



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 January 2011

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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: Annex to the 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.

Encl.: COM(2010) 805 final - Annex 2



EUROPEAN COMMISSION

Brussels, 5.1.2011
COM(2010) 805 final

Annex to the
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

MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION OF MIGRATORY SHARKS

THE SIGNATORIES,

ARE AWARE that the 8th meeting to the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (the Convention) adopted Recommendation 8.16 calling upon Range States of migratory sharks listed on Appendix I or II of the Convention to develop a global migratory sharks conservation instrument;

RECALL that some species of migratory sharks have priority for conservation actions through listing on the appendices of both the Convention as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

RECOGNIZE the critical role that migratory sharks play in marine ecosystems and local economies, and are concerned about the significant mortality of sharks, including those listed on Appendices I and II of the Convention from a range of impacts and threats including target fisheries, fisheries by-catch, illegal, unreported and unregulated (IUU) fishing, trophy hunting, marine debris, ecosystem modifications, anthropogenic disturbances, and increasing pressures on the marine environment due to climate change;

ARE CONVINCED that the vulnerability of migratory sharks to such threats warrants further development of conservation measures where they do not already exist, enhanced implementation and enforcement of existing conservation measures by States and regional economic integration organisations that exercise sovereignty, or jurisdiction, or both over any part of their range, and by States, flag vessels of which are engaged outside national jurisdictional limits in activities that may affect the conservation of sharks;

ARE MINDFUL of the need to ensure the provisions of this Memorandum of Understanding are consistent with other international shark conservation and management initiatives, including the Food and Agricultural Organization's (FAO) voluntary International Plan of Action (IPOA) for sharks, which calls upon States to develop and implement complementary National Plans of Action for sharks, and the 2007 United Nations General Assembly Resolution on Sustainable Fisheries;

NOTE that both the FAO, through IPOA-sharks, and the Convention have embraced a common objective, i.e. the need to ensure the conservation and management of migratory sharks and their long-term sustainable use, and that industry, consumers and conservation non-governmental organizations (NGOs) have critical complementary roles to play in achieving this objective;

ARE CONSCIOUS that Regional Fisheries Management Organizations (RFMOs) should be involved in the development and implementation of this Memorandum of Understanding by virtue of their mandate to bring fishing nations together to promote conservation and management of fish stocks, their knowledge and experience of migratory shark catches, and their scientific expertise critical to sound conservation and management decisions and that it will be necessary to work with and through these organizations to achieve the objectives of this Memorandum of Understanding, and to avoid duplication or inconsistency of efforts;

RECOGNIZE the role that Regional Seas Conventions (RSCs) where applicable have in the conservation of marine biodiversity and the importance of collaborating with these organizations to achieve the objectives of this Memorandum of Understanding;

BELIEVE that the conclusion and implementation of an international instrument in the form of a non-binding Memorandum of Understanding and a supporting Conservation Plan under Article IV.4 of the Convention will add value and contribute significantly to the enhanced conservation of migratory sharks by: (i) strengthening the political will to implement migratory shark conservation measures in a coordinated and timely fashion; (ii) bridging migratory shark fisheries and conservation interests; (iii) contributing to the implementation of the FAO's IPOA for sharks by linking it to this Memorandum of Understanding and building on it; and (iv) by capitalizing on the potential of the Convention's broad membership to add expertise to global conservation efforts in the areas of science, research, monitoring, compliance, enforcement, species identification, data collection and analysis, threat definition and reduction, habitat identification and protection, education and public awareness, information exchange, and capacity building;

AIM TO improve the conservation status of migratory sharks listed in Appendices I and II of the Convention through concerted and coordinated action, including compliance and enforcement efforts, on the part of the States that exercise jurisdiction over the range of these populations, and States whose flag vessels are engaged outside national jurisdictional limits in activities that may affect these populations;

ACKNOWLEDGE that, despite past and ongoing scientific research and monitoring, knowledge of the biology, ecology, and population dynamics of many migratory sharks is deficient, and that it is necessary to promote stronger co-operation between fishing nations on research, monitoring, enforcement and compliance in order to effectively implement conservation measures;

