

**SUMMARY OF THE TECHNICAL MEETING FOR THE ELABORATION OF A CONSERVATION AND MANAGEMENT PLAN FOR MIGRATORY SHARKS AND THE THIRD MEETING ON INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER THE CONVENTION ON MIGRATORY SPECIES AND WILD ANIMALS: 8-12 FEBRUARY 2010**

The third meeting on International Cooperation on Migratory Sharks (SHARKS III) under the Convention on Migratory Species and Wild Animals (CMS) convened from 10-12 February 2010 in Manila, the Philippines, and was preceded by the Technical Meeting for the Elaboration of a Conservation and Management Plan for Migratory Sharks from 8-9 February. The goal of SHARKS III was to consider and review the draft text of a non-legally binding Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks under CMS, and adopt the MoU with the view to open it for signature by the end of the meeting. The goal of the Technical Meeting was to consider and further elaborate the draft conservation and management plan (CMP) and reach consensus on a revised version to be transmitted to SHARKS III for consideration and endorsement.

Most delegates were pleased with the outcomes of the two meetings, a non-legally binding MoU on the Conservation of Migratory Sharks and a clear procedure for completing work on the CMP (which was renamed the Conservation Plan during SHARKS III discussions). A number of delegates said the most significant barrier to completion of the MoU that was resolved at SHARKS III was on the number of species to be considered. Through informal consultations, delegates agreed that all seven shark species currently in Appendix I and II of the CMS (Basking Shark, Great White Shark, Whale Shark, Spiny Dogfish Shark, Porbeagle Shark, and Shortfin and Longfin Mako Sharks) would be considered under the MoU, but that this does not establish a precedent for automatic inclusion of species into the MoU in the future.

One delegate underscored the significance of the MoU, saying, “We are entering uncharted waters for the CMS, by developing an MoU that both addresses commercially harvested species and is open-ended with respect to the number of species concerned.” Participants celebrated the completion of three years of work with ten delegations signing the MoU and thus allowing the MoU to commence on 1 March 2010. After signing the MoU, one delegate commented, “Now the real challenge begins, that of making the migratory shark conservation goals of this MoU a reality.”

**A BRIEF HISTORY OF CMS AND MIGRATORY SHARKS CONSERVATION**

A significant proportion of threatened shark species are migratory, some of them undertaking large-scale movements across and around ocean basins. These extensive migrations mean that conservation efforts in one state can be undermined by actions in the waters of other states or on the high seas. Such species, therefore, require conservation and management actions across their entire range. While a number of international instruments contain provisions for the conservation and management of migratory sharks, they have generally failed to deliver practical improvements in the conservation status of the species, and vulnerable populations are continuing to

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decline. A few regional fisheries management organizations (RFMOs) and other international organizations, as well as some regional instruments, such as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, also address migratory sharks.

This Brief History outlines the efforts made under the auspices of CMS and other relevant processes to address migratory sharks conservation.

**CMS:** This Convention was concluded in 1979 in an effort to address the vulnerability of migratory species. It entered into force on 1 November 1983. CMS, also known as the Bonn Convention, recognizes that states must protect migratory species that live within or pass through their national jurisdiction, and aims to conserve terrestrial, marine and avian migratory species throughout their ranges. CMS currently has 113 parties.

The Convention was designed as a framework through which parties may act to conserve migratory species and their habitats by: adopting strict protection measures for migratory species that have been characterized as being in danger of extinction throughout all or a significant portion of their ranges (species listed in Appendix I of the Convention); concluding agreements for the conservation and management of migratory species that have an unfavorable conservation status or would benefit significantly from international cooperation (species listed in Appendix II); and joint research and monitoring activities. At present, over 100 migratory species are listed in Appendix I.

CMS also provides for the development of specialized regional agreements for Appendix II species. By January 2010, seven legally binding agreements and seventeen MoUs had been concluded. The agreements and MoUs are open for signature to all range states of a particular species, regardless of whether they are a party to the Convention.

**CMS COP 6:** CMS effectuated its first shark listing at its sixth meeting of the Conference of the Parties (COP 6) (4-16 November 1999, Cape Town, South Africa), where resolutions were adopted on, *inter alia*: institutional arrangements; by-catch; and concerted actions for Appendix I species. Seven species were added to Appendix I and 31 species to Appendix II, including the Whale Shark. Recommendations were approved on cooperative actions for various Appendix II species, including the Whale Shark.

**CMS COP 7:** The seventh meeting of the COP (18-24 September 2002, Bonn, Germany) added 20 species to Appendix I and 21 to Appendix II, with three whale species and the White Shark listed on both. COP 7 also adopted a resolution on by-catch.

**CMS COP 8:** The eighth meeting of the COP (20-25 November 2005, Nairobi, Kenya) adopted resolutions on, *inter alia*: the CMS strategic plan, including a paragraph stating that CMS should, where appropriate, cooperate with the UN Convention on the Law of the Sea (UNCLOS) with respect to highly migratory marine species; cross-cutting issues, including climate change and by-catch; and the implementation of existing agreements and development of future agreements, including on migratory sharks.

In particular, Resolution 8.5 endorses the development of a global instrument on migratory sharks, under the auspices of the CMS, and urges cooperative action through a species-

specific action plan. In Recommendation 8.16, the COP, *inter alia*: requests all parties to strengthen measures to protect migratory shark species against threatening processes; calls upon range states of CMS-listed migratory sharks to develop a global migratory sharks conservation instrument in accordance with CMS; and requests the Secretariat to explore avenues for cooperation with the UN Food and Agriculture Organization (FAO) and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) and relevant range states leading to enhanced protection, conservation and management of sharks. The COP also agreed to include the Basking Shark in Appendices I and II.

**SHARKS I:** The first meeting on International Cooperation on Migratory Sharks under the CMS (SHARKS I) (11-13 December 2007, Mahé, Seychelles) was convened to identify and elaborate an option for international cooperation on migratory sharks under CMS. Participants elaborated several options for such an instrument and prepared a general statement on the purpose and process of the meeting and a statement on the outcomes of the meeting to guide the future work on the process. Participants welcomed the emerging convergence towards either a global legally binding or non-legally binding instrument, supported the involvement of existing regional and intergovernmental organizations in the future governance arrangements for sharks and agreed on key elements for the instrument. An Intersessional Steering Group on Migratory Sharks to advance the work was established, with the expectation of finalizing the instrument at CMS COP 9.

**CMS COP 9:** The ninth meeting of the COP (1-5 December 2008, Rome, Italy), in its resolution on priorities for CMS agreements (Resolution 9.2), *inter alia*: encourages the Secretariat to continue exploring partnerships with interested organizations specialized in the conservation and management of migratory species; urges range states to ensure the definite conclusion and entry into effect of an instrument on sharks; and lists the Shortfin and Longfin Mako Sharks, Porbeagle Shark and the northern hemisphere population of the Spiny Dogfish on Appendix II.

**SHARKS II:** The goal of the second meeting on International Cooperation on Migratory Sharks under the CMS (SHARKS II) (6-8 December 2008, Rome, Italy) was to reach agreement on whether the instrument to guide the management of migratory sharks would be legally binding or not. SHARKS II agreed that the instrument should be non-legally binding in the form of an MoU for migratory shark conservation. Participants revised the proposed draft MoU and informally considered draft elements for the plan of action to be developed by an Intersessional Drafting Group, with the expectation that both documents would be finalized and adopted at SHARKS III. Among the meeting's most contentious issues was whether to limit the MoU's scope to the Basking, Great White and Whale Sharks or to also include the Spiny Dogfish, Porbeagle and Shortfin and Longfin Mako Sharks that were listed on the CMS Appendices at COP 9.

#### **OTHER RELEVANT INITIATIVES**

**UNCLOS:** This Convention, which was adopted in 1982 and entered into force in 1994, is one of the main legal frameworks for the conservation and management of marine resources. It grants coastal states rights and responsibilities for the

management and use of fishery resources within their national jurisdictions and provides for the establishment of exclusive economic zones. With respect to the high seas, UNCLOS recognizes free access and freedom of fishing to all states, and calls upon these, and especially fishing states, to cooperate in the conservation and management of fishery resources occurring in the high seas. UNCLOS Annex I (highly migratory species) lists over 50 migratory shark species. Under UNCLOS, coastal states are also required to consider the effects of fishing on associated and dependent species, which is directly relevant to shark by-catch.

