate measures developed to deal with any identified gaps”. “Gaps” in this context might be interpreted as gaps in the implementation of existing Agreements, or gaps in the coverage of deserving species (hence requiring new Agreements), or both. Target 4.1 concerns accession of new CMS Parties, *inter alia* “particularly those [...] for which there is a high priority for securing new Agreements”.
- 3.17 In the current (February 2014) draft of the proposed successor Strategic Plan for Migratory Species 2015-2023 (intended to be broader than just a Plan for CMS) there is simply the more general target 3, which is for “national, regional and international governance arrangements and Agreements affecting migratory species and their migratory systems [to] have improved significantly, making relevant policy, legislative and implementation processes more coherent, accountable, transparent, participatory, equitable and inclusive”.
- 3.18 The draft also includes target 9, which seeks more complete engagement by all of the States who share joint responsibility for the conservation and effective management of migratory species; and thus is a basis for aspiring to see full participation in any Agreement by *all* of the Range States for the species it covers.
- 3.19 The new draft Plan otherwise remits the question of development of new Agreements to a Companion Volume on Implementation (yet to be drafted). It mentions that “priorities for development of future CMS instruments” should be part of the delivery framework for the strategy, but the Plan itself says nothing more about what policy attitude to this is being or should be adopted..
- 3.20 The 2006-2014 Plan recommends a number of measures for ensuring that Agreements use similar systems (as each other) for planning and reporting their work, in order to ensure that they are strategically aligned with the Convention. In association with the successor Strategic Plan for Migratory Species it is envisaged that those responsible for individual Agreements will (*inter alia*) develop sub-targets, to add extra specificity in their own context to the main Plan targets. Enhanced articulation between Agreement objectives and Strategic Plan objectives is therefore a further aim.

## Priorities

- 3.21 The last few COPs have each adopted Resolutions on priorities for Agreements<sup>9</sup>. These have tended to give specifics of the animal groups for which initiatives were being developed, to refer to strategic objectives in the Convention and the Strategic Plan (see section 2 and this section above respectively), and to call on Parties and others to provide the requisite support for taking forward the specified actions. They have however not expressed any policy orientation on the overall scale and make up of this kind of activity, or on strategic trends for the future.

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<sup>9</sup> Res. 7.7, 2002; Res. 8.5, 2005; Res. 9.2, 2008; and Res. 10.16, 2011.

- 3.22 “Gap analysis” reviews, such as those prepared for COP 10 in 2011, have examined existing instruments relating to particular taxa, identifying strengths and weaknesses and gaps in coverage<sup>10</sup>. The conservation status of CMS Appendix-listed species (and candidates for listing) also receives attention through reviews undertaken by the Scientific Council; and the Council is in the process of developing criteria for listing<sup>11</sup>.

### **A philosophy for the future**

- 3.23 Efforts made thus far to define priorities for Agreements have helped to provide some scientific rigour for the individual proposals that get made. Consideration of options for streamlining has helped to highlight issues of efficiency; and there is a growing realization of the resource and capacity implications of continued growth in the CMS family (see also section 4 below).
- 3.24 Advances such as these are progressively sharpening perspectives on the manageability of the Article IV system, and the rationale used to justify any given initiative within it.
- 3.25 They stop short, however, of an objective assessment of needs across the whole system, and a clear policy attitude at global level to its ultimate desired state in terms of size, coverage, diversity, balances, sustainability, open-endedness, efficiency and other factors. This poses risks to the Convention, as described in section 1 above.
- 3.26 A philosophy for the future, therefore, could involve an approach based on more systematic and reasoned strategic appraisals of the opportunities and risks that apply. Two core elements of this are suggested in this report: (i) a set of criteria to guide proposals for the development of new Agreements; and (ii) a more developed discipline for monitoring and evaluation.

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<sup>10</sup> These included: terrestrial mammals (including bats) in COP10 document Inf.10.15; marine turtles in document Inf.10.16; Central African elephants in document Inf.10.27; and cetaceans in document Conf.10.35. A review of bird flyways was also discussed by the Scientific Council at its 17<sup>th</sup> meeting in 2010 (ScC17 documents Inf. 4.1b/4.2b/4.3b).

<sup>11</sup> See ScC18 document Doc. 7.1 (2014).

## 4. Agreement viability: the current picture

- 4.1 The Future Shape process acknowledged that any change to structures in the Agreement system (with reference primarily to MoUs) could potentially require governmental renegotiation of existing MoUs; and that before proceeding in such a direction it would be important to research more fully the capacity and delivery aspects involved.
- 4.2 In this context, among the short-term action priorities listed in Resolution 10.9 was (action 5.3) “an assessment of MoUs and their viability”. This wording might suggest that viability was one aspect to be assessed and other aspects were also to be assessed; but no elaboration on the scope of these other aspects was given. The reason for limiting the scope of this to MoUs and not also addressing Article IV.3 Agreements is not explicit, but probably relates to the particular implications for the CMS Secretariat in supporting the administration of MoUs.
- 4.3 Agreements vary greatly, as already discussed; so the definition of viability in each case may also differ. It is also likely to be seen differently from different perspectives. For example, Parties/Signatories, the CMS Secretariat and other instruments competing for the same resources may all draw different conclusions from the same facts.
- 4.4 In most cases, however, viability is likely to involve some version of the following two factors:
- whether an Agreement can sustain itself and meet projected needs with its projected resource inputs, i.e. in business terms whether it is a “going concern” (“projected needs” would need defining in each case);
  - whether the Agreement is using its available resources in an effective way to deliver its objectives (it could be self-sustaining but not be achieving anything, hence this second factor).
- 4.5 Questions of effectiveness can be developed much further than the one defined above; but “viability” here is seen as a concept of minimum qualifying survivability/validity, rather than one of performance quality more broadly (for the latter, see instead section 8 below).
- 4.6 The CMS Secretariat has responded to Resolution 10.9 action 5.3 by producing the report “An assessment of the CMS MoUs and their viability”<sup>12</sup>. This defines the conditions that enable viability as being:
- where Signatories are willing and able to run an MoU themselves; or
  - where there is a strong engagement from stakeholders in the MoU and some modest and regular funding is available to assist them; or
  - where significant funding is available to staff a functional Secretariat.
- 4.7 The assessment report evaluates existing MoUs (and the Gorilla Agreement, which shares similar features) according to a number of factors that are likely to influence judgements about viability. These factors could be considered in the following way:

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<sup>12</sup> COP11 document Doc.11.22.3 (2014).

- (i) *Demands*, including administrative complexity: e.g. number of Range States, number of Signatories, number of regions covered, number of species covered and the severity of their conservation needs, number of languages used (both prescribed official languages and languages used in practice)<sup>13</sup>, logistical factors for meetings (e.g. geographical spread of countries relative to the seat of coordination)<sup>14</sup>;
  - (ii) *Capacities*: e.g. coordination and funding arrangements, resources available, level of engagement by Signatories and other stakeholders, scientific information (such as species monitoring data), scope for synergy with other processes (such as joint meetings);
  - (iii) *Indicators of delivery*<sup>15</sup>: e.g. proportion of Range States that have signed, conservation plans or work programmes agreed, national implementation information provided, unified agendas among partners and other stakeholders on the issue (i.e. no competition/dilution of effort), catalytic effects (such as leveraged funding).
- 4.8 The assessment reports a conclusion from previous studies<sup>16</sup> that the legal status of Agreements (i.e. whether binding or non-binding) appears to bear little relation to viability.
- 4.9 Not all of the factors mentioned above will be relevant in every case. Even funding and a specific administrative structure for servicing the Agreement may not always be necessary: in the case of the Bukhara Deer for example, the MoU added a legal framework and political backing for cooperative conservation activities that were already in place; and the Great Bustard MoU provides a useful framework for cooperation that Signatories can largely manage by themselves.
- 4.10 In most cases, however, the “demand” side of the equation will include a need for sustainable and predictable finance, so that core services (regular communication with Signatories and other stakeholders, convening of meetings, and the production and translation of documents) can be performed. When the basics of this are secure, more effort can go into profile-raising and further fundraising; so there is a “virtuous circle” or “multiplier effect”.
- 4.11 The assessment report also cites continuity of coordination as an important viability factor.
- 4.12 The scale of demand obviously makes a difference. MoUs with a small number of countries, business conducted in a shared language, limited geographical extent, one or only a few species, and only a few main conservation priorities, tend to score well on implementation (e.g. Huemul, High Andean Flamingos, Ruddy-headed Goose, Great Bustard).

