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“Flyway Conservation at Work – Review of the Past, Vision for the Future”

**POTENTIAL ROLE OF THE AGREEMENT IN THE
CONSERVATION OF SEABIRDS**

Paper by the Technical Committee
Approved intersessionally on 23 July 2007

Background

In Resolution 2.1, AEWA's 2nd Session of the Meeting of the Parties requested the Technical Committee of the Agreement, *inter alia*, to review further development of the Agreement by including additional species of wetland birds and species traditionally considered as seabirds, looking in the first instance at the species listed in Table 2 and Table 3 of the document AEWA/MOP 2.9.

The Technical Committee discussed the issue of inclusion of new species to the Agreement at its fourth (in 2003), fifth (in 2004) and more substantively at its sixth (in 2005) meeting. As a result of these discussions, the Technical Committee decided to recommend to MOP3 to initially not include any bird species from Table 3 of the document AEWA/MOP 2.9, which listed wetland dependent passerines, birds of prey and owls.

Instead, the Technical Committee decided to analyse the seabird species listed in Table 2 of the document AEWA/MOP 2.9 more closely, in order to assess the degree to which they may be appropriate for inclusion in the Agreement's Annex 2. The analysis resulted in a proposal to MOP3 for the inclusion of 21 species, traditionally regarded as seabirds (see *Appendix 8* and document AEWA/MOP 3.16).

However, AEWA's Third Meeting of the Parties in 2005 could not decide on this issue, but in its Resolution 3.8 requested the Technical Committee “... *in close co-operation with the Agreement Secretariat and consultation with the relevant bodies of the Convention, to further consider the potential role of the Agreement in the conservation of seabirds, taking into account the actions being undertaken by the RFMOs and other relevant international organisations, such as the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea, and to report to the fourth session of the Meeting of the Parties.*”

Following the request of MOP3, a Technical Committee working group was convened in order to look closely at this issue. At the 7th Meeting of the Technical Committee, the Technical Committee Working Group 6 presented its findings after examination of the CBD Programme on Marine and Coastal Biological Diversity. It was felt that some further work should be done on this subject and a revised paper should be presented at the next meeting of the Technical Committee.

This document represents the revised paper and contains a number of new findings and reviewed position of the Technical Committee.

Findings and Discussion

Amongst the most significant at-sea threats to seabird species are food shortage due to depletion of fish stocks, to which overfishing contributes, and by-catch in longline fisheries, as well as oil pollution. Climate change also plays a role in the depletion of fish stocks and the solid waste is another problematic aspect of pollution for seabirds. Further threats are destruction of habitats and unsustainable human exploitation. On-land threats include disturbance at breeding sites and introduced terrestrial predators. The examinations of the TC concentrated on regulations in international law and non-binding instruments that address the most significant threats.

The TC working group examined the CBD Programme on Marine and Coastal Biological Diversity. This programme is very much about marine protected areas. All references with some relevance to the potential role of the work of the CBD to the conservation of seabirds have been compiled and presented in *Appendix 1*.

Findings:

- (a) There are very few provisions in CBD for a potential role of the work of CBD in the conservation of seabirds.
- (b) There are several references to UNCLOS that indicate that UNCLOS has a very limited potential role in the conservation of seabirds.
- (c) There are no references to other ISOs or to RFMOs that indicate their potential role in the conservation of seabirds.
- (d) There are several paragraphs in the CBD's Programme on Marine and Coastal Biological Diversity that can be interpreted as being an appeal to other organisations to play a role in the conservation of species like seabirds, in marine and coastal areas within and beyond national jurisdiction.

The TC working group further examined the United Nations Convention on the Law of the Sea (UNCLOS). The convention contains regulations for all ocean areas. Under it, several agreements have been adopted, among them the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982. Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement). The UN Fish Stocks Agreement enforces and specifies the regulations of UNCLOS relating to the conservation of fish stocks. All references in UNCLOS and the UN Fish Stocks Agreement relevant to the protection of marine species have been compiled and presented in *Appendix 2*.

Findings:

- (a) There are some provisions in UNCLOS that indicate a role in the conservation of marine living resources, for example by means of implementing the concept of Maximum Sustainable Yield (which can be interpreted as a call for reducing overfishing) and by taking into consideration the effect of fishing on species associated with or dependent upon the harvested species (presumably this would include seabirds).
- (b) The UN Fish Stocks Agreement addresses the issue of minimising catch of non-target species - both fish and non-fish species - and protecting biodiversity in the marine environment (which obviously includes seabirds).
- (c) Resolutions by the UN General Assembly addressing oceans and the law of the sea and sustainable fisheries indicate an important role of FAO and Regional Fisheries Management Organisations (RFMOs) in achieving the above mentioned goals and hence in the conservation of seabirds.

After assessing the findings in UNCLOS and the UN Fish Stocks Agreement, the TC working group examined the FAO Code of Conduct for Responsible Fisheries. The FAO Code of Conduct, adopted 1995, is voluntary. It is about the sustainable use of marine resources. The paragraphs that are important with regard to the protection of seabirds are presented in *Appendix 3*.

Findings:

- (a) The code suggests actions for the management of fish stocks within areas of national jurisdiction.

- (b) There are references that can be interpreted as appeals to RFMOs and similar organisations to take actions in areas outside national jurisdiction.
- (c) FAO is not responsible for but facilitates the implementation of the code. By 2000, many countries had assimilated large proportions of the plan into national legislation or organised fishery management around the code. FAO's monitoring indicates that more effort is needed.
- (d) Under the code, several voluntary International Plans of Action (IPOA) have been set up. Relevant for the conservation of seabirds are the International Plan of Action for the Management of Fishing Capacities (IPOA-Capacity) and the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds; relevant passages see again *Appendix 3*).
- (e) The IPOA-Capacity's objective is to achieve an efficient, equitable and transparent management of fishing capacity, in order to reduce overfishing, by 2005.
- (f) The IPOA-Seabirds' objective is to reduce the incidental by-catch of seabirds in longline fisheries.
- (g) The implementation of the IPOA-Capacity and the IPOA-Seabirds is not very advanced.

RFMOs are international organisations that try to coordinate fisheries on high seas and establish management measures for fish stocks. The TC working group examined provisions of RFMOs relevant to the AEW region (see map in *Appendix 4*). Management measures are directly established by the North East Atlantic Fisheries Commission (NEAFC), the Northwest Atlantic Fisheries Organization (NAFO), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean (SEAFO), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), and the General Fisheries Commission for the Mediterranean (GFCM). Members are provided with scientific and management advice by the Fishery Committee for the Eastern Central Atlantic (CECAF) and the Regional Commission for Fisheries (RECOFI).