FURTHER NOTE that other species of sharks not currently listed on Appendices I and II of the Convention may also benefit from implementation of this Memorandum of Understanding as a consequence of more coordinated conservation efforts among Range States, shark fishing states, and shark trading states;

EXPRESS their desire to pursue the actions, where appropriate, set forth in this Memorandum of Understanding, in the spirit of mutual cooperation, to achieve and maintain a favourable conservation status for migratory sharks; and

HAVE REACHED THE FOLLOWING UNDERSTANDING:

Section 1 Scope, definitions and interpretation

1. This Memorandum of Understanding is a non-legally binding instrument under Article IV, paragraph 4, of the Convention, as defined by Resolution 2.6 adopted at the Second Meeting of the Conference of the Parties to the Convention (Geneva, 11-14 October 1988).
2. This Memorandum of Understanding is intended to apply to all migratory species of sharks included in Annex 1 of this Memorandum of Understanding.
3. For the purpose of this Memorandum of Understanding:

- a) “Conservation Plan” means the Migratory Sharks Conservation Plan to be adopted under this Memorandum of Understanding;
- b) “Advisory Committee” means the committee of persons qualified as experts in migratory shark science and management established under Section 7 of this Memorandum of Understanding;
- c) “Conservation status of migratory sharks” means the sum of all the influences acting on migratory sharks that may affect their long-term distribution and abundance;
- d) The conservation status is considered "favourable" when all the following conditions are met:
 - i) population dynamics data relative to appropriate biological reference points indicate that migratory sharks are sustainable on a long term basis as a viable component of their ecosystems;
 - ii) the distributional range and habitats of migratory sharks are not currently being reduced, nor are they likely to be reduced in the future to levels that affect the viability of their populations in the long term; and
 - iii) the abundance and structure of populations of migratory sharks remains at levels adequate to maintain ecosystem integrity;
- e) Conservation status will be taken as “unfavourable” if any of the conditions set out in sub paragraph 3. d) above are not met;

Nothing in sub-paragraphs d) and e) will affect the obligations under the Convention for Signatories that are also Convention Parties with respect to species listed under Appendix II of the Convention.

- f) “Convention” means the Convention on the Conservation of Migratory Species of Wild Animals signed at Bonn, Germany on 23 June 1979;
- g) “Convention Secretariat” means the body established under Article IX of the Convention;
- h) “Cooperating partner” means a non-Range State, an intergovernmental or a non-governmental organization, or other body or entity that associates itself with this Memorandum of Understanding in accordance with the provisions of paragraph 30;
- i) “Habitat” means any area in the range which contains suitable living conditions, particularly known aggregation, feeding and breeding sites, for migratory sharks;
- j) “IPOA-Sharks” means the International Plan of Action for the conservation and management of sharks adopted at the 23rd session of the FAO Committee on Fisheries, February 1999;
- k) “Range” means all the areas of water that a migratory shark inhabits, stays in temporarily, or crosses at any time on its normal migration route;

- l) “Range State” means any State that exercises jurisdiction over any part of the range of migratory sharks, or a State, flag vessels of which are engaged outside its national jurisdictional limits in taking, or which have the potential to take, migratory sharks;
 - m) "Regional economic integration organisation" (REIO) means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by this Memorandum of Understanding and has been duly authorised, in accordance with its internal procedures, to sign this Memorandum of Understanding;
 - n) “RFMO” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures;
 - o) “Secretariat” means the body established under paragraph 27 of this Memorandum of Understanding to assist in its administration, implementation and enforcement;
 - p) “Shark” means any of the migratory species, subspecies or populations in the Class *Chondrichthyes* (which includes sharks, rays, skates and chimaeras) that are included in Annex 1 of this Memorandum of Understanding;
 - q) “Shark finning” means the practice of removing any of the fins of a shark (including the tail) while at sea and discarding the remainder of the shark at sea;
 - r) “Signatory” means a Range State or a REIO that is a Signatory to this Memorandum of Understanding; and
 - s) “Taking” means taking, harvesting, hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct.
4. The Annexes form an integral part of this Memorandum of Understanding.