<sup>13</sup> Official languages prescribed in an agreement text may not necessarily be the same as those used in practice. Among the MOUs for example none lists Russian as an official language, yet it is an essential negotiation language in much of Central Asia and Eastern Eurasia, and is regularly used in communications and meetings of the MOUs on Saiga Antelope, Siberian Crane and Bukhara Deer.

<sup>14</sup> Longer distances imply greater travel costs for meetings; and where meetings can be held near a Secretariat office there may be scope for free facilities (e.g. interpretation) or other administrative savings.

<sup>15</sup> Note that these are indications rather than actual evidence: for example the existence of a plan does not necessarily mean it is being implemented; conversely a lack of national report information does not necessarily mean there has been no action to report.

<sup>16</sup> ERIC Ltd (2010). Review of the current organization and activities of CMS and the CMS family: first step of the intersessional Future Shape process. COP10 document Inf.10.14.8. See paragraph 255, page 62.

- 4.13 Three quarters of the MoUs receive services from the CMS Secretariat headquarters in Bonn. There may sometimes be an inequity with this in cases where non-CMS Parties (who are fully entitled to sign MoUs) benefit from a service that is funded from a budget provided only by CMS Parties.
- 4.14 Even in the case of those MoUs that benefit from technical coordination or other assistance from relevant NGOs (including four cases where this is done under contract)<sup>17</sup>, the CMS Secretariat must still provide aspects of official oversight and related servicing.
- 4.15 The main threat to viability in the cases that rely on the CMS Secretariat is the dwindling financial and human resource at the centre, as described under “The strain on Agreement servicing” in section 3 above.
- 4.16 There are high levels of interest from Signatories and/or donors in supporting the MoUs on Dugong, Birds of Prey, IOSEA Turtles, and Sharks (although for the latter, despite Signatories agreeing a budget to employ a professional staff member, funds received prior to 2014 have been insufficient for this, and an officer has been provided through a separate arrangement with Germany).
- 4.17 Some other Agreements, however, are in regions that lack traditional donors or other suitable partners that can build a critical level of coordination activities in the region, and the shortfall in central Secretariat capacity (and in the case of the Gorilla Agreement the shortfall in payment of assessed contributions) means that they are not operating fully (for example the Atlantic Turtles, Western African Aquatic Mammals and West African Elephant MoUs).
- 4.18 The viability assessment supports the conclusion of a previous study<sup>18</sup> to the effect that the commitment of individual Signatories to implement an Agreement is one of the most important factors in ensuring success.

### **The question of future viability**

- 4.19 With appropriate criteria, the viability of an Agreement can be assessed at a given point in time; and a viability picture for the system as a whole can be synthesized, as the 2014 Secretariat report discussed here has done. Strictly speaking, however, viability is a property with a time dimension, and should be expressed as a prognosis relating to a defined period.
- 4.20 Such a prognosis would aim to assess how likely a currently successful agreement is to continue being so in future, and what are the critical factors affecting this. If any agreement is judged to have reached the point of not being a sufficiently worthwhile prospect for continued investment unless certain factors change, this could trigger a time-bound plan of action to try to change those factors.
- 4.21 The same approach would apply to judgements about the worthwhileness and survival prospects of any *new* agreement that is being proposed. The suggestions for the latter in section 5 below therefore take full account of the discussion above.

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<sup>17</sup> Currently Saiga Antelope, Siberian Crane, Aquatic Warbler and Pacific Cetaceans.

<sup>18</sup> UNEP-WCMC (2011). Review of CMS existing instruments and projects on terrestrial mammals (including bats). CMS COP10 document Inf.10.15.



## 5. Developing new Agreements: proposed criteria

- 5.1 As suggested in section 3 above, a set of criteria to guide proposals for the development of new Agreements should be one of the core elements of adopting a more systematic policy approach for the future.
- 5.2 The Convention has already proved to be a healthy enabling environment for the stimulation of Agreement proposals. The main need here is not so much to increase that stimulation, but to organize and channel it in a more strategic way, which involves measured assessments (in a defined context in each case) of opportunities, risks, appropriateness and relative priorities.
- 5.3 The initiative for a new Agreement often comes from one or more concerned Range States. This is also a healthy sign; but it means that a decision cannot simply be made about the overall degree of expansion or limitation to be pursued at any given time as a matter of central Secretariat work planning (and yet the outcome may impact significantly on Secretariat work). This makes explicit Agreement and collective adoption of a scheme of criteria all the more important.
- 5.4 The CMS Standing Committee at its 37<sup>th</sup> Meeting in November 2010 discussed the overall matching of inspiration and ambition for development of new Agreements with the capacity available in practice to operate them. Suggestions included the addition of a financing plan as an integral part of any proposal for a new Agreement; delivery through other partners; and extension of existing Agreements. The Committee decided that proposals for new instruments in future should be tested for financial sustainability, subjected to a gap analysis, and linked to or even merged with existing instruments where appropriate.
- 5.6 COP Resolution 10.9 (2011), on the Future Shape of CMS, defined an action to create criteria for new proposed Agreements, citing as examples: scientific need; the added value of CMS involvement; existing and potential synergies (internally and externally); funding criteria; and the existence of a volunteer coordinator.
- 5.7 Resolution 10.16 (also in 2011), on priorities for Agreements, listed “considerations [which] must be addressed when making any new proposals in the meantime” (i.e. while a broader policy approach was being developed). These include: needs and gaps in current conservation provisions; delivery of a specific existing CMS COP mandate or other existing CMS initiative; financial implications, financing plans and financial sustainability; absence of alternatives (such as extending an existing instrument, or delivery through a partner organization); opportunities for synergy; and whether an organization (or preferably a country) has committed to leading the development process.
- 5.8 Using these previous suggestions as a starting-point, the present section sets out a more developed proposal for thirteen criteria to be used in judging (and thereafter defending, if approved) the case for a new Agreement under CMS. Each is described in turn below. In summary, they are:
- (i) Conservation priority
  - (ii) Serving a specific existing COP mandate
  - (iii) Clear and specific defined purpose
  - (iv) Absence of better remedies outside the CMS system

- (v) Absence of better remedies inside the CMS system
- (vi) If a CMS instrument is best, extending an existing one is not feasible
- (vii) Prospects for sustained funding
- (viii) Synergies and cost effectiveness
- (ix) Prospects for leadership in developing the Agreement
- (x) Prospects for sustained coordination of implementation
- (xi) Feasibility in other respects
- (xii) Likelihood of success
- (xiii) Magnitude of likely impact.