**UNFSA:** The Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, also known as the UN Fish Stocks Agreement (UNFSA), was adopted in 1995 and entered into force in 2001. This agreement amplifies and facilitates the implementation of UNCLOS provisions relating to the conservation and management of these categories of fish stocks in the high seas. It sets out detailed mechanisms for cooperation between coastal and fishing states, including the establishment of regional fisheries arrangements or organizations.

**IPOA-Sharks:** Adopted in 1999, FAO's International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) was designed in the context of the voluntary FAO Code of Conduct for Responsible Fisheries. It highlights actions required for the management and conservation of sharks to ensure their long-term sustainable use. The IPOA-Sharks calls upon all states to produce a Shark Assessment Report and, if they have shark fisheries, to develop and implement national plans of action, which identify the research, monitoring and management needs for all *Chondrichthyan* fishes that occur in their waters. In implementing IPOA-Sharks, states are also urged to ensure effective conservation and management of sharks that are transboundary, straddling, highly migratory and high-seas stocks. Building on IPOA-Sharks and the recommendations of the CITES Intersessional Shark Working Group, FAO, in November 2008, held a Technical Workshop on the "Status, limitations and opportunities for improving the monitoring of shark fisheries and trade."

**CITES COP 14:** This Convention entered into force in 1975 and constitutes the international legal framework for the prevention of trade in endangered species of wild fauna and for the regulation of international trade in other vulnerable species. The Basking, Whale and White Sharks are listed on CITES Appendix II (species requiring control measures). Under Resolution 12.6 (conservation and management of sharks), CITES maintains an active involvement in shark conservation measures.

CITES COP 14, held in June 2007, agreed to list Sawfish on its Appendix I (vulnerable species that may only be traded under exceptional circumstances), but rejected proposals to list Porbeagle and Spiny Dogfish Sharks on Appendix II and to impose trade measures. However, a wider range of species was expected to be discussed as a result of the work of the CITES Animals Committee's Intersessional Shark Working Group and a document submitted by Australia.

**CITES AC 23:** The 23rd meeting of the CITES Animals Committee (AC) (19-23 April 2008, Geneva, Switzerland) considered the implementation of the IPOA-Sharks, future action to be taken with respect to the management and conservation of sharks if their status does not change, and the illegal, unreported and unregulated (IUU) fishing and international trade in shark products.

Concerning IPOA-Sharks, the meeting underscored the need for detailed international trade data on shark products to assist with shark fisheries monitoring and assessments, and recommended that: the Secretariat monitor the World Customs Organization discussions on the development of a customs data model and the inclusion therein of a data field to report trade at a species level, and notify parties of the existence of these discussions and significant developments; the Secretariat identify and assess options for developing a more universal tracking system; and parties develop and utilize customs codes for shark fin products that distinguish between dried, wet, processed and unprocessed fins.

On the management and conservation of shark species of concern, the Committee requested the US to head the work of an intersessional group on the issue of sharks and stingrays, and prepare a paper for discussion at AC 24, highlighting progress made and priorities for future actions for species of concern.

**CITES AC 24:** The 24th meeting of the CITES Animals Committee (20-24 April 2009, Geneva, Switzerland) established a working group on sharks and stingrays. Australia presented a document on linkages between international trade in shark fins and meat and IUU fishing, including the outcomes of the FAO Technical Workshop. It noted that illegal shark fishing is occurring globally, most illegal fishing of sharks is carried out in national waters by both foreign and national vessels, most of the identified illegal fishing involves the retention of fins, and most of the reported instances and estimates of IUU shark fishing do not specify the species of sharks taken.

The AC recommended that, *inter alia*: parties improve data collection, management and conservation via, *inter alia*, domestic, bilateral and RFMO measures; possible future actions for the AC may include, refinement of the list of species of concern; parties continue research to improve understanding of the situation of IUU; and parties that are shark fishing states develop national shark plans at the earliest opportunity and take steps to improve research and data collection on both fisheries and trade.

### **REPORT OF THE TECHNICAL MEETING FOR THE ELABORATION OF A CONSERVATION AND MANAGEMENT PLAN FOR MIGRATORY SHARKS**

On Monday morning, 8 February 2010, CMS Executive Secretary Elizabeth Mrema opened the Technical Meeting for the Elaboration of a Conservation and Management Plan (CMP) for Migratory Sharks. She noted the goal of the meeting to finalize the CMP to feed into the third meeting on International Cooperation on Migratory Sharks under the CMS (SHARKS III).

**ORGANIZATIONAL MATTERS:** Delegates elected David Hogan (US) as Chair and Stephen Manegene (Kenya) as Vice Chair of the meeting. Delegates agreed to use the rules of procedure established under SHARKS II (UNEP/CMS/MS2/Doc.6), noting that decisions are made by consensus.

On the agenda (UNEP/CMS/TMMS/Doc.1) and meeting schedule, Argentina expressed a preference that no working groups meet in parallel. Chair Hogan noted the intention to work primarily in plenary and delegates adopted the agenda.

#### **UPDATE ON THE CONSERVATION STATUS OF MIGRATORY SHARKS**

Sarah Fowler, International Union for Conservation of Nature (IUCN), presented an update on the conservation status of migratory sharks. She reported that 17% of the 1044 species on the IUCN Red List Shark Specialist Group Assessment in 2010 are threatened, noting the highest rate of threat was to pelagic, mostly migratory shark species. She reported that according to FAO over 40% of migratory shark species are over-exploited and 15% are depleted. She said sharks are the most threatened of all taxonomic groups and highlighted the lack of data on impacts of climate change on sharks. In the ensuing discussion, one delegate noted that the use of by-catch should be considered as sound use rather than detrimental and another questioned the lack of reported threat of by-catch on freshwater species. Fowler noted that by-catch release reduces mortality rates and acknowledged the need to reassess the freshwater by-catch data.

#### **REVIEW, FURTHER ELABORATION AND FINALIZATION OF THE DRAFT CONSERVATION AND MANAGEMENT PLAN FOR MIGRATORY SHARKS**

On Monday, Chair Hogan presented the draft CMP (UNEP/CMS/TMMS/Doc.3), noting that it lists possible actions that may be considered by signatories. He highlighted its non-legally binding status. Spain, for the European Union (EU), expressed readiness to contribute to the elaboration of the draft CMP and stressed the importance of reaching agreement on the objectives and activities. Norway noted that the targets set out in the CMP are financially ambitious. He stressed a need to focus on the value added by CMS shark work and, with Colombia, called for coordination with other bodies and mechanisms.

Argentina highlighted that the CMP should stimulate concrete actions. Mauritius noted the need to consider the situations of developing countries and countries that do not have national shark fisheries. Chair Hogan suggested the non-binding status of the CMP provides the opportunity to broaden its content and that the CMP should include flexibility to address the differing priorities of signatories.

Chair Hogan, supported by Australia, the US, the UK and the EU, suggested developing preambular text highlighting that the CMP is non-legally binding. The US and Guinea suggested including text in the preamble on collaboration with other organizations. Australia called for prioritization of actions in the CMP, with Chair Hogan noting that priorities vary among nations and regions.

On Tuesday, Chair Hogan reiterated that the document is non-binding and that overly prescriptive language will be revised. Recognizing the limited time for negotiations, Chair Hogan suggested that a revised draft CMP might be considered on the

margins of SHARKS III, noting that some delegations may be hesitant to sign the Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks under CMS before the CMP is finalized.

**PREAMBLE:** On Tuesday, Chair Hogan introduced preambular language for the CMP stating that the actions described in the CMP are non-binding and are included for the consideration of the signatories in developing, promoting or adopting measures or programmes aimed at achieving the objectives of the MoU. The US requested broadening the scope of cooperation by including a reference to other stakeholders. Cameroon proposed including a reference to cooperation with FAO. The European Commission (EC) introduced a reference to regional seas conventions. Croatia stressed the need to provide a framework to ensure that signatories move in the same direction when they implement the CMP. The UK and the EU emphasized that the CMP preamble must be consistent with the draft MoU's annex on conservation and management measures and noted that this provides that signatories should strive to adopt required measures. They also argued for the replacement of "may" in the CMP with "should," which entails a stronger commitment.

