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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 January 2011

to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European
Union

Subject: Communication from the Commission to the Council concerning the
Memoranda of Understanding on the Conservation of Migratory Sharks and
Birds of Prey under the Convention on the Conservation of Migratory Species
of Wild Animals

Delegations will find attached Commission document COM(2010) 805 final.

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EUROPEAN COMMISSION

Brussels, 5.1.2011
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The EU has been a Party to the Convention on Migratory Species (CMS)¹ since 1983. All EU Member States are also parties to the Convention. A list of endangered migratory species is established in Appendix I of the Convention, while Appendix II lists migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those migratory species which have a conservation status which would significantly benefit from the international co-operation that could be achieved by such an international agreement.

This is the case for Migratory Sharks and for Birds of Prey in Africa and Eurasia, for which two non-legally binding Memoranda of Understanding have been concluded under the Convention, as described below.

1. Memoranda of Understanding on the Conservation of Migratory Sharks

On 12 February 2010 in Manila, Philippines, the third Meeting on International Cooperation on Migratory Sharks under the Convention adopted a Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks². The MoU was opened for signature and 10 Range States (states which exercise jurisdiction over any part of the range of migratory sharks, or states, flag vessels of which are engaged outside its national jurisdictional limits in taking, or which have the potential to take, migratory sharks) signed it immediately: Congo, Costa Rica, Ghana, Guinea, Liberia, Palau, Philippines, Senegal, Togo and the USA. This means that the MoU entered into force on 1 March 2010, as the minimum number of signatures needed for the MoU to enter into force was 10. The MoU is open to new signatures. This MoU is a non-legally binding instrument which will apply to the seven shark species listed in Appendices I and II of the Convention³. New species can be added by consensus of the signatories.

The EU established a coordinated position and participated in the negotiations of this MoU. Being a regional economic integration organization as defined by the MoU, the EU is allowed to become a signatory and to take part at the Meeting of the Signatories, which is the governing body of the MoU. Most EU Member States,

¹ The Convention on the Conservation of Migratory Species of Wild Animals (CMS), signed at Bonn on 23 June 1979, calls for international co-operative action to conserve migratory species. Article IV.4 of that convention encourages Signatories to conclude agreements – including non-legally binding administrative agreements in respect of any populations of migratory species. The European Union and all the EU Member States are some of the 113 Parties to CMS. The European Commission represents the European Union at this international convention.

² http://www.cms.int/species/sharks/MoU/Migratory_Shark_MoU_Eng.pdf

³ Whale Shark (*Rhincodon typus*), Basking Shark (*Cetorhinus maximus*), Great White Shark (*Carcharodon carcharias*), Longfin Mako (*Isurus paucus*), Shortfin Mako (*Isurus oxyrinchus*), Porbeagle (*Lamna nasus*), Spiny Dogfish (Northern Hemisphere populations) (*Squalus acanthias*).

being also Range States, will also be able to sign the MoU. From the point of view of biodiversity, fisheries and coherence with external policy, there is added value to the EU joining this MoU. Therefore, it is proposed that the EU becomes a Signatory of this MoU and that this will be achieved by the signature by a representative of the European Commission which represents the EU at the Convention on Migratory Species. Such signature does not preclude any views from the Commission regarding the outcome of the so-called "future shape" inter-sessional assessment process of the organisation and activities of the CMS and the CMS family, which was launched at the 9th Conference of Parties (CoP9) of the Convention in order to explore the possibilities of strengthening the CMS and related agreements.

The MoU contains a section which sets out the general objectives of a Conservation Plan, as well as more specific objectives and actions to be implemented by the signatories. A more detailed and ambitious Conservation Plan could not be finalized at the meeting but work will be carried on by email in order to have a text ready by the date of the first Meeting of the Signatories, which should adopt it by consensus. The MoU addresses a number of significant issues for shark conservation, such as finning, by-catch, cooperation between governments, inter-governmental and non-governmental organizations and engagement with the Food and Agriculture Organisation (FAO), Regional Fisheries Management Organizations (RFMOs), stakeholders of the fishing industry, local communities, regional seas conventions, the Convention on International Trade in Endangered Species (CITES) and the Convention on Biological Diversity (CBD). The added value of this MoU is the establishment of a common understanding to improve or restore to favourable conservation status migratory shark species while ensuring that directed and non-directed fisheries for sharks are sustainable. Research, monitoring, information exchange, public awareness and participation are also key objectives. The success of this MoU depends on the implementation of the measures at national level.

The MoU is fully compatible and in line with the Community Plan of Action for the Conservation and Management of Sharks adopted by the Commission in February 2009 and supported by the Agriculture and Fisheries Council in its conclusions of 23 April 2009. Moreover, this is the first ever agreement under CMS for fish and it includes species of commercial interest in particular for international trade. It contributes to promoting conservation and management of migratory sharks by putting and keeping sharks fisheries in the international political agenda and provides support to the work being undertaken in CITES and in regional seas conventions.