- 5.9 While one or two of these criteria could be regarded as discretionary (e.g. (viii) on synergy), meeting most of them would probably always need to be mandatory (although applied in a flexible range of ways, given the diversity of forms of CMS Agreement and of the situations they address). Some criteria might function as an absolute standard for judging whether a given proposal is deserving on its own merits (e.g. (iii) on clear purpose, and (ix) on prospects for leadership); while other criteria might be used in a more relative way to compare two or more proposals that are competing for priority.
- 5.10 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 criteria, this would add details of lead individuals, budget estimates, etc.
- 5.11 The narrative demonstrating qualification against the criteria could, for each of them, also state the risks and assumptions being made (criteria vii, ix, x, xi, xii and xiii may be the easiest to address in this way). The process would thereby simultaneously generate a risk analysis as an integral part of the proposal.

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

- 5.12 Conservation priority in terms of unfavourable status (Appendix II) should be straightforward to substantiate through well-established CMS scientific processes<sup>19</sup>. Where an Appendix II species is also listed in Appendix I, the same would apply to evaluating its degree of endangerment. Exceptionally, candidates for listing on the Appendices might need to be evaluated in the same terms.
- 5.13 Information on the science case may represent a best consensus view, and on that basis may or may not be a sufficient justification for action. Consideration should therefore also be given to the authority, completeness,

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<sup>19</sup> Among these are the reviews established by Resolutions 3.2 and 5.2. Although these are viewed mainly as the basis for initiating “concerted actions” and “cooperative actions” under the Convention, they will also generate information that is relevant for considering potential Agreements. 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 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.

depth of testing and any other aspect affecting the quality of the underpinning science (and hence the confidence with which it can be relied upon as a basis for predictions).

- 5.14 The more that the reasons for unfavourable conservation status of the species concerned are linked to problems affecting migration<sup>20</sup>, the more relevant will a CMS Agreement be as a response to those problems.
- 5.15 In addition to prioritizing according to conservation status, 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. This may therefore also play a part in judging “conservation priority”.
- 5.16 Needs that are defined on a basis of “gaps in current conservation provisions” (Resolution 10.16) are a form of conservation priority; but that is also a question about whether remedies already exist, and hence is addressed more appropriately under criteria (iv), (v) and (vi).

### **Criterion (ii) Serving a specific existing COP mandate**

- 5.17 Proposals that meet a need or objective already expressed collectively by the Parties would normally be expected to have higher priority than those that cannot show such a link. This would include COP decisions, Strategic Plan targets and objectives adopted in other CMS initiatives which cannot more effectively be met in other ways (see criteria (iv) and (v)). The more specifically defined the mandate, the stronger the case will be.
- 5.18 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 (e.g. on ethics, or other forms of appropriateness) and the absence of any other internal policy conflicts.

### **Criterion (iii) Clear and specific defined purpose**

- 5.19 Although the term is specifically employed in the context of Appendix II, “favourable conservation status” loosely describes the outcome sought for migratory species in general under the Convention. (The implied aim for Appendix I species of “avoided endangerment” might be considered as amounting to the same thing, or at least a more minimal version of the same thing)<sup>21</sup>. It would therefore be assumed that some reflection of this concept will be found within the framing of purposes for a proposed Agreement<sup>22</sup>. For Article IV.3 Agreements, this expectation is reinforced by Article V.1<sup>23</sup>.

<sup>20</sup> For example physical obstacles to migratory movements; loss of connectivity in habitat; threats that jeopardize a critical behaviour or a critical site in the migratory cycle; etc.

<sup>21</sup> 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.

<sup>22</sup> Favourable conservation status is defined in Article I.1 (c)-(d). “Endangered” is defined in Article I.1 (e).

<sup>23</sup> “The object of each [Art. IV.3 agreement] shall be to restore the migratory species concerned to a favourable conservation status or to maintain it in such a status. Each [Art. IV.3 agreement] should deal with those aspects of the conservation and management of the migratory species concerned which serve to achieve that object.”

- 5.20 In the case of Appendix II species at least, it would be consistent with Article IV for Agreement objectives also to define the way in which the species is/are intended to benefit particularly from international cooperation.
- 5.21 The key principle for the future should be to be as systematic and explicit as possible in defining the expected conservation outcomes for any Agreement; so that progress can be assessed, adaptive course-corrections applied and success recognized. Following the SMART standard (Specific, Measurable, Achievable, Relevant, and Time-bound<sup>24</sup>) will help; adding perhaps also U (Uncomplicated). An Agreement therefore should give sharper focus to whatever existing priorities (criterion (ii) above) it is addressing<sup>25</sup>.
- 5.22 The objectives defined for an Article IV.3 Agreement should show how it will relate to relevant elements of the guidance for such Agreements in Article V<sup>26</sup>.
- 5.23 Where an Article IV.4 Agreement is being proposed as a step towards eventual conclusion of an Article IV.3 Agreement<sup>27</sup>, the pathway towards this result should be set out as clearly as possible.
- 5.24 Consideration of these issues will link to consideration of whether the Agreement being sought should have legally binding status or not. A discussion of the factors involved in that choice lies beyond the scope of the present report, and while important, it should not cloud the primary question about the strength of the case for using an Agreement at all (of either type) as the preferred means of addressing a particular conservation need. The choice of legal status will be influenced in any event by aspects of the assessment against these criteria; and it may even change during the lifetime of the initiative (as for example in the scenario mentioned in the preceding paragraph).
- 5.25 An Agreement 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. Their status in terms of CMS Appendix listing should also be specified (an Agreement may address a combination of Appendix I and Appendix II species, provided the needs and objectives for both are sufficiently congruent).

#### **Criterion (iv) Absence of better remedies outside the CMS system**

- 5.26 A proposal should demonstrate that it is addressing a gap in current conservation provisions and is not duplicating something that already exists. Assuming this is demonstrated, criterion (iv) then tests whether a CMS instrument is the only option for filling the gap, or is the best of several options of filling the gap.

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<sup>24</sup> Regarding "time-bound", the agreement itself may need to be in place indefinitely (to maintain constant responses to constant pressures or risks); but it will often still be good practice to specify timeframes for particular measures to be pursued under its auspices.

<sup>25</sup> COP Resolution 10.9 item 12, referred to already in earlier sections above, refers to "improving identification of priority objectives" (for agreements).

<sup>26</sup> By virtue of Res. 2.6 (1988), two elements of this guidance (concerning coverage of the whole of the range of the migratory species concerned and being open to accession by all Range States of those species) also apply to Article IV.4 agreements.

<sup>27</sup> Resolution 2.6 "recommends the use of non-binding instruments such as Resolutions of the Conference of the Parties and Memoranda of Understanding as potential first steps towards the conclusion of [Art IV.3 agreements] under the Convention".

- 5.27 “Other options” in this sense could for example be achievement of the same intended outcomes through mechanisms available under another intergovernmental framework (such as another biodiversity-related Convention), or through the programmes of one or more partner organizations.
- 5.28 The judgement to be made under this criterion will involve a diligent assessment of the potential range of options that may be relevant to consider; and an assessment of the strengths and weaknesses of each of them, compared to the strengths and weaknesses of a “CMS Agreement option”.