Findings:

- (a) Most RFMOs try to handle overfishing by introducing catch limits and quotas.
- (b) The long-term objective is to keep fish stocks at a level for the maximum sustainable yield (MSY), as also required in UNCLOS and the UN Fish Stocks Agreement. To estimate the MSY, specific data on the stock and the species are needed. The data that the calculation is based on is not always available or reliable and the outcome of the calculation depends on assumptions made during the process. Furthermore, illegal, unreported and unregulated fishing is a problem. Inaccurate calculations might lead to the depletion of fish stocks. There are no references to species that depend on fish as food for estimating the MSY, like seabirds, but their impact might be included in mortality rates when assessing the fish stocks.
- (c) Some RFMOs (SEAFO, IOTC, ICCAT, CCSBT) have introduced measures to reduce seabird by-catch. No measures have been taken by NAFO, NEAFC, and GFCM.
- (d) No information is available from CECAF and RECOFI.

As some seabird species are also threatened by oil spills, the conventions relating to the prevention of oil pollution have also been examined by the TC working group. The relevant passages are presented in *Appendix 5*.

Findings:

- (a) The International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) regulates what action is to be taken to prevent oil pollution and to respond to an emergency.
- (b) The International Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention) prohibits the dumping of oil into the sea.
- (c) The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) also sets up regulations to prevent oil pollution from ships. Revised Annex I *Regulations for the prevention of pollution by oil* entered into force on 1 January 2007, containing all amendments made since the entering into force of MARPOL 73/78 in 1983.
- (d) In all three agreements, there are no special requirements concerning the protection of seabirds.

Some regional conventions could potentially engage in the protection of some seabird species. The TC working group examined the conventions relating to marine biodiversity in the AEW region. Relevant passages are compiled in *Appendix 9*.

Findings:

- (a) The Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) obliges Parties to cooperate and to take all appropriate measures to prevent and abate pollution. Under the convention's Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, an Action Plan for the Conservation of Bird Species listed in Annex II of the protocol exists. In annex II of the protocol none of the seabird species in question are listed so this plan does not apply to them.
- (b) The Helsinki Commission (HELCOM) works to protect the marine environment of the Baltic Sea from all sources of pollution. In order to address the problem of by-catches of marine mammals and birds, HELCOM is working to restrict the use of harmful fishing equipment (salmon drift nets and bottom-set gill nets). Seabird breeding sites are theoretically incorporated into the system of Baltic Sea Protected Areas, but further measures regarding their protection are necessary.
- (c) The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) aims at extending the cooperation of the Contracting Parties to cover all human activities that might adversely affect the marine environment of the North East Atlantic. Programmes and measures relating to fisheries management cannot be adopted. In the OSPAR list of threatened species that will guide the OSPAR Commission in setting priorities for its further work on the conservation and protection of marine biodiversity, one of the seabird species in question is listed, *Uria aalge*.
- (d) The Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah Convention) has produced an Action Plan for the Conservation of the Marine Environment and Coastal Areas, however, no further implementing documents or measures on seabirds are available.
- (e) The Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea against Pollution (Bucharest Convention) defines a list of threatened species. Actions will be taken primarily for these species. In the Black Sea Red Data Book none of the 20 seabird species in question are listed.
- (f) No measures on seabirds by the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention) or the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention) can be found.
- (g) Under the Convention for the Conservation of European Wildlife and Habitats (Bern Convention), special attention is given to the species in Appendix 2. None of the seabird species in question are listed in this appendix.
- (h) The Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (EC Birds Directive) calls on states to engage in the conservation of all bird species naturally occurring in the European territory of the member states. Special attention is given to species listed in annex 1 (none of the seabird species is listed) and migratory species. Several of the seabird species qualify as migratory species under the directive. Member states are required to classify Special Protection Areas for these species.
- (i) Under the Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), habitats listed in annex 1 are to be protected by means of a network of sites. In the annex, several coastal habitat types are listed.

In Resolution 3.8 the MOP also invited the Parties "...to indicate to the Secretariat their particular concerns regarding the information contained in Table 1 annexed to Doc. AEW/MOP3.29.Rev.2 and regarding the addition of 21 species to Annex 2 before the next meeting of the Technical Committee". No concern regarding the information contained in Table 1 annexed to Doc. AEW/MOP3.29.Rev.2 or regarding the addition of 21 species to AEW Annex 2 (see *Appendix 8*) was expressed by any of the Parties before the 7th meeting of the Technical Committee at the end of October 2006.

After the 7th meeting of the Technical Committee, attention was drawn to the fact that six of the species proposed to MOP3 for inclusion into the Agreement's species list (see *Appendix 8*) were also listed in the first and the second editions of the Report on the Conservation Status of the Migratory Waterbirds in the Agreement Area, respectively in 1999 and in 2002, as being species inappropriate for inclusion. These six species are as follows: Kittiwake *Rissa tridactyla*, Bridled Tern *Sterna anaethetus*, Sooty Tern *Sterna fuscata*, Brown Noddy *Anous stolidus*, Black Noddy *Anous minutus*, Lesser Noddy *Anous tenuirostris*. The reason for suggesting these six species as inappropriate for inclusion is that they are "...more properly regarded as seabirds, breeding on rocky or sandy sea coasts, cliffs, offshore islands, etc., and spending the non-breeding season exclusively in marine environments."

The Technical Committee would like to stress that the geographical scope of AEWA is clearly about marine and coastal areas within and beyond national jurisdiction (see map and definition of the Agreement area in *Appendix 6*). The definition of waterbirds in the text of the AEWA refers to wetlands: formally AEWA did not include an explicit definition of wetlands, but adopted the definition of the Ramsar Convention (see again *Appendix 6*).

It has to be stressed again that currently the AEWA species list already includes a number of waterbirds, traditionally regarded as seabirds (added by MOP1 and MOP2), amongst them are the African Penguin *Spheniscus demersus*, the Cape Gannet *Sula capensis*, the Crowned Cormorant *Phalacrocorax coronatus*, the Bank Cormorant *Phalacrocorax neglectus*, the Socotra Cormorant *Phalacrocorax nigrogularis*, and a number of gull and tern species, as well as some sea ducks, such as the Common Eider *Somateria mollissima*, the King Eider *Somateria spectabilis*, the Steller's Eider *Polysticta stelleri*, the Long-tailed Duck *Clangula hyemalis*, the Common Scoter *Melanitta nigra*, the Velvet Scoter *Melanitta fusca*, and the Red-breasted Merganser *Mergus serrator*.

In addition, the Lesser Noddy *Anous tenuirostris*, was classified as a species whose range overlaps in a small part with the Agreement area, and therefore, the region has little significance for the species. This statement however does not apply to the true distribution of the sub-species *Anous t. tenuirostris*, which overlaps by ca. 95% (rough estimation) with the Agreement area.

The Black Noddy *Anous minutus*, has also been considered inappropriate for inclusion due to the lack of clear migration patterns. It does, however, appear that post-breeding dispersal may be as far away as 3,000 km. While the latter is certainly valid for the Pacific races, there is no substantial evidence that the races occurring within the AEWA area are as highly dispersive too. The high racial variation within the species also suggests that there might be little movement and inter-linkages between the populations. On the ground of this information the Technical Committee considers that until the opposite can be proved, the Black Noddy *Anous minutus* should not be regarded as appropriate for inclusion.

