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**ASSESSMENT OF THE MERITS OF A CMS
INSTRUMENT COVERING MIGRATORY RAPTORS
AND OWLS IN THE AFRICAN – EURASIAN REGION**

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CONSULTATION DOCUMENT

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On behalf of the
Global Wildlife Division
Department for Environment, Food and Rural Affairs
United Kingdom

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BACKGROUND TO THE CONSULTATION

This consultation document, with the associated status report, has been commissioned by the UK Department of Environment, Food and Rural Affairs following on from resolutions passed at the VI World Conference on Birds of Prey and Owls (Budapest, Hungary, 18-23 May 2003). It is intended to ascertain whether range states in the African-Eurasian region would consider it worth exploring the establishment of an appropriate international instrument under the Bonn Convention on Migratory Species (CMS) to conserve migratory raptors and owls. The exercise was endorsed by the CMS Scientific Council in April 2004, and the results will be reported to the next Conference of Parties to be held in Nairobi, 16-25 November 2005.

2. STATUS OF AND INTERNATIONAL CONSERVATION MEASURES FOR RAPTORS AND OWLS IN AFRICA-EURASIA

This consultation document is accompanied by a report based on a review of the available literature and data in BirdLife International's World Bird Database that aims to establish the current conservation status of each species of migratory raptor and owl within the African-Eurasian region, the principal threats to those with an Unfavourable Conservation Status and the potential for taking further international actions for raptors and owls of the region using existing multi-lateral environmental agreements.

With respect to the owls, the report concludes that few of the migratory species currently have an Unfavourable Conservation Status and furthermore the threats they face are quite particular to them. Accordingly, there appears to be no justification at present for establishing a CMS agreement for owls.

On the other hand, 28 species of migratory raptors (a relatively large proportion of the 54 species concerned) have an Unfavourable Conservation Status whether globally or within the region (see Table 1). Many face common threats within their breeding areas, whilst on migration and on their wintering grounds. These birds could therefore potentially benefit from further concerted international conservation actions.

A wide range of existing multilateral environmental agreements (MEAs) already contain provisions that can or could improve the conservation status of migratory raptors in the African-Eurasian region (see Table 2). They confer a panoply of interlocking (if not overlapping) legislation that, in principle, covers all the threats faced by migratory raptors. Yet clearly, for many species, the current arrangements appear to be either inadequate or simply failing.

3. OPTIONS FOR CONCERTED CONSERVATION ACTIONS

In the circumstances described above, the principal options for addressing the Unfavourable Conservation Status of migratory raptors in the African-Eurasian region are:

1. Wait and see whether the situation improves as existing legislation gradually gathers pace (especially in Europe under the EC Directives, Bern Convention and CBD, and for Africa under CBD, African Convention, Convention to Combat Desertification, and Climate Change Convention).

2. Strengthen the existing legislation, especially by acquiring more parties (particularly Russia, Ukraine, Belarus, Kazakhstan and other Central Asian countries and more African members for the Bern Convention), generating higher political commitment, and seeking ways to improve enforcement of protection under national law.
3. Set up a new instrument under CMS focusing on these species.

In fact, since Options 1 and 2 are already pursued by various governmental agencies and non-governmental organisations, the key question for this assessment is whether Option 3 brings added conservation value, and if so what is the most appropriate form of instrument.

4. CMS INSTRUMENTS for CoNCERTED Actions

In general, a CMS instrument has a number of distinctive features and advantages, such as:

- focusing attention on a discrete set of migratory species within a given geographic area;
- specifying and engaging the range states most appropriate for these species; and
- the management/action plan associated with a CMS instrument can more easily facilitate joint action (including by drawing together the existing legislation), information exchange and integration, and best practice development across the geographical area of the instrument;
- providing the possibility for better access to other types of assistance, including other biodiversity-related conventions and international organisations, and integration into the entire world of environment and development.

However, there are also disadvantages that would have to be borne in mind, including:

- the additional administrative and financial burden for under-resourced environmental ministries, even when actions are closely correlated with obligations under other MEAs;
- the considerable time likely to be needed to negotiate, adopt and ratify a new instrument and for the first meeting of parties to convene and actually pursue an agreed action plan; and
- continued reliance on national conservation priorities.