**RESEARCH, MONITORING AND INFORMATION EXCHANGE:** On Monday, Norway and Colombia noted that it would be too time-consuming to establish indicators to assess progress towards national and/or regional targets. The UK proposed combining three paragraphs on long-term monitoring, characterizing priority shark populations and reviewing research and monitoring activities. The EU, opposed by Colombia and Senegal, suggested deleting a paragraph on traditional ecological knowledge, while the US proposed moving it to the chapeau. Australia proposed prioritizing: baseline studies; collection of relevant data; identification of vulnerable or threatened shark populations; and studies on shark population dynamics and survival rates. The UK stated that the provisional annex on conservation and management measures within the draft MoU is the key document where signatories should prioritize actions. Cameroon noted that various initiatives relevant to the CMP may currently exist and that their consideration needs to be incorporated into the CMP.

Chair Hogan noted suggestions to link paragraphs on information exchange and collaborative research and monitoring. Norway and Argentina requested clarification on who would bear responsibility for coordinating collaborations and exchanges. The Democratic Republic of Congo (DRC) emphasized that standardization should be considered in research and monitoring. The Inter-American Tropical Tuna Commission (IATTC) stated that regional fisheries management organisations (RFMOs) had not adequately covered transnational pelagic and deep sea fisheries and noted that CMS could fill this gap.

**REDUCING DIRECT AND INCIDENTAL FISHERIES RELATED CAUSES OF SHARK MORTALITY:** On Monday, the EC noted that some shark fisheries are legal and, supported by DRC, said "regulation" is preferable to "reduction." The UK called for "sustainable levels" to be included in the objective. The US suggested the objective read, "ensure direct and incidental fisheries of sharks are sustainable."

The EC, opposed by Mauritius, highlighted the need to specify the concept of unwanted by-catch, as opposed to by-catch that is used opportunistically. Australia, opposed by the US, proposed a paragraph on recording the magnitude of shark by-catch mortality be incorporated into an article on the identification and assessment of threats. Togo noted that the primary tools to reduce by-catch are legislation and regulation. IATTC highlighted that only catch that is discarded dead counts towards shark by-catch mortality estimates. He said that if sharks are caught and used, regardless of whether it is incidental, then it is considered a shark fishery, rather than by-catch. The UK suggested a paragraph on seasonal closure of areas. On incidental capture mitigation mechanisms, IATTC suggested highlighting release methods that improve survival.

On best practice approaches to minimize threats and manage direct harvest, Chair Hogan noted the need to reorganize and link paragraphs to improve comprehension of the article. Norway suggested the deletion of text referring to onboard observers due to the expense of observers. He preferred enhancement of port control measures. IATTC remarked that monitoring port landings alone underestimates juvenile harvesting and suggested the need for targeted research projects, observer or electronic monitoring, and systematic collection of landing information. Norway suggested that financial matters should not be discussed in the article on best practice. A number of parties requested clarification of text on minimization of plastics in fishing operations to better reflect a focus on discarded fishing gear.

On economic incentives that threaten sharks, IATTC recommended that alternative livelihood options for communities be incorporated in the article. Norway and Chile noted the phrase “subsidies that contribute to illegal, unreported and unregulated (IUU) shark fishing” was misleading as it implies subsidies exist to promote IUU. Liberia, supported by the Philippines and the UK, highlighted the need to differentiate between subsistence and trade fisheries. The Republic of Congo (Congo) proposed implementation of mechanisms to control IUU and Côte d’Ivoire recommended identifying the states responsible for IUU.

On closure management programmes, Australia and Malta noted overlap between a provision on identification of critical habitats and provisions on research and monitoring. The US and the UK offered to consolidate text on closure management programmes throughout the CMP.

On harvesting sharks solely for the purpose of finning, the EC noted that there is consensus that finning should be prohibited and proposed replacing the words “regulate and manage” with “prohibit.” This was opposed by Chile and Colombia. Côte d’Ivoire proposed promoting the sustainable use of sharks. IATTC stressed that non-sustainable fisheries do not alleviate poverty. Chair Hogan, supported by Norway, noted that signatories should encourage the release of live sharks when such release is feasible. Colombia added that sharks under species specific size limits should be released. Mauritius recalled a resolution of the Indian Ocean Tuna Commission (IOTC) requiring vessels not to have onboard fins that total more than 5% of the weight of sharks onboard. Chair Hogan noted that where there are no IOTC-like measures in place there may be a need to introduce them.

On Tuesday, Chair Hogan introduced revised text emphasizing actions to address finning. Argentina and Chile requested the chapeau on finning reflect the non-legally binding status of the CMP. The UK objected, noting that this was reflected in the preamble. The UK called for text on waste from shark capture to be placed in other sections on fisheries management.

**IMPROVING EFFECTIVENESS OF SCIENCE-BASED MANAGEMENT FOR ECOLOGICAL FACTORS:** On Monday, Chair Hogan noted the need to elaborate on the proposed incentives in the article on incentives for adequate protection of areas of critical habitats. Norway said that compensatory measures are national priorities and should be deleted from the text. The Philippines, supported by Cameroon, proposed text on environmental impact of marine and coastal development. Following comments by Norway on repetition in the text, Chair Hogan noted an opportunity to eliminate the entire objective by consolidating it into the objective on reducing direct and incidental fisheries-related causes of mortality.

**INCREASING PUBLIC AWARENESS OF THE THREATS TO SHARKS AND THEIR HABITATS:** On Monday, Norway stressed that establishing community learning/information centers specifically for sharks was too ambitious. On public education, awareness and information programmes, Chair Hogan proposed consolidation of paragraphs by focusing on the targeted audiences. Australia suggested moving a paragraph on the development of alternative livelihood opportunities for local communities to a provision on adverse economic incentives.

**ENHANCING NATIONAL, REGIONAL AND INTERNATIONAL COOPERATION:** On Monday, Chair Hogan highlighted overlap with CITES in the article on trade and shark products. ECOCEAN noted that not all shark species under CMS are presently under CITES and one delegate noted existing cooperation between CITES and CMS.

On Tuesday, Norway said the chapeau for the article on assisting states in the development of plans of action was overly ambitious, and should focus on “encouraging” states to develop and implement plans of action. ECOCEAN called for retention of “assistance upon request” in the chapeau. Argentina noted a lack of clarity on which organizations or states would be responsible for the assistance. Chair Hogan welcomed text to specify competencies, but noted that the preamble will contain a statement that actions may be taken individually or collectively. Norway highlighted the existing FAO Plan of Action template and suggested that the CMP may introduce text on helping to implement the FAO International Plan of Action on the Conservation and Management of Sharks (IPOA-Sharks) and national plans of action. Kenya suggested that states should identify opportunities for regional cooperation.

On enhancing mechanisms for cooperation and promoting information exchange, Argentina proposed specifying that efforts to identify and strengthen mechanisms for cooperation among coastal and fishing states, as well as relevant intergovernmental organizations and RFMOs, should be undertaken “as appropriate.” Mauritius emphasized port state measures as tools to combat IUU fishing. The EC stressed the need to add reference to regional seas conventions. The US proposed moving paragraphs on encouraging signatory states to become parties to the CMS and global fisheries agreements to the draft MoU.

Norway said the text was overly detailed and noted the need to avoid duplication of efforts, for instance on establishing a website, which has already been undertaken by the FAO.

The US provided consolidated text on capacity building and the Philippines offered to assist in additional redrafting of the article. Malta noted a lack of clarity on who should carry out capacity-building activities. Guinea called for inclusion of support for existing capacity-building efforts. Colombia highlighted the unique concerns of developing countries and New Zealand referred delegates to text in the draft MoU that addresses developing countries.