Thus, the original list of species proposed for addition to AEWA's Annex 2, which contains 21 species (see *Appendix 8*), should be reduced to 20 species, excluding the Black Noddy *Anous minutus*.

Conclusion

There are currently provisions and regulations in international law, which if implemented successfully, might have the ability to reduce the most urgent threats to seabirds in the marine environment to some extent, i.e. by-catch in longline fisheries, food shortage due to overfishing, and oil pollution. However, the implementation of these provisions and regulations is difficult and not very advanced at present. In the coastal and terrestrial environments, where major events in the life cycle of seabirds, such as breeding, are taking place, threats are insufficiently targeted by other MEAs. Amongst those threats are introduced predators, human disturbance, unsustainable exploitation, habitat deterioration and loss. In response to Resolution 3.8 that follows on Resolution 2.1 (see *Appendix 7*), the Technical Committee considers that AEWA has an important role to play in the conservation of waterbird species, traditionally regarded as seabirds.

While there are provisions in international law regarding some threats to seabirds, there is no international treaty in place, which is specifically focused on the conservation of the seabird species. Partial exception is

ACAP (the Agreement on the Conservation of Albatrosses and Petrels), which only covers a sub-set of the migratory seabirds. For other migratory seabird species, a strategic and coordinated approach on the flyway scale is missing. AEWA can play a role in bridging this gap by including the migratory seabird species occurring within its area, in its species list.

Instead of devising own provisions for mitigating threats to the species in the marine environment, the Agreement should work together with the other relevant international organisations to make provisions under their mandate more efficient. AEWA could coordinate conservation measures and facilitate a cohesive approach to the conservation of the seabird species. AEWA could further encourage parties and international organisations to make more allowance for aspects of seabird conservation. Possible fields are the consideration of seabirds when identifying important bird areas and marine protected areas or in fishery policies. Besides the legal aspect of seabird conservation, in other areas of work, such as research and monitoring, and education and information, AEWA could have a strong added value. AEWA could adopt the important role as a centre of knowledge on species status and threats, as well as improving and encouraging data collection, and collecting and providing examples of most effective conservation measures and best practices.

In conclusion, the Technical Committee recommends adding a reduced list of 20 species (excluding the Black Noddy *Anous minutus*) to Annex 2 (the original list is of 21 species as proposed in Doc. AEWA/MOP3.29.Rev.2) by the 4th session of the Meeting of the Parties (MOP4).

**SUMMARY SHEET OF REVIEWED INSTRUMENTS OF INTERNATIONAL LAW
(BINDING AND NON-BINDING)**

<u>Instrument</u>	<u>Overfishing</u>	<u>By-catch</u>	<u>Oil pollution</u>	<u>Other</u>
CBD Programme on Marine and Coastal Biological Diversity	Suggests collaborative links with relevant organisations and institutions	Calls on states to take measures to reduce by-catch	-	Calls on states to establish and manage marine and coastal protected areas
UNCLOS	Calls on states to determine total allowable catch	Calls on states to take into account ecologically related species	Calls on states to prevent, reduce and control pollution	-
UN Fish Stocks Agreement	Calls on states to ensure long-term sustainability of fish stocks	Calls on states to minimise catch of non-target species and protect biodiversity	Calls on states to minimise pollution	-
FAO Code of Conduct for Responsible Fisheries (voluntary)	Calls on states to prevent overfishing and suggests actions for the management of fish stocks	Fisheries management should also target species belonging to the same ecosystem	-	-
FAO IPOA-Capacity (voluntary)	Develops strategies to achieve an efficient, equitable and transparent management of fishing capacity	-	-	-
FAO IPOA-Seabirds (voluntary)	-	Suggests activities and measures to reduce by-catch	-	-
CCSBT	n/a	Measures to reduce by-catch	-	-
CECAF	-	-	-	-
GFCM	-	-	-	-
ICCAT	n/a	Resolution on seabird by-catch	-	-
IOTC	n/a	Resolution on seabird by-catch	-	-
NAFO	Quotas and bans	-	-	-
NEAFC	Management measures and catch limits	-	-	-
RECOFI	-	-	-	-
SEAFO	Interim management measures	Conservation Measure on seabird by-catch	-	-
MARPOL 73/78	-	-	Regulations to prevent oil pollution from ships	-
London Convention	-	-	Prohibits the dumping of oil into	-

			the sea	
OPRC	-	-	Regulates what action is to be taken to prevent oil pollution and to respond to an emergency	-
Abidjan Convention	-	-	Urges parties to reduce and prevent pollution	Calls on states to establish specially protected areas for marine wildlife (no reference found to seabirds)
Barcelona Convention (does not apply to the species in question)	-	-	Prohibits dumping of oil and prepares for emergencies	52 specially protected areas inventoried in 2003
Bern Convention (does not apply to the species in question)	-	-	-	-
Bucharest Convention (does not apply to the species in question)	-	-	Calls on parties to reduce and prevent pollution and gives regulations for emergencies	-
EC Birds Directive	-	-	-	Special conservation attention (SPAs) given to regularly occurring migratory bird species in Europe
EC Habitats Directive	-	-	-	Protection of coastal habitat types in Europe
HELCOM	-	Working to restrict the use of harmful fishing equipment	Reduction of discharges, emissions and losses of hazardous substances	62 Baltic Sea Protected Areas in 1995
Jeddah Convention	-	-	Urges parties to reduce and prevent pollution	-
Nairobi Convention	-	-	Urges parties to reduce and prevent pollution	Calls on states to establish specially protected areas for marine wildlife (no reference found to seabirds)
OSPAR Convention	-	-	Reduction of discharges, emissions and losses of hazardous substances and of run-offs from offshore industry	<i>Uria aalge</i> in the list of priority species for conservation action

Glossary of Acronyms

Abidjan Convention	Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region
AEWA	Agreement on the Conservation of African-Eurasian Migratory Waterbirds
Barcelona Convention	Convention for the Protection of the Mediterranean Sea against Pollution
Bern Convention	Convention for the Conservation of European Wildlife and Habitats
Bucharest Convention	Convention on the Protection of the Black Sea against Pollution
CBD	Convention on Biological Diversity
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CECAF	Fishery Committee for the Eastern Central Atlantic
EC Birds Directive	Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds
EC Habitats Directive	Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora
FAO	Food and Agricultural Organization
GFCM	General Fisheries Commission for the Mediterranean
HELCOM	Helsinki Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
Jeddah Convention	Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment
London Convention	International Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matter
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships
MSY	Maximum Sustainable Yield
NAFO	Northwest Atlantic Fisheries Organization
Nairobi Convention	Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region
NEAFC	North East Atlantic Fisheries Commission
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic
RECOFI	Regional Commission for Fisheries
RFMO	Regional Fisheries Management Organization
SEAFO	Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean
SPA	Special Protection Area
TC	Technical Committee
UNCLOS	United Nations Conventions on the Law of the Sea
UN Fish Stocks Agreement	1995 Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Appendix 1

Extract from CBD Decision VII/5

Marine and coastal biological diversity

Review of the programme of work on marine and coastal biodiversity

3. *Agrees* that the programme of work on marine and coastal biological diversity should be applied and interpreted consistently with national law, and where applicable, international law, including the United Nations Convention on the Law of the Sea;