Section 2 Objective

5. The objective of this Memorandum of Understanding is to achieve and maintain a favourable conservation status for migratory sharks based on the best available scientific information, taking into account the socio-economic and other values of these species for the people of the Signatories.

Section 3 Fundamental Principles

6. The Signatories recognize that successful shark conservation and management require the fullest possible cooperation among governments, intergovernmental organizations, non-governmental organizations, stakeholders of the fishing industry and local communities, and engagement pursuant to this Memorandum of Understanding with the fisheries industry, FAO, RFMOs, as appropriate, RSCs, CITES, the Convention on Biological Diversity (CBD) and other relevant international organizations.

7. The Signatories acknowledge the role as well as the scientific and political actions of States and RFMOs, as appropriate, which are responsible for the management of migratory

shark fisheries, and the need to strengthen and improve their role in taking measures to improve or restore a favourable conservation status of sharks listed in Annex 1 of the Memorandum of Understanding.

8. Sharks should be managed to allow for sustainable harvest where appropriate, through conservation and management measures based on the best available scientific information.

9. In implementing the measures given in the Conservation Plan the Signatories should apply widely both an ecosystem and a precautionary approach¹. Lack of scientific certainty should not be used as a reason for postponing measures to enhance the conservation status of sharks.

10. Signatories may establish, by mutual consent, bilateral, sub-regional or regional management plans that are consistent with this Memorandum of Understanding.

Section 4 Conservation Plan

11. At its first session, the Meeting of the Signatories should adopt a Conservation Plan to be incorporated as an Annex to this Memorandum of Understanding.

12. The Signatories should cooperatively strive to adopt, implement and enforce such legal, regulatory and administrative measures as appropriate to conserve and manage migratory sharks and their habitat. To this end, they should endeavour to implement progressively, individually or cooperatively, or both, including by participation in or in cooperation with the FAO, RFMOs as appropriate, RSCs and other relevant international fora, those objectives described below and which include:

- a) Improving understanding of migratory shark populations through research, monitoring and information exchange;
- b) Ensuring that directed and non-directed fisheries for shark are sustainable;
- c) Ensuring to the extent practicable the protection of critical habitats and migratory corridors and critical life stages of sharks;
- d) Increasing public awareness of threats to sharks and their habitats, and enhance public participation in conservation activities; and
- e) Enhancing national, regional and international cooperation.

13. The Signatories recognize that in order to be successful in these endeavours they should make every effort, as appropriate and subject to the availability of necessary resources, to:

- a) Cooperate with relevant organizations so as to facilitate the work conducted in relation to the Conservation Plan;

¹ Rio Declaration on Environment and Development of 14 June 1992, Principle 15.

- b) Engage with the fisheries industry, FAO, RFMOs as appropriate, conservation NGOs, RSCs and other international organizations that deal with fisheries to develop a working relationship, analyze the strengths and weaknesses of current conservation and management initiatives, and involve them in the improvement and execution of the Conservation Plan;
- c) Promote practical and enforceable conservation recommendations within relevant RFMOs and RSCs by the Signatories to this Memorandum of Understanding that are members of the RFMOs and RSCs;
- d) Build research, data collection, monitoring, compliance and enforcement capacity;
- e) Promote and coordinate stock assessments and research in collaboration with appropriate fishery management and scientific bodies;
- f) Identify and conduct studies of shark migration, aggregation, critical habitats, ecology, behaviour and life stages, and, to the extent practicable, protect the sites;
- g) Facilitate the timely access to and exchange of information necessary to coordinate conservation and management measures, and facilitate training in data quality;
- h) Regulate or manage the harvest of sharks in order to address shark finning and, where not already in place, enact legislation or regulations to prohibit shark finning, including by considering taking measures, as appropriate, to require that sharks be landed with each fin naturally attached in line with UN General Assembly Resolution 62/177 and with Recommendation 4.114 of the International Union for the Conservation of Nature;
- i) Prohibit the taking of species listed in Appendix I of the Convention in accordance with Article III of the Convention;
- j) In fisheries catching sharks other than those listed in point i above, encourage relevant bodies to set targets based on the best available science for fish quotas, fishing effort and other restrictions to help achieve sustainable use;
- k) Ensure development and implementation of Plans of Action - Sharks in accordance with FAO's voluntary IPOA-Sharks;
- l) Ratify or accede to those international instruments relevant to the conservation and management of migratory sharks and their habitats in order to enhance the legal protection of migratory shark species;
- m) Formulate, review, revise and harmonize national legislation and regulations, as necessary, relevant to the conservation and management of migratory sharks and their habitats;
- n) Create and maintain species-specific national records of shark catches, landings and discards; and
- o) Encourage other States to sign this Memorandum of Understanding.