On strengthening and improving enforcement of conservation and management measures and legislation, Chair Hogan suggested that this article is unnecessary, since it refers to domestic policies that are driven by national priorities, and thus may be beyond the scope of the CMP.

**PROMOTING THE IMPLEMENTATION OF THE CMP AND MOU:** On Tuesday, Chair Hogan noted that several paragraphs under the objective of promoting implementation were redundant and repetitive. The EC underscored that references to making the MoU legally-binding should not be placed in the CMP. Humane Society International highlighted that deletion of reference to a legally-binding MoU does not exclude possibility of a legally-binding MoU in the future.

On an article concerning the promotion of the role of the MoU Secretariat and Advisory Committee of the MoU, Chair Hogan said most of the points had already been covered elsewhere and suggested its deletion. The US concurred, noting that establishing lines of communication between the MoU Secretariat and the Advisory Committee should be moved to the relevant article on communication.

Chair Hogan said that the paragraph on seeking resources to support the implementation of the MoU was redundant. The US suggested retention of a paragraph on use of economic instruments for conservation of sharks and their habitats in the action plan.

On improving coordination among governments and nongovernmental organizations (NGOs), Colombia, Chile and Argentina emphasized that the choice of lead agencies to coordinate national shark conservation and management policy was the choice of each signatory to the MoU and should be based on national competences. Chair Hogan thus recommended the deletion of this article.

He also suggested deleting the section on expanding the scope of the MoU. He noted that discussions on the relationship between the CMS and MoU concerning the listing of proposals for inclusion of new species were pending. Delegates considered deleting the entire objective.

#### **RELATIONSHIP BETWEEN THE CMP AND MOU**

On Tuesday afternoon in order to ensure harmonization between the two documents, Executive Secretary Mrema invited delegates to consider aspects of the MoU that address the CMP. The Secretariat explained that the draft MoU annex on conservation and management measures resulted from discussions following SHARKS II on the overly detailed description of the CMP within the MoU. Norway questioned the benefits of retaining the annex. The UK, supported by Argentina and the EU, called for reincorporation of the annex into the MoU

to give the MoU substantive content. The EC offered to redraft the section in the MoU on the CMP. Australia cautioned against repetition or contradictions between the CMP and the MoU in the redraft. Informal consultation took place with the view to providing a proposal on the modalities for reintegrating the annex into the section of the MoU on the CMP.

Presenting a redraft of the MoU text on the CMP, the EU described articles: on the objectives of the CMP; on actions signatories should take to reach the objectives; and on consideration of domestic capabilities and competencies. She noted the deletion of a paragraph on the Advisory Committee suggesting it is better placed elsewhere in the MoU.

Responding to Mauritius, the EU suggested a description of the CMP should be included in the MoU to provide a clear and simple document. Chair Hogan highlighted that a description of the CMP in the MoU may facilitate the completion of the MoU by the end of SHARKS III. Eritrea said there were redundancies between the objectives and actions. Chile noted that the headings of objectives in the MoU should be the same as in the CMP, while the EC and US suggested that the headings under the CMP could be more detailed. IUCN requested consistency in the terminology of the objectives with equivalent aims in the IPOA-Sharks.

Noting the number of outstanding issues to consider in the draft CMP, Chair Hogan called on delegates with concerns to consult informally on the margins of SHARKS III to reach consensus.

#### **STATE OF THE DRAFT CONSERVATION AND MANAGEMENT PLAN**

Delegates continued discussions on the draft CMP on the margins of SHARKS III. As a result of these discussions, on Thursday in SHARKS III plenary, a revised draft was presented, which SHARKS III delegates agreed to rename as the draft "Conservation Plan." The draft Conservation Plan incorporated a new preamble and revisions to each objective, including the deletion of the objective on promoting the implementation of the plan and MoU. Delegates to SHARKS III instructed the Intersessional Drafting Group under the Chairmanship of the US to continue its work and produce a revised draft incorporating the submissions received during the intersessional period. This revised draft will be transmitted the first Meeting of the Signatories of the MoU for adoption.

#### **REPORT OF SHARKS III**

On Wednesday, Theresa Mundita Lim, Department of Environment and Natural Resources, the Philippines, welcome participants to SHARKS III and expressed appreciation for the efforts towards concluding the CMP under the guidance of Chair Hogan. Manuel Gerochi, Under-Secretary, Department of Environment and Natural Resources, the Philippines, stressed the urgent need to conclude work on the MoU and to develop an effective CMP to save migratory sharks from the threat of extinction. Arthur Yap, Secretary, Department of Agriculture, the Philippines, stressed the importance of biodiversity for poverty reduction and food security and hoped the MoU would be finalized. Elizabeth Mrema, Executive Secretary

of CMS, highlighted that the CMP is expected to serve as an implementation tool for the MoU alongside existing instruments to promote concerted action on shark conservation.

France highlighted the impact of their national strategy for conservation of coastal marine biodiversity in national shark conservation and expressed support for proposals for shark species listings on the CITES' Appendices. Germany reaffirmed financial and institutional support for the CMS. The EU reaffirmed their commitment to shark conservation, citing the 2009 EU Fishing Council Regulation on the capture of specific shark species, including Porbeagle Shark. Sweden noted the importance of SHARKS III in enabling states to express their views, adding that there was a need for consideration of the variations in economic means of states for implementation of conservation and management actions. The Association of Southeast Asian Nations Centre for Biodiversity recognized the role of research in the sound conservation and management of sharks.

**ORGANIZATIONAL MATTERS:** On Wednesday, plenary appointed Theresa Mundita Lim (the Philippines) as Chair and Nigel Routh (Australia) as Vice-Chair. Oliver Schall (Germany), Gina Cuza Jones (Costa Rica) and Aboubacar Oulare (Guinea) were appointed to the Credentials Committee. Delegates adopted the rules of procedure (UNEP/CMS/MS3/Doc.3), noting that parties and non-parties can participate equally in the meeting and that decisions are made by consensus. Delegates adopted the agenda (UNEP/CMS/MS3/Doc.1), annotated agenda (UNEP/CMS/MS3/Doc.2), and the meeting schedule (UNEP/CMS/MS3/Doc.2.1). The Secretariat outlined the objectives of establishing a non-legally binding agreement on migratory sharks and finalizing the draft CMP. He said the provisional agenda provides for opening the MoU for signature.

On Friday, Credentials Committee Chair Oliver Schall presented the Committee's report, highlighting that Marco Barbieri (CMS Secretariat) served as its Rapporteur. He said a total of 39 instruments of credential were reviewed, of which 37 were found to be in order. He said 14 delegations' credentials permitted signature of the MoU, 23 contained no credentials for signature and two allowed for signature with reservation.

This section of the summary follows the meeting's agenda.

#### **DRAFT CONSERVATION AND MANAGEMENT PLAN FOR MIGRATORY SHARKS**

On Friday, Chair of the Technical Meeting David Hogan (US) introduced a revised draft of the CMP to the SHARKS III meeting, noting that SHARKS III had decided to change the title to "Conservation Plan" during the discussions on the MoU on Thursday (UNEP/CMS/MS3/Doc.5). He provided an overview of revisions to the draft Conservation Plan following the Technical Meeting.

Chair Hogan highlighted that delegates will not be able to conclude the Conservation Plan at this meeting and suggested preparing a revised document for consideration by the first Meeting of the Signatories. The EU stressed that the objectives of the Conservation Plan and the relevant provisions of the MoU should be consistent. Chair Hogan suggested acting on a redraft of the Conservation Plan in the interim period with active engagement of all delegations and he offered to coordinate the process.

Argentina noted the potential increase of delegations at future meetings and expressed concern about a structure where many of the participating countries may not participate as signatories. She questioned how these parties could engage in the event they are not signatories. Chair Hogan highlighted the benefits of having increased participation and noted that influence in decision-making may be challenging for participating non-signatories. He stressed that he would include comments from signatories and non-signatories in the revision of the Conservation Plan.

The EU submitted text specifying the procedure for the further elaboration of the Conservation Plan at the first Meeting of the Signatories. He proposed that the Conservation Plan be adopted at the first Meeting of the Signatories by both signatories and non-signatory range states and regional economic organizations. Chair Hogan suggested that this one-time exception to decision-making rules should not be included in the MoU, but that the encouragement of taking everyone's views in the development of the Conservation Plan could be reflected in the report of the meeting.