6. *Welcomes* the entry into force of the Agreement on the Conservation of Albatrosses and Petrels, and notes the adoption of the International Convention for the Control and Management of Ships' Ballast Water and Sediments under the International Maritime Organization and encourages Parties to the Convention on Biological Diversity and other Governments to consider ratifying these treaties

29. *Notes* that there are increasing risks to biodiversity in marine areas beyond national jurisdiction and that marine and coastal protected areas are extremely deficient in purpose, numbers and coverage in these areas;

30. *Agrees* that there is an urgent need for international cooperation and action to improve conservation and sustainable use of biodiversity in marine areas beyond the limits of national jurisdiction, including the establishment of further marine protected areas consistent with international law, and based on scientific information, including areas such as seamounts, hydrothermal vents, cold-water corals and other vulnerable ecosystems;

31. *Recognizes* that the law of the sea provides a legal framework for regulating activities in marine areas beyond national jurisdiction and requests the Executive Secretary to urgently collaborate with the Secretary-General of the United Nations and relevant international and regional bodies in accordance with their mandates and their rules of procedure on the report called for in General Assembly resolution 58/240, paragraph 52, and to support any work of the General Assembly in identifying appropriate mechanisms for the future establishment and effective management of marine protected areas beyond national jurisdiction;

57. *Recalling* paragraph 32 (a) and (c) of the Plan of Implementation from the World Summit on Sustainable Development, that calls on the international community to "maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction";

III. PROGRAMME ELEMENTS

Programme element 1: Implementation of integrated marine and coastal area management (IMCAM)

Operational objective 1.2: To undertake direct action to protect the marine environment from negative impacts

Suggested activities

(j) To take measures to reduce by-catch

Programme element 2: Marine and coastal living resources

Operational objective 2.1: To promote ecosystem approaches to the conservation and sustainable use of marine and coastal living resources, including the identification of key variables or interactions, for the purpose of assessing and monitoring, first, components of biological diversity; second, the sustainable use of such components; and, third, ecosystem effects.

Suggested activities

(a) To develop collaborative links with relevant organizations and institutions, including with regard to cooperative activities aimed at protecting biodiversity in marine areas beyond national jurisdiction.

(i) To maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including areas within and beyond national jurisdiction.

Ways and means

The activities should be carried out by Parties acting individually or under regional agreements where appropriate, and regional and international organizations.

Programme element 6. General

Operational objective 6.2: To undertake effective collaboration, cooperation and harmonization of initiatives with relevant conventions, organizations and agencies while recognising their independent mandates.

Suggested activities

(a) To identify and implement meaningful joint activities and initiatives with relevant conventions, organizations and agencies aimed at the implementation of this work programme.

Appendix 3

ELEMENTS OF A MARINE AND COASTAL BIODIVERSITY MANAGEMENT FRAMEWORK

A. Purpose of the framework

4. Marine ecosystems include both benthic and pelagic elements. Most species have a mobile stage in their life cycle. As a consequence, marine systems are considered open and dispersing larvae can link distant marine, coastal and inland water habitats. This means that connectivity issues are significant in designing a marine biodiversity management framework, and one marine and coastal protected area will not be able to protect all the biodiversity within the area. A network approach is therefore essential. The network should be at an appropriate scale, which may in some cases require a regional approach. That regional approach should address proportionality issues on a regional rather than a national scale, for example when one or a handful of countries possess most or all of a particular habitat type or the world population of a particular species.

Appendix 2

Extract from UNCLOS:

Article 61: Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

Article 117: Duty of states to adopt with respect to their national measures for the conservation of the living resources of the high seas

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118: Cooperation of States in the conservation and management of living resources

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 119: Conservation of the living resources of the high seas

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:
 - (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
 - (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

2. Available scientific information, catch and fishing effort statistics and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with the participation of all States concerned.

Extract from UN Fish Stocks Agreement:

Article 5: General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) *adopt* measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(d) *assess* the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) *adopt*, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) *minimize* pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) *protect* biodiversity in the marine environment;

(h) *take* measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(j) *collect* and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) *promote* and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) *implement* and enforce conservation and management measures through effective monitoring, control and surveillance.

Extract from Resolution 60/31: Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments

III

Related fisheries instruments

30. *Urges* States and subregional and regional fisheries management organizations and arrangements to implement and promote the application of the Code within their areas of competence;

31. *Urges* States to develop and implement, as a matter of priority, national and, as appropriate, regional plans of action to put into effect the international plans of action of the Food and Agriculture Organization of the United Nations;

V

Fishing overcapacity

47. *Calls upon* States and relevant regional and subregional fisheries management organizations and arrangements, as a matter of priority, to take effective measures to improve the management of fishing capacity and to implement the International Plan of Action for the Management of Fishing Capacity of the Food and Agriculture Organization of the United Nations, taking into account the need, through these actions, to avoid the transfer of fishing capacity to other fisheries or areas including, but not limited to, those areas where fish stocks are overexploited or in a depleted condition;

VII

Fisheries by-catch and discards

53. *Requests* States and regional fisheries management organizations and arrangements to urgently implement, as appropriate, the measures recommended in the Guidelines to Reduce Sea Turtle Mortality in Fishing Operations and the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries in order to prevent the decline of sea turtles and seabird populations by reducing by-catch and increasing post-release survival in their fisheries, including through research and development of gear and bait alternatives, promoting the use of available by-catch mitigation technology, and promotion and strengthening of data collection programmes to obtain standardized information to develop reliable estimates of the by-catch of those species;

VIII

Subregional and regional cooperation

54. *Urges* coastal States and States fishing on the high seas, in accordance with the Convention and the Agreement, to pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, to ensure the effective conservation and management of such stocks;

55. *Urges* States fishing for straddling fish stocks and highly migratory fish stocks on the high seas, and relevant coastal States, where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for such stocks, to give effect to their duty to cooperate by becoming members of such an organization or participants in such an arrangement, or by agreeing to apply the conservation and management measures established by such an organization or arrangement;

56. *Invites*, in this regard, subregional and regional fisheries management organizations and arrangements to ensure that all States having a real interest in the fisheries concerned may become members of such organizations or participants in such arrangements, in accordance with the Convention and the Agreement;

Appendix 3

Extract from FAO code of Conduct for Responsible Fisheries:

Article 1: Nature and scope of the Code

1.1 This Code is voluntary. However, certain parts of it are based on relevant rules of international law, including those reflected in the United Nations Convention on the Law of the Sea of 10 December 1982. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst the Parties, such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on high Seas, 1993, which, according to FAO Conference resolution 15/93, paragraph 3, forms an integral part of the Code.

1.2 The Code is global in Scope, and is directed towards members and non-members of FAO, fishing entities, sub regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries.

1.3 The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Article 6: General principles

6.1 States and users of living aquatic resources should conserve aquatic ecosystems. The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources.

6.2 Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development. Management measures should not only ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species.