14. These measures should be implemented taking into account the competencies and capabilities of Signatories under their domestic laws.

Section 5 Implementation, Reporting and Financing

15. Each Signatory should:

- a) Designate a focal point for communication among Signatories and for coordinating implementation measures and activities under this Memorandum of Understanding and the Conservation Plan, and communicate the complete contact details of this authority, and any subsequent changes thereto, to the Convention Secretariat; and
- b) Endeavour to provide to the Secretariat a regular national report on the implementation of this Memorandum of Understanding and the Conservation Plan, the frequency and timing of which should be determined at the first Meeting of the Signatories.

16. Signatories will endeavour to finance from national and other sources the implementation of the measures within their competency necessary for the conservation of migratory sharks. In addition, they will endeavour to assist each other on a bilateral or multilateral basis in the implementation and financing of key points of the Conservation Plan, including capacity building and training, and seek assistance from other sources for the financing and implementation of their strategies or equivalent measures.

17. A fund may be established to meet expenses related to the participation of developing countries at sessions of the Meeting of the Signatories, the Advisory Committee or any other meeting which may be called upon by Signatories through its governing body. This does not preclude such expenses being met by other arrangements, bilateral or otherwise.

Section 6 Meeting of the Signatories

18. The Meeting of the Signatories should be the decision-making body of this Memorandum of Understanding. Decision making of the Meeting of the Signatories should be by consensus.

19. The Convention Secretariat should convene the first session of the Meeting of the Signatories as soon as possible after the date on which this Memorandum of Understanding comes into effect. The Meeting of the Signatories should decide on the frequency of its sessions thereafter, bearing in mind the benefits of holding those sessions in conjunction with meetings of the Conference of the Parties to the Convention.

20. Progress in implementing the Memorandum of Understanding, including amendments to Annex 1, should be assessed by the Signatories at each session of the Meeting of the Signatories.

21. At its first session, the Meeting of the Signatories should adopt its own rules of procedure governing, among other matters, the attendance and participation of observers, and make provision for transparency in the activities relating to the Memorandum of Understanding and timely access to the records and reports relating to the Memorandum of Understanding. Such rules should not be unduly restrictive.

22. Any State not a Signatory to the Memorandum of Understanding, the United Nations, any specialised Agency of the United Nations, any regional economic integration organization, and any secretariat of relevant international conventions and other instruments, particularly those concerned with the conservation and management of marine living resources or conservation and management of sharks, may participate as observers at the first session of the Meeting of the Signatories and its subsidiary bodies. For future sessions, such participation should be subject to the rules of procedure.

23. Any relevant scientific, environmental, cultural, fisheries or technical body concerned with the conservation and management of marine living resources or the conservation and management of sharks, may participate as an observer at the first session of the Meeting of the Signatories and its subsidiary bodies. For future sessions, such participation should be subject to the rules of procedure.

Section 7 Advisory Committee

24. The first Meeting of the Signatories should establish an Advisory Committee, comprising persons qualified as experts in migratory shark conservation science and management. The tasks of the Advisory Committee should include:

- a) Providing expert advice, information and making recommendations including suggestions on new initiatives and on the implementation of this Memorandum of Understanding, to the Secretariat and the Signatories, as necessary and when appropriate;
- b) Analysing, as necessary, scientific assessments and making recommendations on the conservation status of shark populations listed in Annex 1 and others which may be contemplated for inclusion;
- c) Preparing a report on its activities for each advisory session of the Meeting of the Signatories to be submitted to the Secretariat in ample time before the session of the Meeting of the Signatories;
- d) Recommending to the Secretariat the convening of an urgent session of the Meeting of the Signatories in view of emergencies which may arise; and
- e) Carrying out any other task referred to it by the Meeting of the Signatories.

