

**A LEGAL AND INSTITUTIONAL FRAMEWORK TO SUPPORT THE
IMPLEMENTATION OF THE PROPOSED CENTRAL ASIAN FLYWAY ACTION
PLAN TO CONSERVE MIGRATORY WATERBIRDS AND THEIR HABITATS:
OPTIONS FOR CONSIDERATION**

(Prepared by the CMS Secretariat)

Introduction

The Fifth Meeting of the Conference of the Parties to the Convention on Migratory Species (CMS) (Geneva, April 1997) through Resolution 5.4 called on Range States to take an active role in the development of a conservation initiative for migratory waterbirds in the Central Asian Flyway (CAF).

The first opportunity to hold a workshop within the CAF region to discuss actions to conserve migratory waterbirds and their habitats was provided by a Wetlands International project “Towards a Strategy for Waterbird and Wetland Conservation in the Central Asian Flyway”, funded by the Dutch Ministry of Agriculture, Fisheries and Food Security. In addition the African-Eurasian Flyway Project, funded by the Global Environment Facility (GEF), foresaw the need for an outreach workshop for Central Asia.

Through the combined efforts of CMS, the African-Eurasian Waterbird Agreement (AEWA) and Wetlands International, and with additional funding from the Dutch Embassy in Moscow, a 2-day workshop was organised in Tashkent, Uzbekistan (2001) to discuss the conceptual basis for developing a Central Asian Flyway Action Plan to Conserve Migratory Waterbirds and their Habitats (CAF Waterbird Action Plan).

The report from the Tashkent meeting (see Document CMS/CAF/Inf.5) notes that in addition to discussing the first draft of a CAF Waterbird Action Plan, participants also discussed various options for legal and institutional frameworks to support its implementation.

Three different options were considered:

- Extending the AEWA geographical area to encompass the entire CAF region and incorporating the CAF Waterbird Action Plan under the Agreement.
- Developing a new Agreement for the CAF region under the auspices of CMS to which the CAF Waterbird Action Plan would be annexed.
- Placing the CAF Waterbird Action Plan under the Asia-Pacific Migratory Waterbird Conservation Strategy.

At the time of the Tashkent meeting these options corresponded to the three most prominent of several existing independent or legally binding international cooperative frameworks that could provide opportunities to support the CAF Waterbird Action Plan's implementation. While the first two remain viable options, the international setting has changed for the third option and a variation now needs to be considered.

The purpose of this note is to provide information to the Range States within the CAF region on each of the first two options, and to propose a new third option, and some of their possible advantages and disadvantages. An overview of the Central Asian Flyway is provided in Annex 1.

It is hoped that the information provided will guide the Range State delegations in their decision on a preferred legal and institutional framework to support the CAF Waterbird Action Plan's implementation.

Action Requested:

The Range States within the CAF region participating in the meeting are invited to:

- Consider the three options available for a legal and institutional framework to support the implementation of the Proposed Central Asian Flyway Action Plan to Conserve Migratory Waterbirds and their Habitats; and
- Develop a consensus on their preferred option for a legal and institutional framework for the CAF region.

Option 1: Extend the AEWA geographical area to include the entire CAF and incorporate the CAF Waterbird Action Plan under the Agreement

AEWA was concluded on 16 June 1995 in The Hague, The Netherlands, and entered into force on 1 November 1999. As of February 2005 48 Range States have become AEWA Contracting Parties. At least a dozen other Range States are in the process of finalizing their accession procedures and will become a Contracting Party to the Agreement in due course.

AEWA is one of the most ambitious Agreements established to date under CMS auspices. Its geographical area encompasses the whole of Africa, Europe, West Asia and part of Central Asia. The Agreement applies to 235 species of waterbirds.

Since the Agreement entered into force many activities have been initiated or carried out to maintain and/or restore populations of migratory waterbirds to a favourable conservation status. For this the Agreement has received substantial direct financial support from developed country Contracting Parties and indirect financial support from the Global Environment Facility (GEF).

From the north-western side, AEWA extends into the Caucasus, North and Southwest Asia. It thereby includes 16 out of the 30 Range States of the CAF. One option the Range States may wish to consider could be to extend the AEWA Agreement Area to the remaining 14 Range States/territories (Afghanistan, Bangladesh, Bhutan, China, India, Kyrgyzstan, Maldives, Mongolia, Myanmar, Nepal, Sri Lanka, Pakistan, Tajikistan and United Kingdom (Chagos Islands)) so as to include the entire Central Asian Flyway and the CAF Waterbird Action Plan under the AEWA umbrella.

