



5th SESSION OF THE MEETING OF THE PARTIES

14 – 18 May 2012, La Rochelle, France

“Migratory waterbirds and people - sharing wetlands”

**DEVELOPING A LEGAL AND INSTITUTIONAL FRAMEWORK
FOR THE CENTRAL ASIAN FLYWAY**

Prepared by the CMS Secretariat

Introduction

1. The Central Asian Flyway (CAF) is one of the world's most vital routes for migratory waterbirds spanning 30 Range States from the Arctic to the Indian Ocean. It covers at least 279 migratory waterbird populations of 182 species, including 29 globally threatened and near-threatened species which breed, migrate and winter within the region. In order to identify coordinated actions to conserve those species, CMS convened two range state meetings, which agreed on the CAF Action Plan to conserve migratory waterbirds and their habitats.
2. Many waterbird populations are declining rapidly and the wetlands, grasslands and other habitats upon which they depend are seriously threatened along the CAF due to uncontrolled hunting, unsustainable water management, and lack of law enforcement and conservation capacities. There is an urgent need for science-based and internationally coordinated conservation measures, ensuring sustainable benefits to people as well as the survival of species and their habitats. The CAF Action Plan is an important initiative to address these needs.
3. It is the purpose of this paper to provide a brief background of the CAF process so far and the decisions taken by related meetings on the different institutional options for the CAF. It also intends to provide information about the recent decisions taken by CMS Parties with regard to the development of new agreements, which are relevant for the further development of the CAF framework.

Background

4. The fifth Meeting of the Conference of the Parties to the Convention on Migratory Species (CMS COP5), 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 CAF.
5. Through the combined efforts of CMS, the African-Eurasian Migratory Waterbird Agreement (AEWA) and Wetlands International, a two-day workshop was organized in August 2001 in Tashkent, Uzbekistan, to discuss the conceptual basis for developing a Central Asian Flyway Action Plan to Conserve Migratory Waterbirds and their Habitats (CAF Action Plan).
6. The workshop aimed at developing coordination and collaboration among the Asian and Trans-Caucasus States in the research and conservation of migratory waterbirds and their habitats; at examining the current conservation status of migratory waterbirds and wetlands in the CAF region; at reviewing a draft Action Plan as well as at agreeing on recommendations for a follow-up approach.
7. During the meeting, participants briefly discussed potential options for the framework under which the Action Plan could be developed. Delegates however indicated that they were unable to instantaneously choose the right solution for the region. The CMS Secretariat was therefore asked to prepare a more formal, written presentation of the different options, including their advantages and disadvantages.

8. As a follow-up to the recommendations made during the meeting, a second meeting was held in New Delhi, India, in June 2005. While its main objective was to conclude and endorse the Central Asian Flyway Action Plan to Conserve Migratory Waterbirds and their Habitats, the meeting also addressed other issues, including the identification of selected implementation activities, interim coordination mechanisms for the implementation of the CAF Action Plan as well as the preferred options for a legal and institutional framework for the CAF region. The outcomes of the meeting as regards this last issue are illustrated in some detail in the next section of this document.

9. Although the draft CAF Action Plan was discussed and amended during the meeting, it was not finally approved due to one missing piece of information from the Russian Federation regarding the populations of waterbirds. It was therefore agreed that the outstanding information would be provided to the CMS Secretariat after the meeting and that the Action Plan would be then circulated to the Range States for final review and comment. In January 2008, the CAF Action Plan was finally adopted.

10. In the same year, CMS COP9 (Rome, December 2008) adopted Resolution 9.2, which called for the CAF Range States to meet again in order to *explore the possibility of the preparation of a CMS instrument or extending an existing instrument, either legally binding or non-binding, under Article IV of the Convention concerning the conservation of these species and requests the Secretariat to involve the relevant regional Agreements, in particular the Secretariat of the AEWA in the view of a possible close collaboration with the AEWA using all available synergies.*

11. It has so far not proved possible to convene a negotiation meeting of the CAF Range States to reach a formal decision on the legal and institutional framework due to a lack of funding. But with the support of strengthened CMS Secretariat staff capacity on Central Asian issues and with funding from Germany, it has become feasible to prepare such a meeting in conjunction with the First Meeting of Signatories to the Raptors MOU, to be held in Abu Dhabi in December 2012.

12. While this CAF negotiation meeting is scheduled to take place after the 5th Session of the Meeting of the Parties to AEWA, the UNEP/CMS Secretariat would like to appraise AEWA Parties of the process which CMS is conducting, for them to consider next steps to be undertaken by the UNEP/AEWA Secretariat, and the AEWA Technical and Standing Committees before MOP6 in case the CMS CAF negotiation meeting decides that the incorporation of CAF into AEWA is the preferred option.