6.3 States should prevent over fishing and excess fishing capacity and should implement management measures to ensure that fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization. States should take measures to rehabilitate populations as far as possible and when appropriate.

6.12 States should, within their respective competences and in accordance with international law, cooperate at subregional, regional and global levels through fisheries management organizations, other international agreements or other arrangements to promote conservation and management, ensure responsible fishing and ensure effective conservation and protection of living aquatic resources throughout their range of distribution, taking into account the need for compatible measures in areas within and beyond their national jurisdiction.

Article 7: Fisheries management

7.1 General

7.1.1 States and all those engaged in fisheries management should, through an appropriate policy, legal and institutional framework, adopt measures for the longterm conservation and sustainable use of fisheries

resources. Conservation and management measures, whether at local, national subregional or regional levels, should be based on the best scientific evidence available and be designed to ensure the long-term sustainability of fisheries resources at levels which promote the objective of their optimum utilization and maintain their availability for present and future generations; short-term considerations should compromise these objectives.

Extract from the International Plan of Action for the Management of Fishing Capacities:

Introduction

1. In the context of the Code of Conduct for Responsible Fisheries and its overall objective of sustainable fisheries, the issues of excess fishing capacity in world fisheries is an increasing concern. Excessive fishing capacity is a problem that, among others, contributes substantially to overfishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste.
2. The Code of Conduct provides that States should take measures to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with sustainable use of fishery resources.

PART II - OBJECTIVE AND PRINCIPLES

7. The immediate objective of the International Plan of Action is for States and regional fisheries organizations, to achieve world-wide preferably by 2003, but not later than 2005, an efficient, equitable and transparent management of fishing capacity. Inter alia, States and regional fisheries organizations confronted with an overcapacity problem, where capacity is undermining achievement of long-term sustainability outcomes, should endeavour initially to limit at present level and progressively reduce the fishing capacity applied to affected fisheries. Where long-term sustainability outcomes are being achieved, States and regional fisheries organizations nevertheless need to exercise caution to avoid growth in capacity undermining long-term sustainability objectives.

8. The above objective may be achieved through a series of actions related to four major strategies:
 - i. the conduct of national, regional and global assessments of capacity and improvement of the capability for monitoring fishing capacity;
 - ii. the preparation and implementation of national plans to effectively manage fishing capacity and of immediate actions for coastal fisheries requiring urgent measures;
 - iii. the strengthening of regional fisheries organizations and related mechanisms for improved management of fishing capacity at regional and global levels;
 - iv. immediate actions for major transboundary, straddling, highly migratory and high seas fisheries requiring urgent measures.

These strategies may be implemented through complementary mechanisms to promote implementation of this international Plan of Action: awareness building and education, technical co-operation at the international level, and co-ordination.

The International Plan of Action for the Management of Fishing Capacities is available on <http://www.fao.org/docrep/006/x3170e/x3170e04.htm>

Extract from the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries

Introduction

1. Seabirds are being incidentally caught in various commercial longline fisheries in the world, and concerns are arising about the impacts of this incidental catch. Incidental catch of seabirds may also have an adverse impact on fishing productivity and profitability. Governments, non-governmental organizations, and commercial fishery associations are petitioning for measures to reduce the mortality of seabirds in longline fisheries in which seabirds are incidentally taken.

Nature and Scope

8. IPOA-Seabirds is voluntary. It has been elaborated within the framework of the Code of Conduct for Responsible Fisheries as envisaged by Article 2 (d). The provisions of Article 3 of the Code of Conduct apply to the interpretation and application of this document and its relationship with other international instruments. All concerned States³ are encouraged to implement it.

9. The IPOA-SEABIRDS applies to States in the waters of which longline fisheries are being conducted by their own or foreign vessels and to States that conduct longline fisheries on the high seas and in the exclusive economic zones (EEZ) of other States.

Objective

10. Taking into account in particular the objectives of articles 7.6.9 and 8.5 of the Code of Conduct, the objective of the IPOA-SEABIRDS is to reduce the incidental catch of seabirds in longline fisheries where this occurs.

Implementation

11. In implementing the IPOA-SEABIRDS States should carry out a set of activities. This should be done as appropriate in conjunction with relevant international organizations. The exact configuration of this set of activities will be based on an assessment of the incidental catch of seabirds in longline fisheries.

12. States with longline fisheries should conduct an assessment of these fisheries to determine if a problem exists with respect to incidental catch of seabirds. If a problem exists, States should adopt a National Plan of Action for reducing the incidental catch of seabirds in longline fisheries (NPOA-SEABIRDS). (See below the “Technical note on developing a National Plan of Action for reducing the incidental catch of seabirds in longline fisheries”.) When developing the NPOA-SEABIRDS experience acquired in regional management organizations should be taken into account as appropriate. FAO should provide a list of experts and a mechanism of technical assistance to countries for use in connection with development of NPOA-SEABIRDS.

13. States which determine that an NPOA-SEABIRDS is not necessary should review that decision on a regular basis, particularly taking into account changes in their fisheries, such as the expansion of existing fisheries and/or the development of new longline fisheries. If, based on a subsequent assessment, States determine that a problem exists, they should follow the procedures outlined in paragraph 12, and implement an NPOA-SEABIRDS within two years.

14. The assessment should be included as a part of each relevant State’s NPOA-SEABIRDS.

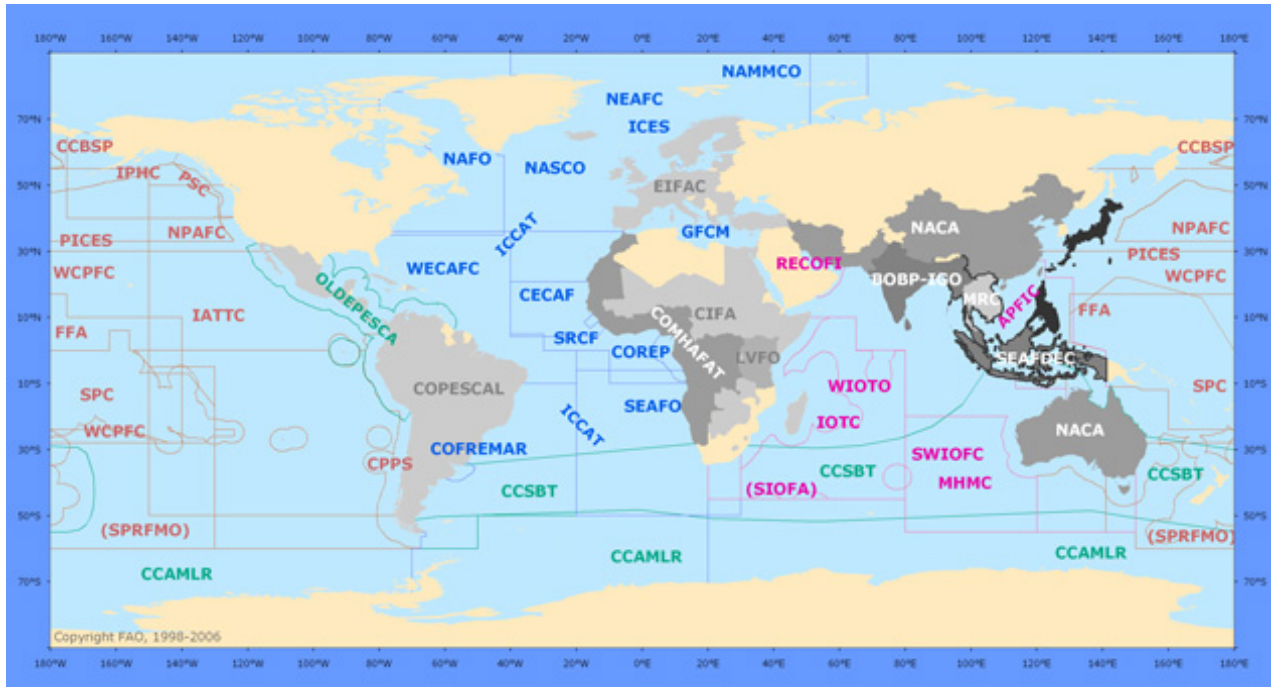
16. States recognize that each longline fishery is unique and the identification of appropriate mitigation measures can only be achieved through on-the-spot assessment of the concerned fisheries. Technical and operational mitigation measures are presently in use or under development in some longline fisheries where