The UK noted the need to discuss the number of range-state signatories required before the MoU comes into effect. Delegates agreed that the MoU would commence on the first day of the month following the month on which there are at least 10 range states.

#### **GENERAL COMMENTS ON THE DRAFT MOU**

On Wednesday afternoon, the Secretariat introduced the third and most recent draft of the MoU (UNEP/CMS/MS3/Doc.4). He noted efforts to soften prescriptive language and reduce the amount of text in the MoU by moving text into provisional annexes. The EC expressed concern that the administrative, financial and procedural aspects of the MoU had not been discussed fully. Mauritius called for simplification of the MoU in order to facilitate efficient implementation. Argentina cautioned against misleading phrases in the text that would lead to misinterpretation and reluctance to sign.

**SPECIES CONSIDERED UNDER THE MOU:** On Wednesday, delegates discussed the taxonomic scope of the MoU. New Zealand, supported by Norway, Argentina, Chile and Ghana, proposed limiting the number of listed species to the Great White Shark, Basking Shark and Whale Shark, while allowing other species to be included later. New Zealand and Norway noted that, in order to simplify the MoU, it would be best to initially focus on the three species considered during SHARKS I. Ghana noted that a focus on three species would enable more countries to become signatories and facilitate the evolution towards a binding agreement.

The EC, Croatia, UK, Germany, Australia, Kenya, the Congo, Sweden, Senegal, and DRC supported the inclusion of the seven shark species currently in the CMS Appendices (Great White Shark, Basking Shark, Whale Shark, Porbeagle Shark, Shortfin and Longfin Mako Sharks and the northern hemisphere populations of the Spiny Dogfish). The US noted that this would provide robustness from the beginning for the inclusion of species of concern. The EC and Germany referred delegates to Article 4 of CMS, which requires international cooperation to reach agreements on migratory species with unfavorable conservation status. DRC remarked that retention of only three species would represent back-tracking on efforts to conserve

migratory species. The US and Colombia expressed flexibility on the inclusion of three or seven species, but a preference for seven.

Humane Society International and ECOCEAN expressed appreciation that several parties supported inclusion of all seven species and said it was an encouraging sign for the future expansion of species under the MoU. Chair Lim proposed establishing an open-ended working group chaired by Germany and assisted by Australia to elaborate a way forward.

On the procedure for expanding the taxonomic scope of the instrument, Argentina said the MoU should establish criteria for the future inclusion of species. Norway highlighted the need to provide clarity regarding the mechanism through which new species would be listed and the relationship between CMS listing and MoU listing. Australia noted the logic in automatic inclusion of shark species listed in the CMS Appendices into the MoU. The CMS Secretariat noted that none of the existing MoUs under the CMS have a mechanism for inclusion of species from CMS Appendices, with the exception of the MoU on the Conservation of Birds of Prey in Africa and Eurasia. The UK drew delegates' attention to the fact that the three species originally considered under the MoU discussions include both CMS Appendix I and Appendix II species.

**Working group on species:** On Friday, following informal consultations, Australia outlined consensus to include all seven sharks in Annex 1 of the MoU. He noted that this does not establish a precedent for automatic inclusion of species from the CMS Appendices into the MoU. Humane Society International asked for explanation as to why parties opted against automatic inclusion of species. Australia responded that this decision was reached by consensus and that the decision enabled signatories to the MoU the prerogative to choose species that are not listed on the CMS Appendices.

#### **MEMORANDUM OF UNDERSTANDING ON CONSERVATION OF MIGRATORY SHARKS**

**PREAMBLE:** On Thursday morning, Chair Lim invited delegates to review the preamble. The Secretariat noted that few changes had been made to the previous draft (UNEP/CMS/MS3/Doc.4). The preamble highlights: the vulnerability of sharks; existing initiatives for shark management and conservation including, CITES, IPOA-Sharks, the 2007 UN General Assembly Resolution on Sustainable Fisheries; the added value of an MoU under CMS; the aim to improve the conservation status of sharks under the CMS Appendices; and the possibility of including species not currently listed in the CMS Appendices.

Senegal requested, opposed by Norway and the US, the inclusion of a phrase recognizing the responsibility of CMS concerning migratory species. Senegal agreed to withdraw the proposal. Guinea, Senegal and the US discussed various options for clarifying the words "reinvigorating/consolidating of implementation actions." Chile suggested, and delegates agreed, on the phrase, "contribute to implementation actions." Chile, supported by DRC, suggested that "mortality rates" be edited to remove the words "rates" noting that these were continuous variables.

#### **SECTION 1 (SCOPE, DEFINITION AND**

**INTERPRETATION):** On Thursday morning, delegates began discussing the operational text of the draft MoU. This section

establishes the MoU as a non-legally binding instrument that applies to all migratory sharks in Annex 1. Delegates discussed definitions, and in the case of a lack of initial consensus, groups of states worked together to develop consensus definitions for Friday. The EU, opposed by Mauritius and the Philippines, suggested the term "Conservation Plan" in place of "Action Plan" or "Conservation and Management Plan." Norway recommended "Action Plan" noting it would be impossible to dissociate conservation from management. DRC, supported by Chile, noted that "Conservation and Management Plan" better reflects that the plan needs to consider all local realities of range states. Delegates reached consensus on "Conservation Plan," with the Seychelles noting that it will be necessary to specify in the preamble that the plan also includes management measures.

On the conditions to be met for sharks to qualify under favorable conservation status, the Secretariat clarified that the text under consideration is taken verbatim from the CMS Convention text. The UK proposed a new paragraph clarifying that any change to the definition is without prejudice to the legal obligations of signatories that are also Convention parties. The US, Chile and the UK provided a consensus definition, which diverges from the standard CMS definition on favorable conservation status, reflecting that "approaching historical population levels" is difficult when species are harvested commercially. They also highlighted the importance of maintaining managed shark populations.

On the definition of a national plan of action for the conservation and management of sharks, the EU proposed, and parties agreed, to delete such definition since there may be also regional plans of action, such as the Mediterranean Plan of Action. On the definition of RFMO, Argentina and the EU proposed a consensus definition based on FAO port state measures. Mauritius highlighted that IOTC is an independent body and not an intergovernmental body and would not be considered an RFMO. Argentina noted that the establishment of RFMOs are not the only approach to manage the high seas.

The EU, supported by Chile, proposed that "finning" means removing shark fins on any vessel, solely for the purpose of harvesting fins, where the remainder of the shark is discarded at sea. The US highlighted that finning could occur without being onboard a vessel and that specifying the reason for collection is unnecessary in the definition. The UK underscored that "remainder" is preferable to "carcass" because it includes living and dead sharks. Côte d'Ivoire called for linking the definition of "taking" to "shark finning." Delegates reached a general consensus on the definition for finning as, "removing any of the fins of a shark, including the tail, while at sea and discarding the remainder of the shark at sea."

The Secretariat proposed splitting the definition of signatory into "signatories" and "cooperating partners" to reflect their differing roles. He suggested that "signatory" be defined as a state or regional economic organization that is a signatory to the MoU, and that a "cooperating partner" means a non-range state, NGO or other entity that associates itself with the Convention. Norway and the EU highlighted existing text on non-range states, intergovernmental organizations and NGOs.



**SECTION 2 (OBJECTIVE):** In this section, delegates agreed that the objective of the MoU is “achieving and maintaining a favorable conservation status for migratory sharks.”

**SECTION 3 (FUNDAMENTAL PRINCIPLES):** This section addresses: the need for cooperation among governments, intergovernmental organizations, NGOs and other stakeholders; the role of states to take measures to improve the conservation status of sharks; the ecosystem and precautionary approach; and the establishment of other management plans consistent with the MoU. On Thursday, Mauritius, opposed by Norway, advocated addition of language on participation of stakeholders of the fisheries industry, including local communities. The US noted that local communities are not necessarily a subset of stakeholders in the fishing industry and independent references to local communities and fisheries industry were retained in the text.