25. Members of the Committee should be appointed as representatives of the Regions by the Signatories from each Region. The Regions and the number of representatives for each Region are set out in Annex 2. The Advisory Committee should elect a Chair and Vice-chair. The Advisory Committee may invite other experts to attend its meetings.

26. The Advisory Committee should conduct its work through collaboration by electronic means whenever possible, with the Chair of the Committee providing a report on the Committee's work to each session of the Meeting of the Signatories. Where the need arises, meetings of the Advisory Committee should be convened by the Chair of the Committee in consultation with the Secretariat, and where possible, such meetings should be held in conjunction with the sessions of the Meeting of the Signatories.

Section 8 Secretariat

27. The Signatories to this Memorandum of Understanding share the view that:
- a) A Secretariat should be established by the Meeting of the Signatories as soon as possible, based in an appropriate organization or institution. The role of the Secretariat may include assisting in the administration and implementation of this Memorandum of Understanding by coordinating, communicating, facilitating and reporting on relevant activities and events, and performing such other functions as may be assigned by the Signatory States; and
 - b) The Convention Secretariat should act as the interim Secretariat to this Memorandum of Understanding until a permanent Secretariat is established and may, subject to the availability of resources, use the services of any reliable organization to support the coordination of this Memorandum of Understanding.

Section 9 Cooperation with other bodies

28. The Secretariat could consult and cooperate with other relevant organizations such as those referred to in Section 3 paragraph 6, as appropriate, to assist in the implementation of this Memorandum of Understanding, including through the exchange of information.

Section 10 Final Provisions

29. This Memorandum of Understanding is open for signature by the Range States and regional economic integration organisations of the shark species listed in Annex 1 of this Memorandum of Understanding.
30. Non-range states, inter-governmental and international and national non-governmental organizations, or other relevant bodies and entities may associate themselves with this Memorandum of Understanding through their signatures as cooperating partners, in particular with respect to the implementation of the Conservation Plan.
31. This Memorandum of Understanding will commence on the first day of the month following the month on which there are at least 10 Range State signatures. Thereafter it will commence for any other Signatory on the first day of the month following the date of signature by that Signatory.
32. This Memorandum of Understanding will remain open for signature indefinitely at the seat of the Convention Secretariat. The cooperation of the Signatories should continue indefinitely but any Signatory may terminate its participation by providing one year's written notice to all other Signatories through the Secretariat.
33. The Memorandum of Understanding, including the Annexes, may be modified by the Meeting of the Signatories. Such modifications should be by consensus.
34. The original text of this Memorandum of Understanding in the English, French, and Spanish languages, each version being equally authentic, will be deposited with the Convention Secretariat, which should act as the Depositary. The Depositary should, after consultations with the Governments concerned, prepare official versions of the text of this

Memorandum of Understanding in Arabic, Russian, Chinese, German and other languages. The working languages for all matters related to this Memorandum of Understanding should be English, French and Spanish.

Opened for signature at Manila on this Twelfth day of February 2010

Annex 1: Species covered by this Memorandum of Understanding and their ranges

Rhincodontidae	<i>Rhincodon typus</i>
Cetorhinidae	<i>Cetorhinus maximus</i>
Lamnidae	<i>Carcharodon carcharias</i>
	<i>Isurus oxyrinchus</i>
	<i>Isurus paucus</i>
	<i>Lamna nasus</i>
Squalidae	<i>Squalus acanthias</i> (Northern Hemisphere populations)

Annex 2

MoU regions and Advisory Committee representation

Africa: 2

Asia: 2

North America: 1

Europe: 2

Oceania: 1

South, Central America & the Caribbean: 2