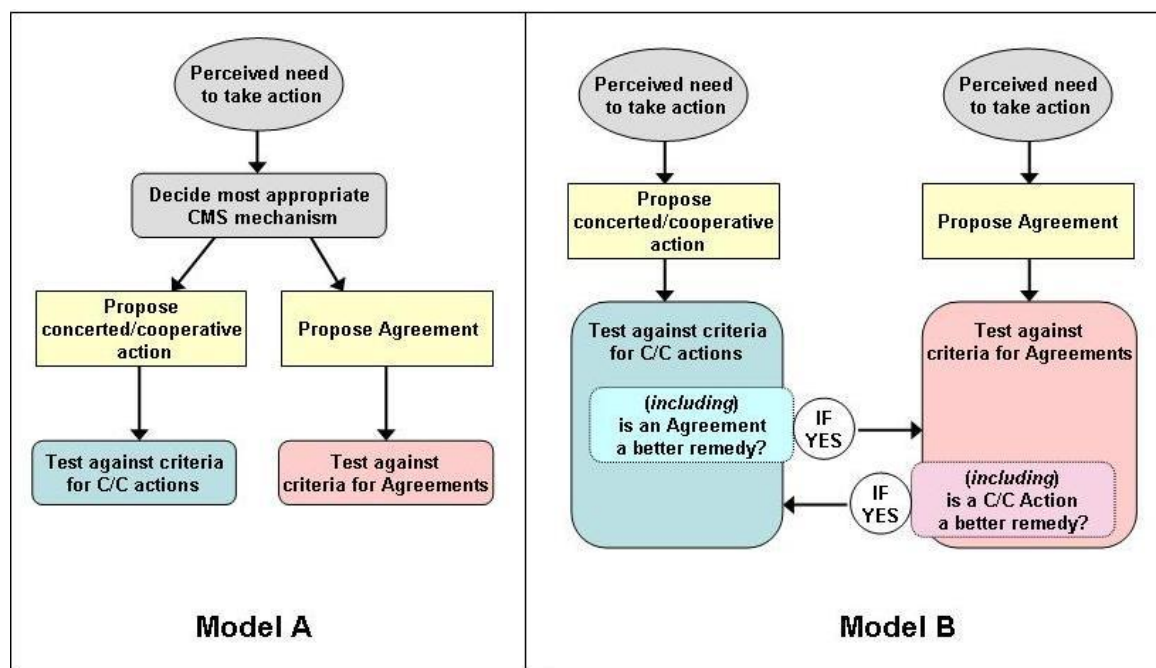
### **Criterion (v) Absence of better remedies inside the CMS system**

- 5.29 Assuming a gap in current provisions has been demonstrated and a CMS remedy is better than other options, as described under criterion (iv) above, then within the CMS system there is still a judgement to be made as to whether an Agreement under Article IV is more appropriate than some other alternative available under the Convention.
- 5.30 Alternatives may include an international species action plan (for a single species or for multiple species), a “concerted action” (Resolution 3.2)<sup>28</sup>, “cooperative action” (Recommendation 5.2)<sup>29</sup> or other cooperation initiative.
- 5.31 The relationship between concerted actions, cooperative actions and Agreements is discussed in a separate consultant report for CMS developed during 2014 in parallel with the present one<sup>30</sup>. That report proposes an equivalent system of criteria for judging proposals, including a reciprocal question about the absence of better remedies within the CMS system.
- 5.32 The model for evaluating proposals that is presented by the combination of these two reports could be conceived in two slightly different ways. In the first, (“model A”), the entry-point to either route would be a reasoned judgement at the very outset (a “gatekeeper question”) as to whether the proposal should be run through the “concerted/cooperative actions criteria” or instead through the “Agreements criteria”.
- 5.33 Alternatively, (“model B”), the process would be triggered either by an initiative being taken to propose a concerted/cooperative action, or by an initiative being taken to propose an Agreement, and in either case a question would be asked (as part of the respective lists of criteria) as to whether the other mechanism would be a better option.

<sup>28</sup> 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.

<sup>29</sup> 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. In parallel with the present report, a proposal is being put to COP11 (draft Resolution contained in UNEP/CMS/COP11/Doc.22.4) to consolidate the concerted and cooperative action mechanisms into a single system (concerted actions, in future applicable both to Appendix I and Appendix II). If this is approved, as from COP12, cooperative actions would no longer exist as a separate option.

<sup>30</sup> Improving the process for concerted and cooperative actions - D E Pritchard; 2<sup>nd</sup> draft May 2014.



5.34 Model A would have logical attractions if proposals all tended to arise in a similar way. Model B, however, is probably a better practical fit with reality, i.e. that proposals tend to arise in a variety of ways from a variety of types of proponent. Concerted and cooperative action proposals, for example, have a history of originating within the Scientific Council, often with a significant input from partner organizations; while proposals for Agreements more often arise on the initiative of governments, and/or are largely driven by the Secretariat.

5.35 It is less often the case, therefore, that a single proponent would be in a position to take a neutral overview at the outset of the relative merits of an Agreement versus a concerted or cooperative action for addressing the issue concerned. Proponents should of course be well able to consider this once they have embarked upon systematically assessing the chosen proposal against a set of criteria; and in Model B this would include being able to switch to the alternative route if doing so proves to be a better option<sup>31</sup>.

5.36 One reason for preferring a concerted or cooperative action might be that it is a 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>32</sup>.

5.37 Another reason for preferring a concerted or cooperative action might be that it is a better remedy in terms of flexibility and/or informality. 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

<sup>31</sup> There is of course also a scenario in which a concerted or cooperative action is designed to be a precursor to an agreement. In such a case the criteria for developing a new agreement would be an integral part of that action; but as part of its implementation, rather than part of the justification for embarking on it in the first place.

<sup>32</sup> 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.

required. Measures designed to operate only for a limited period and then to come to an end may, however, be better pursued in other ways.

### **Criterion (vi) If a CMS instrument is best, extending an existing one is not feasible**

- 5.38 Assuming the preceding criteria have been met, there is still a judgement to make as to whether an entirely new free-standing Agreement should be launched or whether the need could be met instead by extending an Agreement that already exists.
- 5.39 A preference for extensions is implied in the annex to Resolution 10.9 on Future Shape, where activity 12.9 is “Extending the scope of existing agreements/MoUs rather than developing new agreements/MoUs”, which is listed for the “medium term” (between COP 10 and COP 12, i.e. 2011-2017)<sup>33</sup>.
- 5.40 The reference in the Resolution arises primarily from the efficiencies that can result from simply scaling up existing coordination and implementation infrastructure, as opposed to creating new institutions, programmes and budgets. This approach may however have merits in other respects, such as the ecological reasons for treating common issues or related species in an integrated way; or the political reasons for combining efforts in a given region.
- 5.41 “Extension” can be contemplated in a geographic sense (adding new countries), or a taxonomic sense (adding new species), or both. There is not necessarily a presumption that the additions would have to be contiguous (physically bordering the existing countries, or being the nearest taxonomic relatives), although in practice, proximity in either sense is likely to be a factor.
- 5.42 Criterion (vi) would operate therefore by positing that if the preceding criteria have been met, a solution should be found by extending an existing Agreement, unless there is a compelling reason for this not to be feasible (in which case a new Agreement might be contemplated subject to the other criteria set out below).

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

- 5.43 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 would be unwise to invest time and effort in developing it<sup>34</sup>.
- 5.44 This does not necessarily mean that full funding sources would need to be in place before a proposal could be approved: it is more a question of having an evidence-based assessment (and assurances) about what is likely. A key

<sup>33</sup> Activity 12.9 cites AEWA (the Agreement on the Conservation of African-Eurasian Migratory Waterbirds) and the West African Elephant MOU as examples. In the case of AEWA, the technical, administrative, procedural, financial and legal implications of extending that Agreement to embrace a long-standing proposal for a conservation initiative for migratory waterbirds in the Central Asian Flyway were reviewed in a consultant report in 2013 (D E Pritchard: Assessment of the implications for AEWA of expanding its scope to include the CAF region. Report for the CMS Secretariat; considered by the AEWA Standing Committee at its 9<sup>th</sup> meeting in September 2013).

<sup>34</sup> The position here may not necessarily bear any relationship to the conservation merits of the case or to the other criteria listed here; so there may sometimes be difficult “trade-off” judgements to make between the different possible grounds for proceeding.

judgement to be made is what standard of proof or strength of confidence to seek, in the evidence and assurances that are being relied upon.