There are four types of CMS instruments for cooperative actions. In increasing order of complexity, these are:

- (1) stand-alone action plans;
- (2) memoranda of understanding
- (3) Article IV(4) agreements that can cover any migratory population in any specified geographic range of one or more species (even ones not listed in Annex II of CMS); and
- (4) Article IV(3) Agreements that must cover the whole range of one or more species listed in Annex II of CMS.

A further possibility should also be mentioned here, which is:

- (5) to expand the coverage of the existing Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) to cover raptors (or indeed all migratory birds) using this flyway.

Table 3 provides a review of the strengths, weaknesses, opportunities and threats (SWOT analysis) of each type of instrument. Since all migratory raptors are listed on Appendix II of

CMS, any of these instruments may be used for developing concerted international actions for their conservation. Indeed, over time, it is possible to start with a relatively simple instrument and gradually increase its legal standing.

Table 1: Migratory raptors of the Africa-Eurasian region that have Unfavourable Conservation Status at global and/or regional level

Species	English Name
<i>Chelictinia riocourii</i>	African Swallow-tailed Kite
<i>Milvus milvus</i>	Red Kite
<i>Milvus migrans</i>	Black Kite
<i>Haliaeetus albicilla</i>	White-tailed Eagle
<i>Neophron percnopterus</i>	Egyptian Vulture
<i>Aegypius monachus</i>	Cinereous Vulture
<i>Circaetus gallicus</i>	Short-toed Snake-eagle
<i>Circus maurus</i>	Black Harrier
<i>Circus cyaneus</i>	Northern Harrier
<i>Circus macrourus</i>	Pallid Harrier
<i>Accipiter brevipes</i>	Levant Sparrowhawk
<i>Buteo rufinus</i>	Long-legged Buzzard
<i>Aquila pomarina</i>	Lesser Spotted Eagle
<i>Aquila clanga</i>	Greater Spotted Eagle
<i>Aquila nipalensis</i>	Steppe Eagle
<i>Aquila rapax</i>	Tawny Eagle
<i>Aquila adalberti</i>	Spanish Imperial Eagle
<i>Aquila heliaca</i>	Imperial Eagle
<i>Aquila chrysaetos</i>	Golden Eagle
<i>Hieraaetus pennatus</i>	Booted Eagle
<i>Pandion haliaetus</i>	Osprey
<i>Falco naumanni</i>	Lesser Kestrel
<i>Falco tinnunculus</i>	Common Kestrel
<i>Falco vespertinus</i>	Red-footed Falcon
<i>Falco eleonora</i>	Eleonora's Falcon
<i>Falco biarmicus</i>	Lanner Falcon
<i>Falco cherrug</i>	Saker Falcon
<i>Falco rusticolus</i>	Gyr Falcon

Table 2: International Agreements having provisions covering the main threats facing migratory raptors
(see status report for more details)

International Agreement	Threat Type						
	Habitat loss / degradation (human induced)	Taking of birds (harvesting / hunting)	Accidental mortality	Control of predators / persecution (including deliberate poisoning)	Pollution (affecting habitat and/or species)	Disturbance (human)	Climate Change
Convention on Biological Diversity	x	x	x		x		
Climate Change Convention	x						x
Convention to Combat Desertification	x						
CITES		x					
European Landscape Conservation	x						
Convention on Migratory Species	x	x	x	x	x	x	
Ramsar Convention	x				x		
Bern Convention	x	x		x		x	
African Convention	x	x			x		
EC Habitats Directive	x				x		
EC Birds Directive	x	x		x	x	x	

Table 3: Strengths, weaknesses, opportunities and threats (SWOT) of potential CMS instruments for migratory raptors