incidental catch of seabirds occurs. Measures developed by different States are listed in a Technical Note inserted at the end of this document (Technical note on developing a National Plan of Action for reducing the incidental catch of seabirds in longline fisheries). This list does not prejudice the right of States to decide to use any of these or other suitable measures that may be developed. A more comprehensive description and discussion of the mitigation measures currently used or under development can be found in FAO Fisheries Circular No. 937.

19. States, within the framework of their respective competencies and consistent with international law, should strive to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, to reduce the incidental catch of seabirds in longline fisheries.

The International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries is available on <http://www.fao.org/docrep/006/x3170e/x3170e02.htm>

Appendix 4



Regional Fishery Bodies - World Ocean Coverage

Provided by the FAO (http://www.fao.org/fi/body/rfb/Big_RFB_map.htm)

By-catch regulations by RFMOs:

The SEAFO Conservation Measure 05/06 on Reducing Incidental By-catch of Seabirds in the SEAFO Convention Area is available on

<http://www.seafo.org/welcome.htm>

The IOTC Resolution 06/04 on Reducing the Incidental By-catch of Seabirds in Longline Fisheries is available on

http://www.iotc.org/English/resolutions/reso_detail.php?reso=43

The ICCAT resolution on the incidental mortality of seabirds in 2002 is available on

<http://www.iccat.es/Documents/Recs/compendiopdf-e/2002-14-e.pdf>

Appendix 5

Extract from OPRC:

Conscious of the need to preserve the human environment in general and the marine environment in particular,

Recognizing the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, sea ports and oil handling facilities,

Mindful of the importance of precautionary measures and prevention in avoiding oil pollution in the first instance, and the need for strict application of existing international instruments dealing with maritime safety and marine pollution prevention, particularly the International Convention for the Safety of Life at Sea, 1974, as amended, and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and also the speedy development of enhanced standards for the design, operation and maintenance of ships carrying oil, and of offshore units,

Article 1

General provisions

(1) Parties undertake, individually or jointly, to take all appropriate measures in accordance with the provisions of this Convention and the Annex thereto to prepare for and respond to an oil pollution incident.

The convention text is available from

<http://sedac.ciesin.columbia.edu/entri/texts/oil.pollution.preparedness.1990.html>

Extract from the London Convention 1972 and the 1996 Protocol thereto:

Article 4: Dumping of wastes or other matter

1. Contracting Parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1.

Annex 1

Wastes or other matter that may be considered for dumping

1. The following wastes or other matter are those that may be considered for dumping being mindful of the Objectives and General Obligations of this Protocol set out in articles 2 and 3:
 - 1 dredged material;
 - 2 sewage sludge;
 - 3 fish waste, or material resulting from industrial fish processing operations;
 - 4 vessels and platforms or other man-made structures at sea;
 - 5 inert, inorganic geological material;
 - 6 organic material of natural origin; and
 - 7 bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

Extract from MARPOL 73/78:

The Parties to the Convention,

Being conscious of the need to preserve the human environment in general and the marine environment in particular,

Recognizing that deliberate, negligent or accidental release of oil and other harmful substances from ships constitutes a serious source of pollution,

Recognizing also the importance of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as being the first multilateral instrument to be concluded with the prime objective of protecting the environment, and appreciating the significant contribution which that Convention has made in preserving the seas and coastal environment from pollution,

Desiring to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances,

Considering that this object may best be achieved by establishing rules not limited to oil pollution having a universal purport,

Annex 1 (old version)

Regulations for the Prevention of Pollution by Oil

Article 4

SURVEYS

1. Every oil tanker of 150 tons gross tonnage and above, and every other ship of 400 tons gross tonnage and above shall be subject to the surveys specified below: ...

4. After any survey of the ship under this Regulation has been completed, no significant change shall be made in the structure, equipment, fittings, arrangements or material covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation 5

ISSUE OF CERTIFICATE

1. An International Oil Pollution Certificate (1973) shall be issued, after survey in accordance with the provisions of Regulation 4 of this Annex, to any oil tanker of 150 tons gross tonnage and above and any other ships of 400 tons gross tonnage and above which are engaged in voyages to ports or off-shore terminals under the jurisdiction of other Parties to the Convention. In the case of existing ships this requirement shall apply twelve months after the date of entry into force of the present Convention.

2. Such Certificate shall be issued either by the Administration or by any persons or organization duly authorized by it. In every case the Administration assumes full responsibility for the Certificate.

The convention text (old version of Annex I) is available at:

<http://sedac.ciesin.columbia.edu/entri/texts/marine.pollution.dumping.ships.aircraft.1972.html>

Appendix 6

Extract from AEWa Annex 1: Definition of Agreement Area

The boundary of the Agreement area is defined as follows: from the North Pole south along the 130°W line of longitude to 75°N; thence east and southeast through Viscount Melville Sound, Prince Regent Inlet, the Gulf of Boothia, Foxe Basin, Foxe Channel and Hudson Strait to a point in the northwest Atlantic at 60°N, 60°W; thence southeast through the northwest Atlantic to a point at 50°N, 30°W; thence south along the 30°W line of longitude to 10°N; thence southeast to the Equator at 20°W; thence south along the 20°W line of longitude to 40°S; thence east along the 40°S line of latitude to 60°E; thence north along the 60°E line of longitude to 35°N; thence east-northeast on a great circle to a point in the western Altai at 49°N, 87°27'E; thence northeast on a great circle to the coast of the Arctic Ocean at 130°E; thence north along the 130°E line of longitude to the North Pole. The outline of the Agreement Area is illustrated on the following map.