Possible AEWA advantages

In contrast to negotiating a stand-alone Agreement under CMS auspices (see Option 2 below), expanding the AEWA Agreement Area to include the entire CAF could be easily done and would not be time consuming. It simply would require the AEWA Contracting Parties to approve amendment of the existing AEWA annexes and the CAF Ranges States to accede to AEWA.

The basis for amending AEWA's annexes is found in Article X, paragraph 1 (see Document CMS/CAF/Inf.6). It provides that the AEWA Meeting of Parties (MOP) may amend the Agreement's annexes at any of its ordinary sessions

AEWA Annex 1a describes the AEWA Agreement Area and this could be amended at a forthcoming MOP. The same is applicable for the AEWA Action Plan and the AEWA List of Species that are found in separate annexes to the Agreement.

AEWA Article X, paragraph 5, provides the only qualification: a two-thirds majority of the Parties present at the MOP must adopt the amendment. Importantly, the amended annexes require no national level ratification procedure, which means that AEWA could be easily adjusted to include the remaining areas of the CAF region not already included in the Agreement and the CAF Waterbird Action Plan.

The Fourth and Fifth Meetings of the AEWA Technical Committee (2003 and 2004) have discussed the option of extending the AEWA Agreement Area to include the entire CAF region and a future CAF Waterbird Action Plan. The Technical Committee did not find any scientific or biological reason to object to the extension of the Agreement Area. Furthermore, the First Meeting of the AEWA Standing Committee (2004) has taken note of the Technical Committee's conclusions and is awaiting the outcome of the New Delhi CAF workshop before taking further steps prior to the Third Meeting of the AEWA MOP, 23-27 October 2005 in Dakar, Senegal.

AEWA also offers an existing and well-established institutional framework that would support the CAF region's implementation of AEWA generally and the implementation of the CAF Waterbird Action Plan in particular. Subsidiary bodies and a UNEP-administered Secretariat are already in place.

Furthermore, AEWA offers not only a regular budget agreed triennially by its Contracting Parties (developed and developing countries and countries with economies in transition), which provides a stable funding source for its Secretariat and subsidiary bodies, but a variety of possibilities to fund action-oriented projects on the ground within the Agreement Area. Project funding under AEWA comes from a variety of sources including the AEWA regular budget, voluntary contributions from Parties, UNEP and other organisations. It would be expected that the CAF region would also be eligible for project funding if it joined AEWA.

More recently, AEWA has been affiliated with a US\$12.0 million dollar UNEP GEF project that, starting in mid-2005, will provide a number of Range States within the Agreement Area, whether or not they are AEWA Parties, with financial and technical support. Wetlands International executes the project in close cooperation with BirdLife International as well as the AEWA and Ramsar Secretariats. Central Asia will be one of the project's main focus areas. The project's successful implementation could lead to the future development and approval of additional GEF projects.

Another important advantage of incorporating the entire CAF region, and following from this the CAF Waterbird Action Plan, into the AEWA framework would be the possibility to ensure that a single forum addresses the CAF region. By including the CAF region into the AEWA Agreement Area overlapping mandates, as well as thematic and geographical applications between other fora and AEWA, would be eliminated.

To gain the maximum benefit from the CAF Waterbird Action Plan, incorporating the CAF region into AEWA would require the CAF Range States to accede to the Agreement. Because some of the existing AEWA Agreement Area already overlaps with the CAF, some Range States already are AEWA Parties.

Possible AEWA disadvantages

There are some possible disadvantages to expanding the AEWA Agreement Area to include the entire CAF region and the CAF Waterbird Action Plan. Perhaps the most important disadvantage, as mentioned earlier, is that Range States will need to accede to the Agreement.

Internal accession procedures may take time and AEWA membership will entail annual membership fees. Despite the potential for country-level accession delays, the CAF Waterbird Action Plan could still be applied on an interim basis by the Range States (and across the CAF for that matter) until accession takes place. Finances to support coordination and implementation of the Action Plan through this interim phase will need to be secured.

For developing countries and countries with economies in transition, AEWA membership fees are modest and these costs can almost certainly be exceeded by the benefits that accrue from membership. Meetings of Parties are convened triennially and the attendance of countries meeting eligibility requirements can be financially supported by the Agreement. The Range States would also gain access to a well-established network of waterbird, habitat conservation and sustainable use expertise, in addition to being eligible for project funding and funding to attend AEWA technical workshops. Another benefit of membership is the possibility to influence the future direction of the world's largest dedicated intergovernmental forum on the conservation of waterbirds and their habitats.