**SECTION 4 (CONSERVATION PLAN):** The section establishes the objectives of conserving and managing migratory sharks and outlines conservation and management measures that may be taken to meet these objectives. These provide the framework for the draft Conservation Plan to be adopted and annexed to the MoU.

In the draft MoU presented on Wednesday (UNEP/CMS/MS3/Doc.4), conservation and management measures were included in a provisional annex. On Thursday evening, the EU presented its proposal to incorporate this annex into the MoU. He highlighted the goal of defining lines of action to be taken into account in the development of the Conservation Plan.

Norway suggested the separation of research and data collection capacity from compliance and enforcement capacity. Colombia requested to include reference to observer programmes. The Chair suggested returning to observer programmes if they are not adequately addressed in the draft conservation plan. New Zealand preferred less prescriptive language throughout the section. A number of delegates suggested restructuring and rephrasing the objectives of the Conservation Plan. The US noted that language in the MoU was different from agreed language in the Technical Meeting. Ghana called for consideration of decision-making capacity building. The EC requested revised text on shark finning in the objectives.

On Friday morning, the US, supported by the UK, provided a paragraph on the adoption of the draft Conservation Plan by signatories at the first Meeting of the Signatories by consensus. On cooperation for adoption and implementation of legal regulation measures, Argentina requested mentioning that implementation will be in cooperation with other relevant organizations in addition to FAO, RFMOs and regional seas conventions, as appropriate. New Zealand called for text reflecting that efforts should be subject to the availability of resources.

**SECTION 5 (IMPLEMENTATION, REPORTING AND FINANCING):** This section calls for: signatory focal points; national reports on the implementation; efforts of signatories to finance their own implementation and assist others; and the potential establishment of a fund to meet expenses of developing country participation.

On Thursday, the EU proposed a formulation on financing, stating “signatories will endeavor to finance from national and other sources the implementation in their territories of measures necessary for the conservation of migratory sharks, and that they will endeavor to assist each other in the implementation of financing of key points of the Conservation Plan.” The US and Norway noted the MoU also applies to activities beyond national jurisdiction and parties agreed to delete the reference to “their territories.” The US, Senegal, Seychelles, the Philippines and others noted that the EU proposal needed to incorporate some additional elements, with Mauritius adding reference to capacity building, technical assistance and training. Colombia proposed inserting reference to bilateral and multilateral support. The EU endorsed these amendments and a paragraph on the potential establishment of a fund to meet expenses related to the participation of developing countries to relevant meetings was eventually retained from the previous formulation. Norway expressed concern for the lack of clarity on reports on national activities.

**SECTION 6 (MEETING OF THE SIGNATORIES):** This section provides that the Meeting of the Signatories will be the decision-making body of the MoU and that decisions should be by consensus. It outlines the process for convening the first Meeting of the Signatories, establishing rules of procedure and initial participation. On Thursday, the EU introduced consolidated text, which says the first Meeting of the Signatories should take place as soon as possible after the MoU commences and highlights benefits of having Meetings of the Signatories alongside the CMS Conference of the Parties (COP). Responding to concerns from Argentina, the EU said they would make the language of the section reflect the MoU’s non-binding status. The US noted that linking meetings to the CMS COP would provide a limited time to respond to listing of species in CMS Appendices, and that it may limit the signatories’ ability to respond to crises. The Secretariat noted administrative challenges in organizing a COP and Meeting of the Signatories concurrently. Norway suggested having the first Meeting of the Signatories after two thirds of signatories have handed in national reports, or within three years.

Croatia called for the first Meeting of the Signatories to consider the rules of procedure for adding species to Annex 1 of the MoU. The US proposed to retain text referring to a provisional annex of the MoU on issues to be addressed at the Meetings of the Signatories. The EU preferred, and delegates agreed, to the deletion of this annex. The Seychelles highlighted the importance of considering who may attend meetings, while Cameroon noted that this is a matter of national prerogative.

**SECTION 7 (ADVISORY COMMITTEE):** This section describes the process for establishing an advisory committee. On Thursday, the EU proposed, and delegates accepted, text providing that the work of the committee be carried out primarily through electronic means. Argentina stressed the creation of this committee is contrary to the spirit of a non-binding MoU since it may create ex-post obligations for the signatories. The US said the advisory committee should not have the power to create such obligations. On the composition of the committee, Norway proposed the appointment of one expert per region. The

EU proposed alternative text, incorporating this suggestion on regional appointments and creating an annex on regions and their representation.

On a paragraph providing that the meeting of the advisory committee be held back-to-back with the Meeting of the Signatories, the EU, supported by New Zealand and Argentina, proposed deletion. Guinea and Chile preferred retention of the paragraph, noting virtual reunions should be complemented by face-to-face meetings to overcome limitations of countries with poor access to information technologies.

#### **SECTION 8 (ESTABLISHMENT OF A SECRETARIAT):**

This section contains the provisions on the establishment of an MoU Secretariat. On Thursday, the CMS Secretariat noted that in the initial draft under consideration (UNEP/CMS/MS3/Doc.4) the text on the function of the MoU Secretariat had been transferred to a provisional annex of the MoU and that the present text states that the Secretariat should be established at the first Meeting of the Signatories. The EU, supported by Germany, suggested that the CMS Secretariat act as the interim Secretariat for the MoU, and the annex be deleted. The US opposed deletion, noting that the annex provides guidelines for future discussions on the formation of the Secretariat during the Meeting of the Signatories. Delegates agreed that “a Secretariat should be established by the Meeting of the Signatories as soon as possible based in an appropriate organization or institution,” and the provisional annex was deleted.

#### **SECTION 9 (COOPERATION WITH OTHER BODIES):**

On Thursday, the Secretariat introduced this section of the MoU that addresses cooperation with other bodies, noting that this had been redrafted into a single paragraph since some elements had been covered in earlier sections. The EU expressed disappointment on the removal of a paragraph requiring the Secretariat to consult and cooperate with relevant organizations since it was vital that the MoU reflect willingness to cooperate with other Secretariats, such as CITES and the Convention on Biological Diversity.

**SECTION 10 (FINAL PROVISIONS):** This section provides that the MoU is open for signature by range states and regional economic integration organizations and that non-range states, intergovernmental and national NGOs may associate themselves as cooperating partners. It says the MoU will commence on the first day of the month following the month on which there are at least 10 range state signatures and that modifications to the MoU will be made by the Meeting of the Signatories and should be by consensus. On Thursday, delegates agreed that the MoU would be translated into English, French, German, Russian, Spanish, Arabic and Chinese. They decided the working language for the MoU would be English, Spanish and French. Delegates decided not to establish an authoritative version of the MoU.

**ANNEX 1 (SPECIES COVERED BY THE MOU AND THEIR RANGES):** Annex 1 presents the species covered by the MoU and their ranges. The Annex currently contains Whale Shark, Basking Shark, Great White Shark, Porbeagle Shark, Longfin and Shortfin Mako Sharks and northern populations of the Spiny Dogfish Shark. Amendments to Annex 1 will be determined by the Meeting of the Signatories by consensus.

**ANNEX 2 (MIGRATORY SHARKS CONSERVATION PLAN):** The draft Conservation Plan will be finalized at the first Meeting of the Signatories and will be annexed to the MoU.

**ANNEX 3 (MOU REGIONS AND ADVISORY COMMITTEE REPRESENTATION):** This annex provides for two representatives each from Africa, Asia, Europe, and South, Central America and the Caribbean, as well as one representative each from Oceania and North America. On Thursday evening, the US requested clarification on participation in the advisory committee for signatories not acting as a regional representatives, noting that a representative of a regional group may not have the same shark management priorities as other states in the region.

#### **INSTITUTIONAL AND FINANCIAL MATTERS**

On Friday afternoon, Executive Secretary Mrema said that in view of the general establishment of the Secretariat and advisory committee, institutional and financial matters would be addressed at the first Meeting of the Signatories.