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
1. Action Plan	A non-binding stand-alone instrument that can be recommended by the Conference of Parties to the Ranges States of a migratory species listed in Appendix I so that they take further measures considered appropriate to benefit the species under Article III(6).	<ul style="list-style-type: none"> • Can be developed quickly with little formal procedure (no need for signatures by the participating agencies). • Enjoys the international authority of the CMS Secretariat with its institutional umbrella as a body provided by the United Nations Environment Programme (UNEP). • Provides a stable and long-term legal and/or political framework for initial implementation and later evolution (e.g. to MoU or Agreement). • There are no regular administrative duties or financial contributions to be paid: the administrative work is usually done by the CMS Secretariat. 	<ul style="list-style-type: none"> • No legal standing and therefore depends for effectiveness entirely on the goodwill of the participating states. • No organisational structure created for implementation so the CMS Secretariat has to coordinate it. 	<ul style="list-style-type: none"> • The material for an Action Plan is readily available and any Range State willing to participate could do so quickly. • The Action Plan could serve as a forerunner for an MoU and eventually a new Agreement, or possible adoption under an expanded AEWA. 	<ul style="list-style-type: none"> • Parties to CMS will not provide the Secretariat with the additional resources needed to service the Action Plan. • Participants in the Action Plan will not give sufficient support because it is not legally binding.

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<p>2. Memorandum of Understanding</p>	<p>A non-binding instrument that aims to co-ordinate existing short-term measures across the range of one or more seriously endangered migratory species. It initiates immediate concerted action measures until a more elaborate instrument (i.e. an Article IV agreement) is prepared and adopted by the Range States.</p>	<ul style="list-style-type: none"> • Can be developed and agreed on relatively short notice • Enjoys the international authority of the CMS Secretariat with its institutional umbrella as a body provided by the United Nations Environment Programme (UNEP). • Provides a stable and long-term legal and/or political framework for initial implementation and later evolution. • There are no regular administrative duties or financial contributions to be paid: the administrative work is usually done by the CMS Secretariat. • Has a higher standing than an Action Plan alone because it requires Ministerial (or equivalent) signatures, and embodies political commitments, but does not need ratification. • Their simplicity allows them (and/or their associated 	<ul style="list-style-type: none"> • No legal standing and therefore depends for effectiveness entirely on the goodwill of the participating states. • No organisational structure created for implementation so the CMS Secretariat has to coordinate it. • Typically has a much less substantive content than an Agreement because it must not create any new commitment for the signatory Range States. • As an MoU does not create any organisational structure of its own, it is arguably not as dynamically implemented as would be an Agreement. 	<ul style="list-style-type: none"> • The material for an MoU and Action Plan is readily available and any Range State willing to participate could do so provided the government signs the MoU. • The MoU could serve as a forerunner a new Agreement, or possibly amalgamation with an expanded AEWA. 	<ul style="list-style-type: none"> • Parties to CMS will not provide the Secretariat with the additional resources needed to service the MoU and Action Plan. • Signatories to the MoU will not give sufficient support because it is not legally binding. • The MoU itself could provide a poor substitute for a higher level Agreement.

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<p>3. Article IV(4) agreement</p>	<p>Article IV(4) agreements may take the form of legally binding multilateral treaties or Memoranda of Understanding. They may be concluded for any population, members of which periodically cross one or more national boundaries but their geographical coverage does not need to extend to the entire migratory range of the species concerned. Moreover, the species covered do not have to be listed in Appendix II of CMS.</p>	<ul style="list-style-type: none"> • A self-standing treaty with its own institutions for implementing an Action Plan. • The legally binding nature of this instrument could unlock resources that would not be released for an Action Plan or MoU. • Decision and policy making bodies, serviced by a Secretariat, meet on a regular basis. • Has the potential to create a dynamic environment to address the particular needs of the species covered, and Range States. • Provides long term legal stability for the Range States, their authorities and scientific bodies, as well as the international community of governmental and non-governmental organisations involved. • Parties must make regular reports on implementation . • Has flexibility in coverage of species and geographic range, and can 	<ul style="list-style-type: none"> • Needs to be ratified in accordance with the internal law making or decision making procedures of every Range State. This can take considerable time. • The legal and institutional framework of the Agreement means the Parties may have to stretch limited resources to a further MEA requiring regular contributions and national personnel for meetings and reporting. 	<ul style="list-style-type: none"> • The material for an agreement and Action Plan is readily available and any Range State willing to become a Party could do so provided it ratifies the Agreement. • The agreement could focus on the most threatened raptors and key range states in order to minimise delays and costs. • The agreement could be amalgamated later with an expanded AEWA if appropriate. 	<ul style="list-style-type: none"> • Parties to the Agreement might not contribute sufficient resources to make it effective as an independent instrument.