The administrative, financial and procedural aspects of the MoU are kept to a minimum. This means less spending on staff and meetings and preference for the use of electronic means of communication. According to the MoU, signatories will endeavour to finance implementation from national and other sources, and a fund may be established to meet expenses related to participation of developing countries in the Meetings of the Signatories. Also, according to the MoU, a Secretariat should be established by the Meeting of the Signatories, and the Convention Secretariat should act as the interim Secretariat until a permanent Secretariat is established. The Convention Secretariat should convene the first Meeting of the Signatories as soon as possible, and at its first session this Meeting should adopt its own rules of procedure. A number of details will be determined by the Meeting of the Signatories and pending the decisions yet to be made on the future shape of the CMS.

2. Memoranda of Understanding on the Conservation of Birds of Prey in Africa and Eurasia

A Memorandum of Understanding on the Conservation of Migratory Birds of Prey in Africa and Eurasia⁴ under the CMS – also known as the Raptors MoU – was concluded on 22 October 2008 in Abu Dhabi, United Arab Emirates. On that date, this MoU was signed by 28 Range States, which included five EU Member States: Finland, Hungary, the Netherlands, Portugal and the United Kingdom. Luxembourg was the sixth Member State to sign on 19 July 2010. The MoU entered into effect on 1 November 2008. To date, 30 Parties and one supporting organisation signed the MoU. The EU established a coordinated position and participated in the negotiations of this MoU. Being a regional economic integration organization as defined by the MoU, the EU is allowed to become a signatory and take part in the Meeting of the Signatories, which is the decision-making body of the MoU. The EU could contribute to a successful implementation of this MoU by becoming a Signatory and providing an EU strategy to be established through technical consultations in coordination with the Member States.

Implementation within the EU is facilitated by the fact that the majority of measures have already been implemented in the EU through the provisions of the Birds and Habitats Directives. No additional EU legislation will be necessary. Any work to be done should be in line with the EU legal framework and take into account the existing EU species action plans, results of LIFE projects, conservation measures in Special Protection Areas (SPA), as well as ongoing initiatives addressing issues with a potential impact both inside and outside SPA, such as technical work on the impact of wind turbines, feeding of vultures and sustainable farming.

The instrument is a non-legally binding MoU, which contains, *inter alia*, a list of general conservation measures, a section on implementation and reporting, as well as final provisions. This Memorandum of Understanding is accompanied by an Action Plan containing specific actions to be implemented by the Signatories.

As long as the MoU is implemented correctly, it is expected that it will contribute effectively to protecting migratory birds of prey in Europe, Asia and Africa and will thereby contribute to EU policy objectives both within the EU and internationally. Such objectives include the strengthening of EU commitments and action for global bird conservation, the promotion of flyway management and the co-operation with the relevant international conventions, as expressed in the conclusions of the conference celebrating the 25th anniversary of the Birds Directive in 2004. Therefore, it is proposed that the EU becomes a Signatory of this MoU and that this will be achieved by the signature of a representative of the European Commission which represents the EU at the Convention on Migratory Species. Such signature does not preclude any views from the Commission regarding the outcome of the so-called "future shape" inter-sessional assessment process of the organisation and activities of the CMS and CMS family, which was launched at the 9th Conference of Parties (CoP9) of the Convention to explore the possibilities of strengthening the CMS and related agreements.

⁴ http://www.cms.int/species/raptors/MoU_&_AP/Eng/MoU_Birds_of_Prey_with_annexes_E.pdf

Due to its non-legally binding nature, the contributions to the implementation of the Action Plan are voluntary. There is, nonetheless, an understanding that funding to support the anticipated conservation programmes will be sought. According to the MoU, Signatories will endeavour to finance from national and other sources the implementation in their territory of the measures necessary for the conservation of birds of prey. In addition, they will endeavour to assist each other in the implementation and financing of key points of the Action Plan. Voluntary contributions should be sought from Signatories and Range States using internal budgeting procedures to determine their level of contribution. The United Arab Emirates (UAE) pledged to provide for the full administrative and institutional costs of a co-ordination unit during the first three years. This office is located in Abu Dhabi and started operating in June 2009. This offer covers the following services: UN Environment Programme (UNEP)/CMS staff salaries, meetings, premises, equipment, computer supplies, communications, translations, travelling Bonn/Abu Dhabi and running a small grants programme. Since the UAE will support at least for a definite period the costs of running a secretariat for this MoU, all other voluntary contributions will be applied directly on implementation actions.

The Commission therefore asks the Council's authorisation to sign these two Memoranda on behalf of the EU.