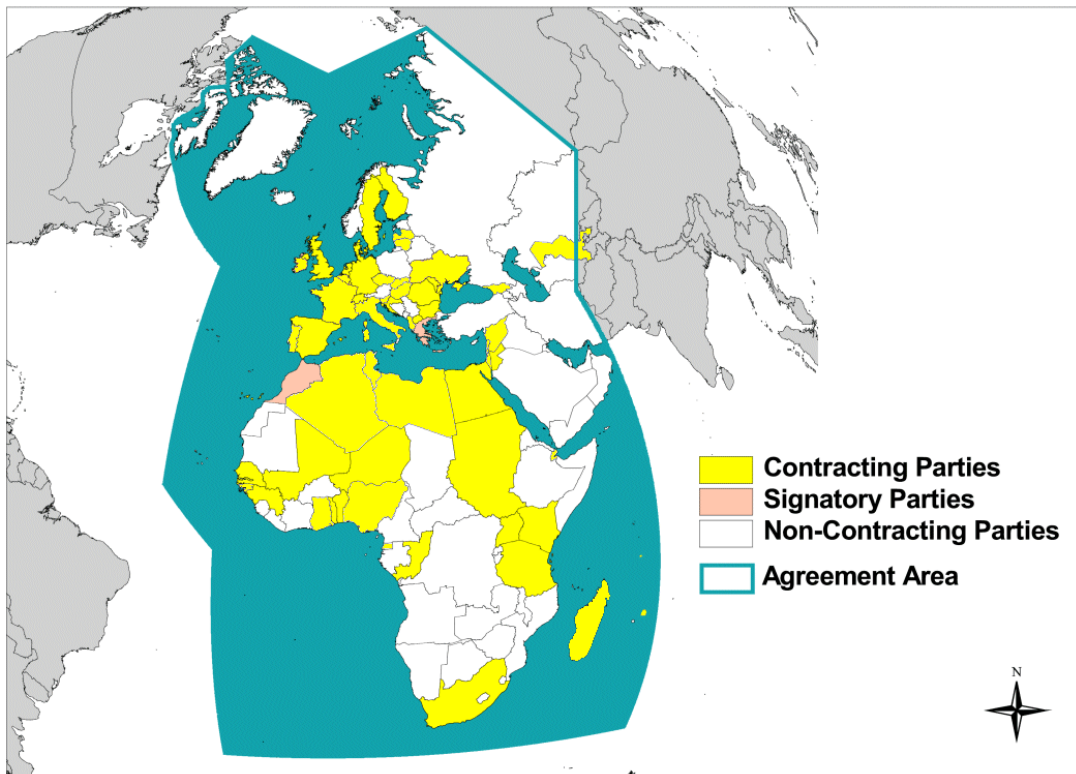


Figure 1. Map of the AEWa area.

Extract from AEWa Article I: Scope, Definitions and Interpretation

(c) "Waterbirds" means those species of birds that are ecologically dependent on wetlands for at least part of their annual cycle, have a range, which lies entirely or partly within the Agreement Area and are listed in Annex 2 to this Agreement;

Extract from Ramsar Definitions:

1. For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.
2. For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands.

Appendix 7

Extract from AEWA Resolution 2.1

AMENDMENTS TO THE ANNEXES TO THE AGREEMENT

6. *Requests* the Technical Committee of the Agreement, in close cooperation with the Agreement Secretariat and in close consultation with the relevant bodies of the Convention on Migratory Species, to review further development of the Agreement by including additional species of wetland birds and species traditionally considered to be seabirds, looking in the first instance at the species listed in Table 2 and Table 3 of AEWA/MOP2.9, expanding Table 3 to species from the whole of Africa, and considering, in particular, the extent to which the existing Action Plan is adequate in its scope to address differing conservation problems faced by birds of prey, passerines and other taxonomic groups using wetlands;

Extract from Doc. AEWA/MoP 2.9

PROPOSED AMENDMENTS TO THE ACTION PLAN OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS PROPOSAL FROM SOUTH AFRICA

At the 6th meeting of the Conference of the Parties to CMS in Cape Town, South Africa, in November 1999, a recommendation (6.2) was put forward for concerted action concerning Appendix II species, including the African Penguin *Spheniscus demersus*. The IUCN/CBSG *Spheniscus* Penguin Conservation Workshop, held in Chile in September 2000, endorsed the development, under the terms of the CMS, of a Memorandum of Understanding (MOU) between South Africa and Namibia for the conservation of *Spheniscus demersus*. However, there are several other southern African coastal seabirds that interact with one another, face similar threats and would benefit from international co-operation in their conservation and management. Thus it was suggested that the MOU should be expanded to include South Africa, Namibia, Angola and possibly Mozambique and to cover the following species: *Spheniscus demersus*, *Oceanodroma leucorhoa*, *Pelecanus onocrotalus*, *Sula (Morus) capensis*, *Phalacrocorax neglectus*, *P. coronatus*, *P. capensis*, *P. carbo lucidus*, *Haematopus moquini*, *Larus dominicanus vetula*, *L. cirrocephalus poiocephalus*, *L. hartlaubii*, *Sterna caspia*, *S. bergii bergii*, *S. dougallii*, *S. vittata* and *S. balaenarum*. *Oceanodroma leucorhoa* was subsequently removed from this list as it is strictly pelagic and has a large Northern Hemisphere population. Of the remaining 16 species, five are already included in Annex 2 to the AEWA (*Pelecanus onocrotalus*, *Sterna caspia*, *S. bergii bergii*, *S. dougallii* and *S. balaenarum*).

During a workshop on *Conservation Assessment and Management Plan for Southern African Coastal Seabirds* held in Cape Town, South Africa, in February 2002 and attended by a representative of UNEP/AEWA Secretariat and a representative of the UNEP/CMS Secretariat, it was concluded that rather than develop a MOU for this group of species under the CMS, a better way forward would be to seek the inclusion of the additional 11 species in the AEWA, and to develop an action plan for the conservation of all 16 species within the framework of the AEWA Action Plan. It was noted that while the AEWA Action Plan makes provisions for the development of international single species action plans (Section 2.2), it does not include any provisions for international action plans covering a suite of species faced with similar problems (multi-species action plans). The workshop therefore urged the South African government (the only Contracting Party to AEWA in this region) to submit a proposal to the Agreement Secretariat for inclusion of an additional eleven species in Annex 2 of the Agreement (and Table 1 of the Action Plan), and for amendment of the Action Plan to include provision for the development of multi-species action plans.

The workshop also noted that the Technical Committee of the AEWA could recommend the establishment of working group (Article VII, paragraph 5) to develop, adopt and implement international action plans. The workshop therefore urged the South African government to propose to the Technical Committee of the

AEWA that a Southern African Working Group (consisting *inter alia* of Angola, Namibia and South Africa) be established to co-ordinate the conservation of southern African coastal seabirds.