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<p>4. Article IV(3) Agreement</p>	<ul style="list-style-type: none"> Article IV(3) Agreements are viewed as formal, multi-lateral treaties. They may create new conservation or financial obligations for their Contracting Parties. To enter into force these instruments need to be ratified or acceded to by a pre-determined number of Range States. This instrument applies to species listed in Appendix II of CMS. Parties within whose territory Appendix II migratory species occur shall endeavour to conclude Article IV(3) Agreements, following the guidelines set out in Article V. 	<ul style="list-style-type: none"> A self-standing treaty with its own institutions for implementing an Action Plan. The legally binding nature of this instrument could unlock resources that would not be released for an Action Plan or MoU. Decision and policy making bodies, serviced by a Secretariat, meet on a regular basis. Has the potential to create a dynamic environment to address the particular needs of the species covered, and Range States. Provides long term legal stability for the Range States, their authorities and scientific bodies, as well as the international community of governmental and non-governmental organisations involved. Parties must make regular reports on implementation . Has a high legal standing, especially for CMS Parties, as a requirement 	<ul style="list-style-type: none"> Needs to be ratified in accordance with the internal law making or decision making procedures of every Range State. This can take considerable time. The legal and institutional framework of the Agreement means the Parties may have to stretch limited resources to a further MEA requiring regular contributions and national personnel for meetings and reporting. The Agreement should cover the whole geographic range of the species covered so the number of eligible Parties can grow very large. 	<ul style="list-style-type: none"> The material for an Agreement and Action Plan is readily available and any Range State willing to become a Party could do so provided it ratifies the Agreement. The Agreement would enjoy the highest level of legal standing. The Agreement would embrace all raptors and relevant Range States. 	<ul style="list-style-type: none"> The large number of Parties involved would mean a considerable period before the Agreement enters in to force. Parties to the Agreement might not contribute sufficient resources to make it effective as an independent instrument.

Type of CMS Instrument	Main Characteristics	Strengths	Weaknesses	Opportunities	Threats
<p>5. Expansion of Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA)</p>	<p>This is an Agreement under Article IV(3) of CMS that came into force in 1999. It covers 235 species in 117 Range States, of which 48 are currently Parties. The Parties take co-ordinated measures to maintain migratory waterbird species in a favourable conservation status or to restore them to such a status. They apply within the limits of their national jurisdiction a range of prescribed measures as well as specific actions determined in the Action Plan of the Agreement.</p>	<ul style="list-style-type: none"> • An already existing and operational Agreement, requiring relatively few additional resources to cover raptors. • Covers the same geographic range as needed for African-Eurasian raptors. • No need for Parties to adopt a new treaty and has economies of scale. • Many threats to waterbirds similar to those faced by raptors e.g. climate change, wind farms, pollution. 	<ul style="list-style-type: none"> • Will potentially require a lengthy process of amendment and ratification by at least two-thirds (i.e. 32) of the existing Parties. • The first realistic opportunity to propose such an amendment would be for the Fourth Meeting of Parties in 2008. • Could reduce the focus on waterbirds while not generating strong action for raptors. 	<ul style="list-style-type: none"> • The material for a raptor Action Plan is readily available and could be integrated with the existing AEWA Action Plan. • If the Parties to AEWA agree to expand its scope then this would fast-track concerted international action for raptors. • The additional costs for including raptors in an expanded AEWA would be much less than creating a new Agreement. 	<ul style="list-style-type: none"> • An expanded AEWA could attenuate specific actions for particular groups and have to rely on more generic actions.