#### **ADOPTION OF THE MOU**

On Friday afternoon, delegates re-examined the MoU paragraph-by-paragraph to ensure that all viewpoints were adequately represented. On implementing, reporting and financing (Section 5), Argentina accepted the paragraph on establishing a fund, but made a statement expressing concern with some potential aspects of the MoU that may create obligations, particularly the creation of bodies such as a fund. The UK proposed removing reference to a governing body. The US noted that there are no provisions for making contributions to a budget.

Under the Meeting of the Signatories (Section 6) and the use of prescriptive language, Norway supported the use of “shall.” The UK and US opposed citing the legal implications of shall. The UK proposed, and others agreed, that the Meeting of the Signatories “will be” the decision-making body of the MoU. In the section on final provisions (Section 10), Norway proposed that modifications to the MoU “will be” made by consensus. Delegates adopted the MoU at 4:14 pm.

#### **CLOSING PLENARY**

On Friday evening, Executive Secretary Mrema noted the work of the Technical Meeting. She said the work on the Conservation Plan would be completed at the first Meeting of the Signatories. On the SHARKS III meeting, Mrema highlighted the adoption of the MoU by delegates and underscored that the MoU would be operational on the month following the signatures of the states.

**OPENING OF THE MOU FOR SIGNATURE:** Chair Lim opened the MoU for signature. The Philippines, Senegal, Togo, United States, Congo, Costa Rica, Ghana, Guinea, Liberia and Palau signed the MoU. As a result, the MoU will commence on 1 March 2010. Chair Lim then closed SHARKS III at 6:47 pm.

#### **A BRIEF ANALYSIS OF THE MEETING**

Sharks are among the most threatened groups of marine species. Over the years, a number of international instruments and organizations have been directly or indirectly engaged in shark conservation and management, including: the United Nations Food and Agriculture Organization’s (FAO) International

Plan of Action for conservation of sharks (IPOA-Sharks); Regional Fisheries Management Organizations (RFMOs); the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES); the UN Convention on the Law of the Sea (UNCLOS); and regional seas conventions.

Despite these efforts, the increasing demand for fins and shark cartilage, sport fishing and by-catch have led to the depletion of shark stocks, which are 30% lower than two decades ago, and the lack of adequate conservation measures continues to drive several species close to extinction. Given the threats in particular facing the many sharks that migrate globally, therefore, a number of states came together in 2007 in the Seychelles at the first meeting on International Cooperation on Migratory Sharks (SHARKS I) under the Convention on the Conservation of Migratory Species and Wild Animals (CMS) in the recognition that shark conservation and management would benefit from the coordination of efforts of range states and other relevant stakeholders. These participants agreed on the need for an instrument on the conservation of migratory sharks. SHARKS II, in Rome, Italy, continued this work, agreeing to pursue a non-legally binding instrument, but failing to adopt a Memorandum of Understanding (MoU) primarily due to the controversies arising from the European Union's (EU) proposal to add four additional shark species to the initial three candidate species. As SHARKS III convened in Manila, the Philippines, delegates underscored the urgency of finalizing a Conservation Plan and completing the MoU.

This brief analysis considers the main achievements of SHARKS III with a focus on the two most critical issues in the negotiations, namely the elaboration of the draft Conservation Plan under the MoU and the taxonomic scope of the MoU (in terms of number of species covered). It describes the limitations of the process and concludes by highlighting the MoU's future role in migratory shark conservation.

### **REACHING CONSENSUS**

During the Technical Meeting for the Elaboration of a Conservation and Management Plan for Migratory Sharks, delegates for the first time had the opportunity to collectively consider a draft Conservation Plan (previously named the draft Conservation and Management Plan), which was developed by an open-ended intersessional drafting group under the chairmanship of the US. Delegates focused on streamlining the text, with one noting in the corridors, "I still want to see a better organization of the plan with aims, activities, and indicators spelled out." While remarkable progress was made on addressing potentially explosive issues, such as the prohibition of shark finning, onboard observers, and limiting fisheries-related mortality of sharks to sustainable levels, the meeting ended before delegates could finalize their work. Since most potential signatories expressed their discomfort with signing an instrument whose primary implementation tool (i.e. the Conservation Plan) could open a Pandora's Box, it was critically important for the MoU to establish clear parameters and limits on the further elaboration of the plan. As a result, many were pleased with the EU's proposed approach of reintegrating text on the Conservation Plan's objectives and potential activities from a provisional annex into the MoU. Furthermore, delegates

seemed confident that they could meet the goal of completing the Conservation Plan at the first Meeting of the Signatories, as long as participants engage actively in the process in the interim.

With the question of the non-legally binding status of the MoU settled at SHARKS II, the key issue for SHARKS III was to decide on the taxonomic scope of the instrument – i.e. the number of shark species to be covered and the mechanism for future inclusion of new species. Delegates arrived at the meeting divided on this issue. The majority of countries, including some who had changed their positions since SHARKS II, endorsed listing of all seven species under the MoU. Many of these proponents noted that all the proposed sharks are included in Appendix II of the CMS (migratory species with unfavorable conservation status), emphasizing that Article 4 of the CMS requires range states of Appendix II species to make efforts towards the conclusion of agreements to improve the conservation status of such species. On the other hand, some countries were reluctant to prioritize all seven species in the MoU, since they believed that this might be overly ambitious for a nascent agreement. Therefore, some opponents preferred to narrow the target of conservation efforts in order to ensure the MoU can be fully implemented. Others were concerned that the inclusion of all seven species would set a precedent for automatic listing of species in the MoU following their listing under CMS Appendices. Given that many of the world's over 1,000 species of sharks are migratory, many delegates were concerned about the implications of an open-ended process. This issue goes to the core of the relationship between the MoU and the CMS. Most Memoranda of Understanding under the CMS, with the exception of the MoU on Migratory Birds of Prey of Africa and Eurasia (the Raptors MoU), focus on a clearly defined set of species.

Eventually, following a change in position by New Zealand, and intensive consultations with a number of Latin American states, parties reached consensus on the inclusion of the seven proposed species, but only with assurance that there will be no automatic inclusion of other species.

This issue hints at the deeper concern of some delegates that future obligations might arise from this process as a consequence of future listing under CMS and/or CITES. Indeed, the non-legally binding status of the MoU was emphasized throughout the meeting whenever delegates expressed hesitation. These concerns have been addressed by providing for the complete independence of the MoU from the CMS in terms of taxonomic coverage. On the one hand, there will be no automatic inclusion into the MoU of species listed under CMS Appendices; on the other, MoU Signatories may also decide to include species, that are not listed in CMS Appendices. Another aspect that facilitated agreement was the MoU's emphasis on sustainable management rather than protection, with a strong focus on sustainable harvesting, especially in its draft Conservation Plan.

### **THE UNCHARTED SEAS OF MIGRATORY SHARK CONSERVATION**

With ten countries signing the MoU during the closing session of SHARKS III, and several expected to sign in the coming weeks and months, delegates were rightly proud of their achievements. However, while it appeared that no delegation was willing to be remembered for blocking consensus on the

expansion of the MoU coverage, some Latin American countries still considered the inclusion of the additional four species as a problem to the extent that they may not actually sign the MoU, and other countries were unwilling to sign until the Conservation Plan is finalized.

One delegate explained, “despite the merits of the MoU and Conservation Plan, regional and interregional agreements better meet our needs. Plus we are not convinced that the CMS is the appropriate forum to discuss commercially harvested species, particularly fisheries.” Indeed the long-term success of the MoU will require greater participation from RFMOs; the FAO; the largest consumers of shark, such as China, South Korea and Taiwan; and the operators of the largest fishing fleets, such as Japan. These stakeholders have for the most part preferred to watch this process from afar.

“While greater participation is key in the long run,” commented a long-time observer, “the main challenge now is establishing a functional Secretariat and convincing states to provide financial resources.” Many delegates highlighted that if the MoU proves to be effective, the momentum will encourage more countries and cooperating partners to sign or associate themselves with the MoU. Establishing this momentum will be critical to success given that the MoU is based on cooperation among states.

#### SETTING A COURSE

The MoU will commence on 1 March 2010, and its successful adoption represents the successful conclusion of more than three years of work. The adoption of an MoU for commercially harvested species is one of the most ambitious steps taken by CMS in its history.