Option 2: Develop a new Agreement for the CAF region under the auspices of CMS to which the CAF Waterbird Action Plan would be annexed

CMS applies globally to terrestrial, avian and marine migratory species including many migratory waterbirds of the Central Asian Flyway. CMS Article IV, paragraphs 3 and 4, invites CMS Contracting Parties to conclude agreements for migratory species (or higher taxa), which have an unfavourable conservation status or would benefit significantly from international cooperation and are listed on Appendix II of the Convention. Agreements concluded under CMS auspices range from formal multilateral treaties, such as AEWA, and less formal instruments such as the CMS Siberian Crane Memorandum of Understanding¹. Action plans are designed to be integral to both.

Due to its framework nature CMS offers the possibility to develop a new stand-alone multilateral agreement for the CAF region under which the CAF Waterbird Action Plan could be incorporated. An Agreement is proposed because Memoranda of Understanding are generally reserved by CMS for single species applications where quick action in individual countries needs to be coordinated across a migratory range. Therefore for purposes of the CAF, a Memorandum of Understanding would not be considered appropriate because of the sheer number of species involved.

CMS's experience over the years, and the success of AEWA and its very useful and well-accepted format, means that AEWA and its Action Plan would be the likely model for a new CMS CAF Agreement on the Conservation of Migratory Waterbirds and their Habitats.

The CAF Agreement could be envisioned to consist of two parts. The first part would be the actual Agreement text. The second part would be the Agreement's annexes.

These would include the specialised action plan, in this case a future CAF Waterbird Action Plan, a description of the Agreement area and the List of Species to which the Agreement and action plan would apply. The CAF Waterbird Action Plan would clearly state those actions expected from the Contracting Parties to maintain or restore populations of migratory waterbird species to a favourable conservation status. The species list would consist of a table listing the populations of each species to which Agreement would apply including their conservation status.

Possible advantages of a new CMS Agreement

Some of the potential advantages of a new CMS Agreement correspond to those offered by Option 1 (Expanding the AEWA Agreement Area). For example, a new CMS Agreement would have a dedicated specialised action plan and it would create supporting institutions, such as a permanent secretariat and technical committee, to assist implementation. Regular meetings of the Meeting of the Parties would keep the Agreement and its action plan under regular review and promote their further development. In addition, the Agreement could have added legitimacy if affiliated with CMS which is an UN-based treaty.

¹ The full suite of CMS instruments also includes stand-alone action plans such as the Sahelo-Saharan Antelopes Action Plan concluded in 1998. However, stand-alone action plans are the exception rather than the rule within CMS because it is generally considered that action plans require a solid legal and institutional framework to ensure their implementation. Such frameworks offer many benefits including secretariat support. They also manifest stronger commitments by participating Range States to the action plan's implementation. Following from this the Range States of the Sahelo-Saharan Antelopes agreed in 2003 to develop in the near future an appropriate CMS agreement to which the action plan will be annexed.

The Agreement would also be a dedicated stand-alone forum on migratory waterbird conservation, with the added advantage of entire dedication to the needs of the CAF region. This visibility might increase the likelihood of attracting financial support for implementation activities.

Possible disadvantages of a CMS Agreement

A number of possible disadvantages could be foreseen. First would be the time it takes to negotiate and conclude a new Agreement. This could take five years or more.

The high cost of the negotiations, borne almost exclusively by the CMS regular budget, would be an added disadvantage of developing a stand-alone agreement. Outside funding would be needed and this would take time to secure.

A second potential disadvantage is the time it could take for the Agreement to enter into force. To enter into force an Agreement requires a pre-determined number of Range States to ratify or accede to it. For example, four years passed between AEWA's adoption in 1995 until its subsequent entry into force in 1999. This could be offset however by interim application of the CAF Waterbird Action Plan across the range.

Third, a stand-alone Agreement requires a budget and membership dues allocated amongst the Contracting Parties to sustain this. The Agreement Area would consist of developing countries and countries with economies in transition that would need to support the Agreement through their membership dues². Alternative sources of funding would most likely need to be sought to provide the basis for undertaking projects to support the Agreement's implementation.

Fourth, the network of expertise and sharing of knowledge associated with a new Agreement would need time to develop.

Finally, another disadvantage is the fact that there is a large overlap between AEWA and the CAF region. For example Armenia, Azerbaijan, Bahrain, **Georgia**³, Turkmenistan, **Uzbekistan**, Kazakhstan, Kuwait, Iran, Iraq, Oman, Qatar, Russian Federation, Saudi Arabia, United Arab Emirates and Yemen are located in both regions. Of the 30 countries identified 16 are already located in the AEWA Agreement Area. In addition, to it being hard to convince the respective Governments to join both Agreements because of the financial implications there would be a likely redundancy in substantive obligations for the States as well.