- 5.45 There may be a slight circularity with this in the case of a proposal for an Agreement that is motivated partly by its prospect of acting as a means of leveraging new funding; and care will be required in such cases.
- 5.46 This criterion would probably have several sub-components, concerning the quantity of funding that is likely; the make-up of sources (e.g. one or many); the pattern of flow (e.g. three-year allocation, annual provision); whether it is project-dependent or unrestricted core funding; practical aspects such as currency exchange; and, crucially, the degree to which the funding plan is considered to be sustainable in the long term. Resourcing of Agreements is discussed further in section 6 below.

### **Criterion (viii) Synergies and cost effectiveness**

- 5.47 Opportunities should be sought for proposed Agreements 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 initiatives (including existing Agreements, concerted/cooperative actions, species action plans, thematic programmes of work, etc) or with initiatives led by others (programmes in other Conventions; cooperation networks for research, public engagement, protected area management; etc).
- 5.48 Simple compatibility with or support for an existing CMS initiative would normally be better dealt with under criterion (ii). The present criterion asks a more substantive question about the nature of mutual added value, economies of scale, and new possibilities that arise from a combination of efforts in way that adds up to something more than just the sum of the individual parts.
- 5.49 In some cases, consideration of synergy and cost-effectiveness issues may show sufficiently strong attachment to another initiative that it amounts to a case for integration, and hence to a decision in the context of criterion (iv), (v) or (vi) that a new free-standing Agreement is not the best solution.
- 5.50 As well as setting an improved context for each Agreement, analysis under this criterion will improve the strategic overview of the suite of mechanisms available for different complementary purposes in relation to migratory species conservation in general, and how they should all work coherently alongside each other.
- 5.51 Synergies may arise in relation to objectives that are not necessarily those of the Agreement itself. For example, the launch of a dedicated instrument for a particular region or group of species may be a decisive factor in encouraging expanded participation in the CMS and accession of new Parties to the Convention from the region concerned.
- 5.52 Similarly it will be important to recognise where Agreements targeting certain migratory animals may incidentally benefit other migratory species/taxa/populations which use the same habitat or suffer the same threats. Other opportunities to maximize added value may arise in relation to awareness raising, capacity-building, catalysing other associated activities; or providing



the CMS with a reason to have a “seat at the table” in relevant global governance processes on an issue where it has not had this hitherto.

- 5.53 A careful judgement will need to be made as to whether these kinds of added value or associated benefit form part of the case for proceeding with a new Agreement, or instead are elements that should be incorporated into implementation plans once a decision to proceed has been made.
- 5.54 Part of the question prompted by this criterion relates to efficient ways of working in a general sense. 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. If all the other criteria are satisfied but the price of proceeding is out of proportion to the overall gain, this may unwisely drain resources that could be better spent on other things. In such cases a proposal is likely to fail the test of criterion (viii) and a better way of meeting the conservation objective would need to be found.

### **Criterion (ix) Prospects for leadership in developing the Agreement**

- 5.55 In almost all cases, a key ingredient in the development and launching of a new Agreement is the solid commitment throughout the negotiation phase (at least) of a country government or other body which can take a leading role, animate the negotiation process and set an example with offers to host meetings, facilitate coordination functions and/or build up voluntary financial contributions.
- 5.56 Meeting this criterion therefore would involve confirming the existence of a named entity/entities which is/are reliably offering (preferably guaranteeing) to lead or coordinate the development of the Agreement. The CMS Secretariat cannot be expected to play such a role without additional funds.
- 5.57 Open-ended or speculative offers will not be as persuasive as those that include a timeframe for conclusion of the process (and the stages towards it), and are backed by a suitably high level of official endorsement.
- 5.58 Well-intentioned proposals for Agreements have sometimes been launched without a firm picture of this leadership component. The importance of this criterion is underlined by the decision taken by CMS Parties at COP 10 in Resolution 10.16, to the effect that “if no such clear expression of interest [in committing to lead the development process for a given proposed new Agreement] or offer to lead on an instrument materializes after two intersessional periods, the instrument concerned will no longer be considered as an instrument under development”.

### **Criterion (x) Prospects for coordination of the Agreement’s implementation**

- 5.59 As a logical corollary of criterion (ix), this criterion involves confirming the existence of a named entity/entities which is/are reliably offering (preferably guaranteeing) to lead or coordinate the implementation of the Agreement on an on-going basis after its adoption. Again it cannot be necessarily assumed that the CMS Secretariat will play such a role.

- 5.60 There may be a case for distilling experiences and “lessons learned” to date in relation both to this function and the development function described under criterion (ix), in order to support others that may wish to take on such a role, and to promote good practice.

### **Criterion (xi) Feasibility in other respects**

- 5.61 It may be useful to include a step that prompts consideration of whether there are any other aspects of feasibility that need to be assessed in addition to those covered under the other criteria here (i.e. funding, leadership and coordination). This might include for example political stability factors, diplomatic barriers to cooperation, and the achievability of the particular conservation actions the Agreement is to specify. The relevance of this criterion will vary from case to case.

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

- 5.62 Satisfying the criteria relating to feasibility will show only that an Agreement is likely to be *implementable*. Criterion (xii), 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/other external confounding factors that may undermine or negate the results of the Agreement.

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

- 5.63 Criterion (viii) above asks about increments of extra value and the proportionality of impact per unit of input, both of which might be demonstrated just as positively by a very small-scale instrument as by a very large-scale one. Criterion (xiii) therefore asks a separate question about the overall scale of impact.
- 5.64 Size is not everything, and should not override the aspects of quality represented by criteria such as (i), (iii) and (viii). “Magnitude of impact” is probably less of a standalone criterion for judging whether a given proposal is deserving on its own merits, and more a way of comparing two proposals that may be competing for priority and are equal in other respects.
- 5.65 The comparison might be between the number of species, number of countries or extent of area that will benefit in each case. Agreements which address multiple problems simultaneously might be favoured over those with a narrower focus; and those with good prospects of a catalytic or “multiplier” effect might similarly rate well on this criterion.

## 6. Resourcing the Agreements

- 6.1 Resourcing Agreements is a bigger subject than this report: the focus here is purely on identifying the elements of a *policy approach* to the subject. Two of the main aspects of this are highlighted below. These include considerations that are relevant to the development of possible new Agreements as well as considerations that relate to the on-going operation of existing Agreements, so there is some overlap with the criteria in section 5 above.

### Minimum conditions for launching

- 6.2 The Convention can adopt a policy approach to the resourcing tests that must be met before investments of time and money are made in developing and launching a new Agreement. This is covered via the proposed criteria in section 5 above. Resourcing here includes finance, but also involves the linked issues of human capacity and political support.
- 6.3 The work involved in creating proposals and testing them against the criteria is of course an investment in its own right. There might be cases where resourcing for a short-term preliminary “research phase” would need to be found, for example, where the initiative is being led by one or more developing countries with limited capacity.

### Funding requirements

- 6.4 Much creative thinking is often directed towards raising funds for specific projects that support Agreement implementation, and much generous support has been provided from a variety of quarters for this over the years. This is all to be encouraged, and hopefully it will grow further.
- 6.5 In the present context, however, the main policy issue is concerned more with how to secure reliable regular funding for the on-going core operating costs of keeping an Agreement alive (In some cases, as mentioned in section 3, this may even require safeguards against the distortions that successful short-term project funding can cause).
- 6.6 Meetings of Agreement Parties/Signatories may set implementation budgets and specify the expected means of raising the necessary funds, for example by assessed levels of annual dues and/or by invited voluntary contributions. This by itself does not guarantee that the specified resources will materialise: extra effort is often required to encourage payments, and (as with the Convention itself) there is often a shortfall.
- 6.7 At the CMS COP level, calls for support are routinely made in a form such as that most recently included in Resolution 10.16 (2011), which “invites Parties, other Governments and interested organizations to provide voluntary financial and other support where possible for the effective operation of existing Agreements and the conclusion of those Agreements currently in development”. Financial and in-kind contributions raised in response are documented and acknowledged in reports to COP on resource mobilization and on partnerships<sup>35</sup>.