Institutional Options for CAF: Outcomes of the New Delhi Meeting, June 2005

13. As the report from the 2005 New Delhi meeting (see AEWA/MOP Inf. 5.6) as well as the meeting declaration (see AEWA/MOP Inf. 5.7) note, participants considered the following three different options for legal and institutional frameworks to support CAF implementation:

- a. Extending the AEWA geographical area to encompass the entire CAF region and incorporating the CAF Waterbird Action Plan under the Agreement;
- b. Developing a new Agreement for the CAF region under the auspices of CMS to which the CAF Waterbird Action Plan would be annexed;
- c. Set up the CAF Waterbird Action Plan as an independent international cooperative conservation framework outside the CMS Framework.

14. Delegates were nearly unanimous in their preference for a legally binding instrument and for the Action Plan to be integrated into AEWA. Three delegations expressed a preference for the Action Plan to be linked to a non-binding memorandum of understanding.

15. However, most of the 23 delegations present were not able to express an official position because they had not the necessary credentials to speak on behalf of their Governments. It was recognized that the opinions expressed were to be considered preliminary and non-binding, especially as most of the countries represented had not initiated inter-ministerial consultations with other relevant Ministries prior to the meeting.

16. While the conclusions of the Meeting provided clear guidance for exploring the AEWA-linked option in more depth, it was noted that an official view was still awaited and most of the Range States had still to confirm their position on a Government level. Therefore, no official or formal decision could be taken at the time of the meeting.

Institutional Options for CAF: Outcomes of the CMS Future Shape Process and the Scientific Council Working Group on Flyways

17. CMS COP9, through Resolution 9.13, launched an intersessional process on the future strategies and structure of CMS and the CMS Family with the task of drafting proposals for consideration at the tenth Conference of Parties (Bergen, Norway, November 2011).

18. This *Future Shape Process* concluded with Resolution 10.9, adopted by CMS COP10, by outlining a set of prioritized activities to strengthen the Convention's contribution to the worldwide conservation, management and sustainable use of migratory species over their entire range.

19. The following activities, annexed to Resolution 10.9, are of particular relevance with regard to the further development of CAF:

- **Activity 12:** Actions to prioritize the growth of CMS and the CMS Family, including (1) the creation of criteria against which to assess proposed new potential agreements; (2) developing a policy where implementation monitoring must be a part of any future MoUs; and (3) extending the scope of existing Agreements/MoUs rather than developing new Agreements/MoUs.
- **Activity 15:** Enhanced collaboration between CMS agreements via Secretariats or via merger of agreements based on either geography/ecology or on species clusters, including (1) cooperation and coordination between agreement Secretariats, programmes and projects based on species clustering, thematic issues or geography, if appropriate; and (2) seeking opportunities to develop synergistic relationships either based on geography or species clustering.

20. In addition, Resolution 10.16 on Priorities for Agreements, *instructs the Secretariat to develop for consideration and adoption at COP11 a policy approach to the development, resourcing and servicing of agreements in the context of Resolution 10.9 on Future structure and strategies of the CMS and the CMS Family*; and decides on a list of eight considerations (a-h), which must be addressed when making any new proposals in the meantime.

21. Resolution 10.10 (Guidance on Global Flyway Conservation and Options for Policy Arrangements) furthermore reiterates the need to build on existing achievements, in particular the CAF Action Plan for waterbirds and the recently approved Western/Central Asian Site Network for the Siberian Crane and Other Migratory Waterbirds, and to *consider the potential to align with existing agreements, building on earlier discussions and considering synergies with AEWA in particular*.

Conclusion

22. With the outcome of the New Delhi meeting, indicating a clear preference of CAF range states for the AEWA-linked option, and taking into account the above mentioned decisions and criteria adopted by CMS Parties, as well as the limited human and financial resources within the CMS Secretariat, effective implementation and appropriate servicing of a stand-alone CMS instrument for CAF under CMS (e.g. MoU) does not seem feasible.

23. In light of these developments, after consultation and in close cooperation with the AEWA Secretariat, the CMS Secretariat intends to offer the third upcoming meeting of the CAF Range States an opportunity to

take an official decision towards either option a. (linking CAF and AEWA) or option b. (independent CAF framework outside of CMS).

24. A copy of document CMS/CAF/6 (*A Legal and Institutional Framework to support the Implementation of the CAF Action Plan: Options for Consideration*), which was tabled at the New Delhi Meeting, and providing an overview on the advantages and disadvantages of the different options for CAF as well as an overview on the flyway is available as AEWA/MOP Inf. 5.8.

Action Requested from the Meeting of the Parties:

1. Take note of the activities undertaken by the CMS Secretariat with regard to the development of an institutional framework for the CAF Action Plan; and
2. Consider next steps to be undertaken by the AEWA Secretariat, and the AEWA Technical and Standing Committees before MOP6 in case the CMS CAF negotiation meeting in December 2012 decides that the incorporation of CAF into AEWA is their preferred option.