Option 3: Set-up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework

Over the past nine years, governments of the region, CMS, Ramsar Convention and international NGOs developed the Asia-Pacific Migratory Waterbird Conservation Strategy⁴ (see Document CMS/CAF/Inf.10) as an international cooperative conservation framework in response to a call by countries, CMS, the Ramsar Convention and other international

² The United Kingdom territory of the Chagos Islands would also be within the Agreement Area.

³ Countries in **bold** are Contracting Parties to AEWA (as at 15 February 2005).

⁴ See < <http://www.wetlands.org/IWC/awc/waterbirdstrategy/Downloads.htm> >.

organisations at an international meeting in Kushiro (Japan) in 1994. The initiative has been coordinated by Wetlands International through the establishment of a 20 member international coordination and review body, the Asia-Pacific Migratory Waterbird Conservation Committee (MWCC) that draws representation from the major stakeholders. Involvement of a wide range of local, national and international stakeholders including government agencies, conventions, development agencies, NGOs, technical institutions, academe and the corporate sector has enabled the implementation of a variety of local, national, trans-boundary and flyway-wide projects and activities. Resources for these actions have been secured from a range of sources.

The Strategy was initially implemented for a five-year period (1996-2000). Based on the success of the framework, the Strategy was updated for implementation during 2001-2005. The Strategy has provided the basis to develop species group action plans (*Anatidae*, cranes and shorebirds) and site networks that currently include 85 sites of international importance for migratory waterbirds in 13 countries in the East Asian-Australasian region⁵.

Additionally, the North East Asian Crane Working Group, which has been established under the APMWCS to coordinate implementation of the North East Asian Crane Action Plan and Site Network, is also serving as a coordinating mechanism for implementation of the UNEP/GEF Siberian Crane project in the East Asian Flyway.

Although there was a long-term goal to develop a binding international legal and institutional framework to support the APMWCS's implementation, at the time of its development there was insufficient support from the Range States to develop a legal and institutional framework.

The Strategy also calls for the development and implementation of an action plan, and the establishment of a site network to conserve migratory waterbirds and internationally important wetlands in the Central Asian Flyway. In Decision 8.22 (2003) the Committee welcomed the development of a flyway approach to the conservation of migratory waterbirds in the Central Asian Flyway. Further, it encouraged all of those involved in migratory waterbird conservation in the Central Asian Flyway to take the initiative to develop a suitable coordination mechanism for the Flyway.

The 2001 Tashkent meeting was presented with the option of possibly placing the CAF Waterbird Action Plan under the Asia-Pacific Migratory Waterbird Conservation Strategy. However since November 2004, when the MWCC met last, it is likely that after 2005 the APMWCS that currently serves as a framework for the three flyways of the Asia-Pacific region may not exist. Instead, the East Asian-Australasian Flyway initiative will probably move forward as an independent entity as a kind of a cooperative partnership for the 2006-2010 period under the WSSD Type II Partnership Initiative framework, led by Australia and Japan. The MWCC did however agree to offer assistance, where possible, to the development of a separate initiative for the Central Asian Flyway.

This leaves the possible option for the CAF Waterbird Action Plan to be set-up as an independent action plan and cooperative framework. As an independent entity it could be developed as a smaller independent version of the APMWCS with a steering committee coordinated by a suitable organisation. This could exist outside of the CMS framework or it could be viewed as an interim step towards integration into the CMS framework.

⁵ See < <http://www.wetlands.org/IWC/awc/waterbirdstrategy/Network.htm> >.

Possible advantages

The APMWCS is an independent legally non-binding international cooperative conservation framework premised on the voluntary participation of the Range States and non-governmental partners. The APMWCS is characterised by its flexible nature, informal institutional structure, expedient decision making through consensus, ability to actively involve a wide range of stakeholders and diverse range of funding sources. An independent CAF Waterbird Action Plan could be modelled upon it.

Unlike a more formal multilateral treaty the APMWCS does not have any formal institutions other than the 20-member international coordination and review committee. Institutional overhead costs therefore are low. Range States participating in a similar cooperative framework for the CAF Waterbird Action Plan could consider structuring it so as not to oblige themselves to make annual financial contributions, either to the cost of coordination activities, or to cover any cost to implement the Strategy itself. However, secure sources of core funding to support coordination and implementation activities would need to be identified before such an option could reasonably be considered realistic and sustainable.