<sup>35</sup> Most recently at COP10 (2011), in documents Conf. 10.19 and Conf. 10.28 respectively.

- 6.8 The Secretariat in addition undertakes active fundraising, both through general appeals against listed funding needs including those relating to Agreements, and through tailored approaches to specific donors.
- 6.9 A variety of funding and coordination models exist, for example. Some Agreements have their own free-standing infrastructure for this and some are administered by the CMS Secretariat, either with a budget or without one. In this context, it may not always be clear to proponents of new Agreements what the scale of their own commitment should be.
- 6.10 The CMS Secretariat is specifically encouraged in COP Resolutions (e.g. most recently Resolution 10.16) to foster partnerships with governments and relevant organizations to support the effective operation of Agreements. In addition to the work it has willingly and successfully embraced on this<sup>36</sup>, the CMS Secretariat sometimes finds itself faced with a high level of fundraising expectations because of underestimates by Agreement proponents of what their own contributions should be. The full scale of such expectations has not been met in recent years, following cuts in central coordination budgets at a time when the family of instruments has kept expanding. This is discussed further under “the strain on Agreement servicing” in section 3.
- 6.11 There may therefore be a case for elaborating a more explicit understanding of the expected funding requirements for an Agreement and how they will be met, by developing an indicative budget.

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<sup>36</sup> Including the “Migratory Species Champion Programme”, developed by the Secretariat in consultation with the CMS family. A major aim of this is to ensure predictable funding over time, including for the operation of Agreements.

## 7. Servicing the Agreements: coordination

- 7.1 Most of the “policy approach” questions relating to Agreement coordination have been covered in other sections of this report. The main advance for the future is likely to be in the area of developing a more explicit shared appreciation among all concerned (including proponents of new Agreements) about the minimum coordination required for an Agreement, and the implications of needing to provide for this in a durable way.
- 7.2 Expectations of the headquarters CMS Secretariat, as the “default” provider of coordination for MoUs where it is not otherwise provided for, have expanded at a time when resources have reduced (as described in earlier sections). This trend has implications both for future growth potential and for the sustainability of some existing Agreements. The COP has accordingly expressed caution about the development of new Agreements (Resolution 9.2) and explored the scope for streamlining (through Future Shape).
- 7.3 These factors are now also the basis for criterion (x) proposed here, which looks for any proposal for a new Agreement to confirm the existence of a named entity/entities which is/are reliably offering (preferably guaranteeing) to lead or coordinate the implementation of the Agreement on an on-going basis after its adoption.
- 7.4 While it cannot be assumed that the CMS Secretariat will play such a role, there may of course be circumstances in which this might be a preferred option (perhaps where several MoUs with similar needs can be efficiently administered together, for example). The source of funding for staff and activities in such cases would of course need to be considered (see section 6).
- 7.5 It could also be instructive to undertake some further modest documenting of experience of effective methods and lessons learned concerning key aspects of Agreement coordination, such as basic standards and expectations. While in many ways every Agreement is unique, some appropriate intelligence of this kind could assist in promoting good practice and supporting others who may wish to take on such a role in future.

## 8. Servicing the Agreements: monitoring and evaluation

- 8.1 A policy approach to CMS Agreements would be incomplete without some principles for the monitoring and evaluation regime to be employed by the individual instruments, and some perspective on how an overview is formed (and used) across the CMS family as a whole. This relates to the operation of existing Agreements, but it is also an issue to consider when addressing criterion (iii) (defining purposes) in proposals for new Agreements (section 5).
- 8.2 COP Resolution 10.9 on the Future Shape of CMS included in its annexed list of activities (as item 12) “Develop a policy where implementation monitoring must be a part of any future MoUs; development and/or utilization of indicators to monitor effectiveness of Agreements; implementation and effectiveness of MoUs to be reviewed at COP level; after a set period of time, CMS Secretariat to report on MoU implementation”.

### Current practices

- 8.3 As with much else discussed in this report, arrangements for monitoring, evaluation and reporting of implementation vary considerably from Agreement to Agreement. At one end of the spectrum are large and well-established Agreements such as AEWA<sup>37</sup> and IOSEA Marine Turtles<sup>38</sup>, working with data-rich scientific traditions, systematic work planning frameworks and relatively sophisticated information management tools<sup>39</sup>. At the other end are MoUs such as the West African Aquatic Mammals MoU<sup>40</sup>, which has struggled to find critical mass for operation in general, and where monitoring and evaluation have therefore not been a priority thus far.
- 8.4 At least for the smaller MoUs, there is a general lack of reported data on national implementation activities, and almost any improvement in this would be inherently desirable, both for the Parties to these Agreements themselves and for wider groups of stakeholders, including the CMS.
- 8.5 As a basis for improving things in a rather more systematic way, it would be valuable first to compile a short review of the monitoring, evaluation and reporting processes that currently exist in each of the 26 Agreements, perhaps with some observations on their respective strengths and weaknesses and what lessons might have emerged on good practice. Such a review is beyond the scope of the present report.

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<sup>37</sup> The Agreement on the Conservation of African-Eurasian Migratory Waterbirds (1995).

<sup>38</sup> The Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia (2001).

<sup>39</sup> The IOSEA Marine Turtle MOU has pioneered methods for on-line submission of national reports, and in 2012 AEWA was the first CMS instrument to use a new “CMS Family Online Reporting Facility” developed in conjunction with UNEP-WCMC. AEWA also has a Strategic Plan, allowing implementation reports be evaluated in terms of progress towards a commonly-adopted nine-year framework of objectives.

<sup>40</sup> Memorandum of Understanding Concerning the Conservation of the Manatee and Small Cetaceans of Western Africa and Macaronesia (2008).

## Maintaining an overview; and improving coherence

- 8.6 As mentioned above, the Parties to an individual Agreement will have a particular interest in evaluating whether or not it is being implemented as expected and whether or not its objectives are being achieved. In addition the wider constituency of the CMS system as a whole has a similar interest in intelligence about how the Convention's "family" of instruments are all faring.
- 8.7 Article VII.5 (b) of the Convention requires the COP to review the implementation of the Convention, which may in particular include reviewing progress towards the conservation of Appendix-listed species. Article IX.4 (h) (as supplemented by Resolution 3.5 in 1991) mandates the Secretariat to provide information on Agreements. In this context, it has been the practice of the Secretariat to provide each meeting of the COP with a consolidated report reviewing progress in the implementation of Article IV Agreements<sup>41</sup>. Sources of information for this include reports from technical meetings and Meetings of Parties/Signatories, as well as reports submitted to the COP for those Agreements that have their own Secretariats. There is no standard pro-forma.
- 8.8 One purpose served by such an overview is in evaluating relevant strategic goals for Agreement development and delivery that have been adopted at Convention level, for example in the Strategic Plan. The current (third) Plan, extended and updated to cover 2006-2014 (latterly in an annex to Resolution 10.5, 2011) includes as target 2.5: "Appendix II regularly reviewed, and opportunities for international collaborative arrangements (including Agreements) at an appropriate scale and resulting in the greatest possible conservation gain, actively pursued". Adopted indicators for this target relate only to numbers of new Agreements.
- 8.9 Target 3.2 ("level of engagement in CMS work of priority target non-Parties increased") has a proxy indicator based on the number of countries joining CMS or/and participating in Agreements. Objective 4 ("to reinforce the overarching and unifying role of CMS in the conservation and management of migratory species") has an indicator based on the number of Parties or Signatories to an Agreement. Target 4.2 ("contribution of agreements and memoranda of understanding towards delivery of the CMS Strategic Plan targets jointly reviewed and appropriate measures developed to deal with any identified gaps") has no indicator as such, but is to be assessed by reviews of, for example, specific taxonomic groups.
- 8.10 The Plan encourages Agreements to use similar systems (as each other) for planning and reporting, in order to ensure that they are each appropriately integrated and strategically aligned with the Convention, as a contribution to achieving target 4.2. The suggestions it makes for this, which also appear in Resolution 8.5 (2005) and were reinforced by Resolution 9.2 (2008), are:
- (i) to develop their own strategic or implementation plans linked, as far as possible, to the Convention's Strategic Plan through a system of cascading logical frameworks that show how their work contributes to the attainment of CMS objectives and targets;