While some have observed that FAO, UNCLOS and traditional fisheries organizations, such as RFMOs, may be reluctant to cooperate fully with the CMS on sharks, it is important to remember that each of these bodies is responsible to their member states. Therefore, it is up to the range states to demonstrate their commitment to the Sharks MoU by pushing for cooperation among intergovernmental organizations.

Many delegates will reunite in only a few weeks at the fifteenth Conference of the Parties of CITES, and see the success of SHARKS III as positive momentum for shark proposals under CITES. The majority of delegates prized the work undertaken during the week, noting the MoU adds great value to past initiatives on sharks by providing a platform for action between signatory range states and cooperative partners. As delegates departed Manila to return to their capitals or visit the whale sharks of the Philippines, most remarked on the spirit of good will and compromise throughout the two meetings. It is a continuation of this spirit of cooperation that will be required to meet the significant implementation challenges of the MoU. As the delegate from Sweden remarked, “a shared species migratory shark in both the Philippines and Sweden under this MoU may be the only direct biodiversity management relationship our countries have.” Thus, there is hope that this instrument will lead to valuable new collaborations on the conservation of migratory sharks.

## UPCOMING MEETINGS

### UNEP GOVERNING COUNCIL/GLOBAL MINISTERIAL ENVIRONMENT FORUM - 11TH SPECIAL SESSION:

The meeting will take place from 24-26 February 2010, in Bali, Indonesia, under the theme “Environment in the multilateral system.” For more information, contact: Jamil Ahmad, UNEP; tel: +254-20-7621-234; fax: +254-20-7624-489; e-mail: [jamil.ahmad@unep.org](mailto:jamil.ahmad@unep.org); internet: <http://www.unep.org/gc/gcss-xi/>

**CITES COP 15:** The fifteenth meeting of the Conference of Parties to the Convention on International Trade in Endangered Species (CITES) will take place from 13-25 March 2010, in Doha, Qatar. The meeting will be preceded and followed by the 59th and 60th meeting of the CITES Standing Committee. For more information, contact the CITES Secretariat: tel: +41-22-917-8139/40; fax: +41-22-797-3417; e-mail: [info@cites.org](mailto:info@cites.org); internet: <http://www.cites.org>

### THE MARINE ENVIRONMENT PROTECTION COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION - 60TH SESSION:

This meeting will be held from 22-26 March 2009, in London, UK and will cover topics, including the recycling of ships, harmful aquatic organisms in ballast water and prevention of air pollution from ships. For more information, contact: IMO Secretariat; tel: +44-207-735-7611; fax: +44-207-587-3210; e-mail: [info@imo.org](mailto:info@imo.org); internet: <http://www.imo.org>

### FIFTH GLOBAL CONFERENCE ON OCEANS,

**COASTS AND ISLANDS:** Convening under the themes of “Ensuring survival, preserving life, improving governance,” this meeting will take place from 3-7 May 2010, at UNESCO in Paris, France. It will provide an opportunity for all sectors involved in the oceans community to address policy issues affecting oceans at the global, regional and national levels. For more information, contact: Miriam Balgos, Global Forum Secretariat; tel: +1-302-831-8086; fax: +1-302-831-3668; e-mail: [mbalgos@udel.edu](mailto:mbalgos@udel.edu); internet: <http://www.globaloceans.org>

**GLOBAL TUNA CONFERENCE:** TUNA 2010 will be held from 20-22 May 2010, in Bangkok, Thailand. TUNA 2010 will bring together stakeholders of tuna fisheries industry to the latest developments in global and regional tuna industries. For more information, contact: tel: +603-20783466; fax: +603-20786804; e-mail: [infish@po.jaring.my](mailto:infish@po.jaring.my) or [infish@tm.net.my](mailto:infish@tm.net.my); internet: <http://www.tunatradeconference.com>

### THIRD INTERNATIONAL CONFERENCE ON DEBRIS

**FLOW:** This meeting is organized by Wessex Institute of Technology, UK and University of Milano and will be held on 24-26 May 2010, in Milan, Italy. This conference will provide a forum for scientists, technologists and engineers to discuss topics in fields of dense flows and discover most advanced, state-of-the-art methodologies in monitoring, modeling, mechanics, hazard prediction and risk assessment. For more information, contact: Claire Shiell; tel: +44-238-029-3223; fax: +44-238-029-2853; e-mail: [cshiell@wessex.ac.uk](mailto:cshiell@wessex.ac.uk); internet: <http://www.wessex.ac.uk/10-conferences/debris-flow-2010.html>

**UN FISH STOCKS AGREEMENT (UNFSA) REVIEW CONFERENCE:** The UNFSA Review Conference will resume from 24-28 May 2010, at UN Headquarters in New York. For more information, contact: Division for Ocean Affairs and the

Law of the Sea (DOALOS); tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los>

**SHARKS INTERNATIONAL CONFERENCE:** This one-time meeting will take place from 6-11 June 2010, in Cairns, Australia. The aim of this conference is to provide a forum for the world's leading shark and ray experts, along with students and up-and-coming early career researchers, to come together to share ideas, update information and report on the progress of the most recent scientific studies in the field of shark and ray ecology. For more information, contact: Sharks International Secretariat; e-mail: [sharksinternational@gmail.com](mailto:sharksinternational@gmail.com); internet: <http://www.sharksinternational.org>

**ELEVENTH MEETING OF THE INFORMAL CONSULTATIVE PROCESS OF THE LAW OF THE SEA:** This meeting is expected to take place from 21-25 June 2010, at UN Headquarters, New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los>

**INTERNATIONAL WORKSHOP ON TUNA RFMO MANAGEMENT ISSUES RELATING TO BY-CATCH:** This meeting will be held on 23-26 June 2010, in Brisbane, Australia. This workshop is aimed to provide advice to tuna Regional Fisheries Management Organizations (RFMOs) on best practices methods and techniques to assess and to reduce the incidental mortality of non-target species, such as seabirds, turtles, sharks, marine mammals, and juveniles of target species. For more information, visit <http://www.tuna-org.org/meetings2010.htm>

**AD HOC WORKING GROUP OF THE WHOLE TO RECOMMEND A COURSE OF ACTION TO THE GENERAL ASSEMBLY ON THE REGULAR PROCESS FOR GLOBAL REPORTING AND ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT, INCLUDING SOCIO-ECONOMIC ASPECTS:** This meeting will be held on 30 August – 3 September 2010, at UN Headquarters, New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los/index.htm>

**ICES ANNUAL SCIENCE CONFERENCE:** This meeting of the International Council for the Exploration of the Sea (ICES) will take place from 20-24 September 2010, in Nantes, France. This meeting of scientists, practitioners and policy makers will include sessions on sharks. For more information, contact: Gørel Kjeldsen; tel: +45-33-38-6700; fax: +45-33-93-42-15; email: [ascinfo@ices.dk](mailto:ascinfo@ices.dk); internet: <http://www.ices.dk/iceswork/asc/2010/index.asp>

**CMS COP 10:** The tenth Conference of the Parties to the CMS will be held in 2011, with dates and venue to be determined. For more information, contact: the CMS Secretariat; tel: +49-228-815-2401; fax: +49-228-815-2449; e-mail: [secretariat@cms.int](mailto:secretariat@cms.int); internet: <http://www.cms.int>

## GLOSSARY

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora.
CMP	Conservation and Management Plan
CMS	Convention on Migratory Species of Wild Animals
COP	Conference of the Parties
EC	European Commission
EU	European Union
FAO	United Nations Food and Agriculture Organization
IATTC	Inter-American Tropical Tuna Commission
IOTC	Indian Ocean Tuna Commission
IPOA-Sharks	International Plan of Action on the Conservation and Management of Sharks
IUCN	International Union for Conservation of Nature
IUU	Illegal, Unreported and Unregulated fishing
MoU	Memorandum of Understanding
NGO	Non-governmental Organization
RFMO	Regional Fisheries Management Organization
SHARKS	Meeting on International Cooperation on Migratory Sharks under the CMS
UNCLOS	United Nations Convention on Law of the Sea