Possible disadvantages

The primary disadvantage of the APMWCS has been limited resources. To support the APMWCS's coordination, Wetlands International has received some annual voluntary contributions from a limited number of countries and organisations: Australia, Japan, the USA and CMS. These contributions have never been guaranteed and have been limited. In practice this has meant that the resources provided have been just enough to *inter alia* cover the cost of a part-time coordinator provided by Wetlands International, hold annual MWCC meetings, cover some costs to promote the implementation of the Strategy at international meetings, coordinate implementation of the Action Plans and Site Networks and develop information materials.

To support the APMWCS's implementation, funding for activities and projects has had to have been raised from a number of sources. The success of fund raising has varied. Funding has been used to support a number of activities undertaken at the site and national levels with some international activities as well including training courses and meetings. The lack of secured long-term funding has not enabled the development of large and flyway wide programmes.

As with the APMWCS, funding could also be foreseen to be the primary limitation for an independent CAF Waterbird Action Plan. This is because Australia, Japan and the USA would not be part of the range, although the United Kingdom (Chagos Islands) would be.

Another possible disadvantage is that representatives of participating Range States need to allocate resources to meet on a regular basis to evaluate the APMWCS's implementation as they would, for example, within an intergovernmental forum under a treaty.

Conclusion

There are three possible legal and institutional options to provide an international framework for promoting conservation of migratory waterbirds and their habitats in the CAF region and the proposed CAF Waterbird Action Plan to support its implementation:

Extending the AEWA geographical area to include the entire CAF and incorporating the CAF Waterbird Action Plan under the Agreement;

Developing a new Agreement for the CAF region under the auspices of CMS to which the CAF Waterbird Action Plan would be annexed; and

Setting-up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework.

Some of the potential advantages and disadvantages of each option have been described earlier.

Which option is most favourable for the CAF Range States will depend upon what is perceived to be most beneficial for the region in supporting and achieving the goal of conserving its migratory waterbirds and their habitats across the CAF.

Annex 1: Overview of the Central Asian Flyway

The Central Asian Flyway⁶ (CAF) covers a large continental area of Eurasia between the Arctic and Indian Oceans and the associated island chains. The Flyway comprises several important waterbird migration routes, most of which extend from the northernmost breeding grounds in Russia (Siberia) to the southernmost non-breeding (wintering) grounds in West and South Asia, the Maldives and the British Indian Ocean Territory of the Chagos Islands.

The birds on their annual migration cross the borders of several countries. Geographically the flyway region covers 30 countries of north, Central and South Asia and the Trans-Caucasus. The Central Asian Flyway covers at least 175 migratory waterbird species, including 26 globally threatened and near-threatened species (as per BirdLife International 2004) that breed, migrate and spend the non-breeding (winter) period within the region, with a focus on those that spend the non-breeding period in South and Central Asia.

The waterbirds use a wide variety of habitats during their annual cycle, from the arctic tundra, forested wetlands of the temperate taiga, forest-steppe, steppe grasslands, deserts, inland and coastal wetlands, wet and dry agriculture crops, rivers, floodplain wetlands, marshes, lakes, tanks, ponds, irrigation tanks, sewage and waste treatment farms. This continental flyway comprises large semi-arid habitats with a limited number of wetlands, particularly in the staging areas and different groups of migratory waterbirds appear to overlap considerably in the usage of important sites. The large coastal wetland areas of the countries along the Arabian Sea and Bay of Bengal and the islands provide good habitat for many species. Many of the wetlands are situated in areas with dense human populations where they provide many goods and services to the people but where they are increasingly being unsustainably exploited by man. Thus the management of these wetlands to secure the provision of these goods and services requires coordinated multi-sectoral planning and implementation to realise the needs of local people and biodiversity conservation.

Many countries along the CAF have developing or transitional economies with inadequate allocation of resources for conservation and for involvement of local stakeholders in sustainable management of wetlands. In addition, changes in political systems and instabilities in some countries, language and other barriers have not enabled strong cooperation to be developed between agencies in all the flyway countries to cooperate in information sharing, research and conservation activities.

The wetland and other habitats on which the waterbirds depend are consequently very threatened along the CAF, and therefore in need of implementation of internationally agreed and co-ordinated and science-based conservation measures, ensuring sustainable benefits to people as well as survival of species and habitats.

⁶ A “flyway” is the total area used by (groups of) populations or species of birds, throughout their annual cycle, including the breeding and wintering areas, but also the migration stop-over sites.