<sup>41</sup> Most recently for example in COP documents Conf. 5.9 (1997), Conf. 6.9 (1999), Conf. 7.9.1 (2002), Conf. 8.10 (2005), Conf. 9.9 (2008) and Conf. 10.9 (2011).

- (ii) to use an effective national reporting system fully harmonized with the system for the Convention;
- (iii) to make their information available through the CMS Information Management System; and
- (iv) to provide, in a timely manner, the information and inputs required for achieving the targets and milestones of the CMS Strategic Plan.

8.11 The proposed successor Strategic Plan for Migratory Species 2015-2023, in the version available at the time of writing (2<sup>nd</sup> draft, February 2014) does not develop this any further, simply indicating instead that all such operational issues will be addressed in a Companion Volume on Implementation, to be drawn up at a later date.

### **Minimum common principles**

8.12 There is no need to be overly prescriptive about the question of common principles. Agreements are designed to be autonomous instruments, and the larger, better established ones with functioning institutions will be able to devise monitoring and evaluation regimes that are adapted to their own particular needs.

8.13 It will, however, be helpful to all to have some degree of shared understanding of tested and emerging practices, a facility for useful knowledge-exchange, and the opportunity, where relevant, to pool or coordinate resources and take a common approach. Smaller Agreements with limited capacity will benefit in particular from guidance and support.

8.14 Consistent with this thinking, it will also be desirable to seek some degree of voluntary convergence and harmonization of principles across the CMS system, so that the global migratory species conservation agenda as a whole has sufficient coherence in this respect. Common information management standards, and minimum monitoring and reporting expectations, therefore have some role to play.

8.15 All Agreements, therefore, big and small, existing and proposed, might be encouraged to have a simple and easy-to-operate evaluation framework (if not already in place) which includes at least the following minimum ingredients:

- A statement or description of how monitoring, evaluation and reporting will operate in relation to the Agreement concerned;
- A definition of at least some key objectives that can be measured, along with a definition of the main measures that will be used for assessing progress towards the achievement of each objective;
- A distinction between (a) progress in implementing activities<sup>42</sup> and (b) progress in achieving (ecological) outcomes<sup>43</sup>; with at least one regularly-monitorable measure being defined for each of these;
- An ability to demonstrate some causal logic that enables outcomes to be attributed to Agreement-related activities (the results of this relationship then become a measure of the Agreement's effectiveness);

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<sup>42</sup> For example institutions maintained; programmes delivered; trends in growth of participation.

<sup>43</sup> For example trends in conservation status of target species, including threats.



- Methods for gathering and analysing information that are sufficiently complete, consistent, transparent and trustworthy for the purpose;
  - A commitment to generating information periodically and in a timely manner both for the Agreement's own governance processes and for relevant syntheses at a CMS-wide level;
  - An effort to relate monitoring and evaluation findings to strategic goals and targets adopted by the CMS (e.g. in the Strategic Plan for Migratory Species), as well as to the Agreement's own objectives.
- 8.16 It may often prove helpful to use a tool such as logical framework (logframe) analysis to help in organizing the rationale for a given monitoring and evaluation regime. This can be as simple as a few lines (which will still help accountability and intellectual rigour) or it could be a more complex planning tool for a major multi-stranded programme<sup>44</sup>.
- 8.17 Assumptions about what constitutes "success" vary considerably. Ultimate results for CMS Agreements must of course relate to the conservation status of migratory species. While it is natural to want to evaluate an Agreement in the same way as one would evaluate a conservation programme, this can, however, downplay the function that multilateral cooperation frameworks also have in holding governments to observance of international standards, and creating a climate of mutuality that prevents new problems arising. Judging the success of Agreements in these terms may be less about how they drive forward new leading-edge achievements, and more about how they help to secure an improved minimum of universally-observed good practice.
- 8.18 Reporting makes progress (and obstacles) intelligible, and enhances accountability<sup>45</sup>. Effective reporting, however, does not end with this, but goes further in functioning as part of a dynamic feedback loop. Sharing among peers and scrutiny by governing and advisory bodies should therefore be designed in such a way as to facilitate learning of lessons (both positive and negative) and adaptation of future action in the light of findings, where necessary.

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<sup>44</sup> It might for example define and tabulate a scheme of goals, objectives, targets, activities, expected outputs, expected outcomes, indicators, milestones, sources of verification, risks, assumptions, and allocation of responsibilities. For a CMS agreement example, see the AEWA Strategic Plan 2009-2017 (annexed to AEWA MOP Resolution 4.7, 2008; available at <http://www.unep-aewa.org/en/meeting/4th-meeting-parties-aewa> ).

<sup>45</sup> An extensive treatment of reporting in the CMS context is given in the "Manual for the National Focal Points for CMS and its Instruments" (UNEP/CMS Secretariat and UNEP/AEWA Secretariat, 2013). Enhanced guidance on national reporting as it relates to monitoring and evaluation of agreements might usefully be integrated into a future updates of this Manual.

## ANNEX 2

## DRAFT RESOLUTION

## CRITERIA FOR ASSESSING PROPOSALS FOR NEW AGREEMENTS

*Recalling* that Article IV of the Convention provides for the conclusion of agreements for migratory species and for AGREEMENTS for species listed in Appendix II of the Convention, in particular for those in an unfavourable conservation status;

*Noting* that colloquially, and in this Resolution, the term “Agreements” is used to refer in a generic sense to AGREEMENTS, agreements and Memoranda of Understanding as the context may require;

*Recognizing* that the development and servicing of Agreements are subject to the availability of resources, *welcoming* the Secretariat’s sustained efforts pursuant to Resolutions 7.7, 8.5, 9.2 and 10.16 to foster partnerships with governments and relevant organizations to support the operation of Agreements under the Convention, and *further welcoming* with gratitude the generous support of this kind provided to date by numerous governments and organizations, including the financial and in-kind contributions noted in document UNEP/CMS/COP11/Doc.14.4;

*Recalling* that paragraph 41 of the CMS Strategic Plan 2006-2014 recommended a number of measures for ensuring that Agreements use similar systems for planning and reporting their work, in order to ensure that they are strategically aligned with the Convention;

*Further recalling* that in Resolution 10.16 the Parties decided on a number of considerations which must be addressed when making proposals for new Agreements, including provision for a proposal to be considered as no longer under development after a period in which no clear expression of interest or offer to lead has materialized, and instructed the Secretariat to develop for consideration and adoption at the present meeting a policy approach to the development, resourcing and servicing of Agreements in the context of Resolution 10.9 on Future structure and strategies of the CMS and the CMS Family;

*Further recalling* Resolution 10.9 in which the Parties *inter alia* adopted a list of activities for implementation in 2012-2014, including an assessment of CMS Memoranda of Understanding and their viability (activity 16.3), creation of criteria against which to assess proposals for new Agreements (activity 12.3) and development of a policy where implementation monitoring must be a part of any future MoUs (activity 12.5);

*Taking note* of the report provided by the Secretariat in document UNEP/CMS/COP11/Doc22.3 on an assessment of the CMS MoUs and their viability; and

*Taking note also* of the report provided by the Secretariat in document UNEP/CMS/COP11/Doc.22.2 on a policy approach to developing, resourcing and servicing CMS Agreements, and *thanking* the Government of Germany for its generous financial support for this work;

*The Conference of the Parties to the  
Convention on the Conservation of Migratory Species of Wild Animals*

1. *Instructs* the Secretariat and the Scientific Council, *urges* Parties, and *invites* other relevant stakeholders to apply the criteria annexed to this Resolution in developing and evaluating proposals for future Agreements;
2. *Urges* all Range States of existing Agreements under the Convention that have not yet done so to sign, ratify or accede as appropriate to those Agreements and to take an active part in their implementation;
3. *Invites* Parties, other governments and interested organizations to provide voluntary financial and other support where possible for the effective operation of Agreements under the Convention;
4. *Requests* the Secretariat to continue its efforts to seek partnerships with governments and relevant organizations to support and enhance the effective operation of Agreements under the Convention; and
5. *Repeals* paragraphs 5 and 6 of Resolution 10.16.

## CRITERIA FOR ASSESSING PROPOSALS FOR NEW AGREEMENTS

The core of the suggested approach to developing Agreements is a method for systematically assessing the opportunities, risks, appropriateness and relative priority of any new proposal to develop an Agreement. This involves testing such proposals against a set of criteria. 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 criteria, this would add details of lead individuals, budget estimates and other associated details.

The criteria below are a summary of those proposed in the report “Developing, resourcing and servicing CMS Agreements - a policy approach” (UNEP/CMS/COP11/Doc.22.2)<sup>46</sup>. Further advice on issues to address in relation to each criterion is given in that report.

The criteria can be applied with some flexibility, given the diversity of forms that CMS Agreements can take and the variety of situations they address. In principle, however, the more objective and transparent the substantiation of the different issues that can be provided in support of a proposal, the more likely it is to succeed.

Some criteria might function as an absolute standard for judging whether a given proposal is deserving on its own merits (e.g. criterion (iii) on clear purpose, and criterion (ix) on prospects for leadership); while other criteria might be used in a more relative way to compare two or more proposals that are competing for priority. In all cases the information compiled should, as far as possible, provide a balanced assessment of the benefits and risks associated with each issue, rather than being seen solely as a tool for persuasion.

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

*Proposals should specify the severity of conservation need, for example in relation to the degree of species endangerment or unfavourable conservation status as defined under the Convention, and the urgency with which a particular kind of international cooperation is required. Links to migration issues and confidence in the underlying science may also need to be described.*

### **(ii) Serving a specific existing COP mandate**

*Proposals should specify how they respond to any specifically relevant objectives expressed in CMS strategies and other decisions of the Parties.*

### **(iii) Clear and specific defined purpose**

*Proposals should specify intended conservation outcomes, and should in particular make clear the way in which the target species is/are intended to benefit from international cooperation. The more specific, realistic and measurable the purpose is the better. Proposals should also have regard (as appropriate) to CMS Article V.*

<sup>46</sup> Many of the questions addressed by these criteria are also valid questions to ask of Agreements that are already in existence, for example when assessing their continuing viability.

**(iv) Absence of better remedies outside the CMS system**

*Proposals should compare the option of a CMS Agreement with alternative options outside the Convention's mechanisms, and explain why a CMS Agreement is the best method of meeting the defined conservation need.*

**(v) Absence of better remedies inside the CMS system**

*Proposals should compare the option of a CMS Agreement with alternative options available under the Convention (such as "concerted actions", international species action plans and other cooperation initiatives), and explain why a CMS Agreement is the best method of meeting the defined conservation need.*

**(vi) If a CMS instrument is best, extending an existing one is not feasible**

*Proposals should demonstrate compelling reasons why a solution cannot be found by taxonomically or geographically extending an existing Agreement.*

**(vii) Prospects for funding**

*Proposals should demonstrate that there are meaningful prospects for funding. The proposal does not necessarily need to demonstrate that full funding is in place before the proposal can be approved, but it should provide an assessment (and assurances) about likely funding. It will be helpful to include an indicative budget, estimate the minimum levels of funding required to launch the Agreement, and describe the degree to which the funding plan is considered to be sustainable.*

**(viii) Synergies and cost effectiveness**

*Proposals should specify any opportunities for the proposed Agreement to link with other initiatives in such a way that the value of both/all of them is enhanced (for example through economies of scale, new possibilities arising from a combination of efforts that would not arise otherwise, etc). Opportunities may also include catalytic effects and associated (secondary) benefits. 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.*

**(ix) Prospects for leadership in developing the Agreement**

*Proposals should demonstrate that there are meaningful prospects for leadership of the development process, for example by a country government or other body making firm offers to lead the negotiation process, host meetings and coordinate fundraising.*

**(x) Prospects for coordination of the Agreement's implementation**

*Proposals should demonstrate that there are meaningful prospects for coordination of the Agreement's implementation on an on-going basis after its adoption (for example the hosting of a secretariat, organization of meetings and management of projects).*

**(xi) Feasibility in other respects**

*Proposals should address all other significant issues of practical feasibility for launching and operating the Agreement (for example political stability or diplomatic barriers to cooperation).*

**(xii) Likelihood of success**

*In addition to evaluating the likelihood that a proposed Agreement will be implementable (criteria (vii), (x) and (xi) above), proposals should evaluate the likelihood that its implementation will lead to the intended outcome. Risk factors to consider include: uncertainty about the ecological effects; lack of a “legacy mechanism” by which results can be sustained; and activities by others that may undermine or negate the results of the Agreement.*

**(xiii) Magnitude of likely impact**

*In order to prioritize proposals that may be equal in other respects, proposals should provide information on the number of species, number of countries or extent of area that will benefit; the scope for catalytic and “multiplier” effects; and any other aspects of the overall scale of impact.*

**(xiv) Provision for monitoring and evaluation**

*Proposals should specify the way(s) in which achievement of the purposes defined under criterion (iii) above is to be measured and reported on. Good practice in this regard involves creating a simple and easy-to-operate evaluation framework including at least the following minimum ingredients:*

- *A statement or description of how monitoring, evaluation and reporting will operate in relation to the Agreement concerned;*
- *A definition of at least some key objectives that can be measured, along with a definition of the main measures that will be used for assessing progress towards the achievement of each objective;*
- *A distinction between (a) progress in implementing activities<sup>47</sup> and (b) progress in achieving (ecological) outcomes<sup>48</sup>; with at least one regularly-monitorable measure being defined for each of these;*
- *An ability to demonstrate some causal logic that enables outcomes to be attributed to Agreement-related activities (the results of this relationship then become a measure of the Agreement’s effectiveness);*
- *Methods for gathering and analysing information that are sufficiently complete, consistent, transparent and trustworthy for the purpose;*
- *A commitment to generating information periodically and in a timely manner both for the Agreement’s own governance processes and for relevant syntheses at a CMS-wide level;*
- *An effort to relate monitoring and evaluation findings to strategic goals and targets adopted by the CMS (e.g. in the [Strategic Plan for Migratory Species]), as well as to the Agreement’s own objectives.*

<sup>47</sup> For example institutions maintained; programmes delivered; trends in growth of participation.

<sup>48</sup> For example trends in conservation status of target species, including threats.