The 11 species proposed for inclusion in Annex 2 are African Penguin *Spheniscus demersus*, Cape Gannet *Sula capensis*, Crowned Cormorant *Phalacrocorax coronatus*, Bank Cormorant *P. neglectus*, White-breasted Cormorant *P. carbo lucidus*, Cape Cormorant *P. capensis*, African Black Oystercatcher *Haematopus moquini*, Kelp Gull *Larus dominicanus vetula*, Grey-headed Gull *L. cirrocephalus poiocephalus*, Hartlaub's Gull *L. hartlaubii* and Antarctic Tern *Sterna vittata*. Most of these species breed on islands and rock islets along the coasts of southern Angola, Namibia and the Northern, Western and Eastern Cape Provinces of South Africa, although several also breed on mainland cliffs, coastal dunes, salt pans and estuaries, and at inland localities. One species, *S. vittata*, occurs only as a non-breeding visitor from breeding grounds in the subantarctic islands. Seven species (*Spheniscus demersus*, *Sula capensis*, *Phalacrocorax coronatus*, *P. neglectus*, *P. capensis*, *Haematopus moquini* and *L. hartlaubii*) are endemic to southern Africa, as is the *vetula* race of *Larus dominicanus*. All can be defined as 'waterbirds' in that they spend a considerable part of their lives in shallow inshore waters and/or along sandy or rocky seashores, and all are to some extent migratory, undertaking regular movements along the coasts of Namibia and South Africa, and in some cases also reaching Angola and Mozambique.

In southern Africa, as elsewhere, coastal seabirds face a number of threats due mainly to changes brought about by human activity and its consequences. These include oil pollution (affecting especially *Spheniscus demersus*), depletion of food supplies as a result of over-fishing, incidental mortality in fisheries, human disturbance from inadequately controlled tourism and recreation, habitat loss (*e.g.* from guano scraping on islands, and diamond mining and harbour development on the mainland), and predation by introduced predators such as feral domestic cats. Although many of the species under consideration breed at protected sites, away from the direct effects of human development, they are not immune to these pressures, and a number of them are in serious need of better conservation measures. The numbers of *Spheniscus demersus* have been decreasing for nearly a century and some former colonies have shrunk to extinction, especially in Namibian waters. The numbers of *Sula capensis* and *Phalacrocorax neglectus* have plummeted in Namibia, and naturally small populations, such as that of *Haematopus moquini*, are at risk of extinction by a catastrophic event. Three species (*Spheniscus demersus*, *Sula capensis* and *Phalacrocorax neglectus*) are now considered to be globally threatened in the category 'Vulnerable', and three others (*Phalacrocorax coronatus*, *P. capensis* and *Haematopus moquini*) are listed as 'Near-threatened' (BirdLife International 2000).

Extract from AEW A Resolution 3.8

AMENDMENTS TO THE ANNEXES TO THE AGREEMENT

3. *Invites* Parties to indicate to the Secretariat their particular concerns regarding the information contained in Table 1 annexed to Doc AEW A/MOP3.29.Rev.2 and regarding the addition of 21 species to Annex 2 before the next meeting of the Technical Committee;
4. *Requests* the Standing Committee, in view of the assessment by the Technical Committee of updated information consolidated by the Secretariat, to review Table 1 of the Action Plan, and if appropriate, communicate to the Secretariat a proposal for its amendment not less than 150 days before the opening of future sessions of the Meeting of the Parties, in accordance with Article X of the Agreement;

Requests the Technical Committee, in close co-operation with the Agreement Secretariat and consultation with the relevant bodies of the Convention, to further consider the potential role of the Agreement in the conservation of seabirds, taking into account the actions being undertaken by the RFMOs and other relevant international organisations, such as the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea, and to report to the fourth session of the Meeting of the Parties

Appendix 8

Extract from Doc. AEWA/MOP3.29 Rev.2

PROPOSAL FOR AMENDMENT OF THE ACTION PLAN OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIRGATORY WATERBIRDS (AEWA)

Table 1a¹
STATUS OF POPULATIONS OF WATERBIRD SPECIES PROPOSED FOR INCLUSION IN
THE AGREEMENT

Population	A	B	C
PHAETHONTIDAE			
<i>Phaethon aetheras</i> Red-billed Tropicbird			
<i>aethereus</i> - South Atlantic	1c		
<i>indicus</i> - Persian Gulf, Gulf of Aden, Red Sea	1c		
<i>Phaethon rubricauda</i> Red-tailed Tropicbird			
<i>rubricauda</i> - Indian Ocean	1c		
<i>Phaethon lepturus</i> White-tailed Tropicbird			
<i>lepturus</i> - Persian Gulf, Gulf of Aden, Red Sea	1c		
SULIDAE			
<i>Sula (Morus) bassana</i> Northern Gannet		2a	
<i>Sula dactylatra</i> Masked Booby			
<i>melanops</i> - W Indian Ocean	1c		
FREGATIDAE			
<i>Fregata minor</i> Great Frigatebird			
<i>aldabrensis</i> - W Indian Ocean	1c		
<i>Fregata ariel</i> Lesser Frigatebird			
<i>iredalei</i> - W Indian Ocean	1c		
STERCORARIIDAE			
<i>Catharacta skua</i> Great Skua		1	
<i>Stercorarius longicaudus</i> Long-tailed Skua			
<i>longicaudus</i>			1
LARIDAE			
<i>Rissa tridactyla</i> Black-legged Kittiwake			
<i>tridactyla</i>		2a	

¹ Table 1a has been established for discussion purposes only. Upon decision of MOP3 it will be merged with Table 1.

<i>Sterna anaethetus</i> Bridled Tern			
<i>melanopterus</i> - W Africa	1c		
<i>fuligula</i> - Red Sea, E Africa, Persian Gulf, Arabian Sea to W India			1
<i>antarctica</i> - S Indian Ocean		1	
<i>Sterna fuscata</i> Sooty Tern			
<i>nubilosa</i> - Red Sea, Gulf of Aden, E to Pacific		2a	
<i>Anous stolidus</i> Brown Noddy			
<i>plumbeigularis</i> - Red Sea & Gulf of Aden		1	
<i>Anous minutus</i> Black Noddy			
<i>atlanticus</i> - Atlantic Islands, Gulf of Guinea			(1)
<i>Anous tenuirostris</i> Lesser Noddy			
<i>tenuirostris</i> -Indian OceanIslands to E Africa			1
ALCIDAE			
<i>Alle alle</i> Little Auk			
<i>alle</i> High Arctic, Baffin Is - Novaya Zemlya		2a	
<i>Uria aalge</i> Common Guillemot			
<i>aalge</i> - E North America, Greenland, Iceland, Faeroes, Scotland, S Norway, Baltic		2a	
<i>albionis</i> Ireland, S Britain, France, Iberia, Helgoland		2a	
<i>hyperborea</i> Svalbard, N Norway to Novaya Zemlya		2a	
<i>Uria lomvia</i> Brunnich's Guillemot			
<i>lomvia</i> - E North America, Greenland, E to Severnaya Zemlya		2a	
<i>Alca torda</i> Razorbill			
<i>torda</i> E North America, Greenland, E to Baltic & White Seas			1
<i>islandica</i> Iceland, Faeroes, Britain, Ireland, Helgoland, NW France			1
<i>Cepphus grylle</i> Black Guillemot			
<i>grylle</i> Baltic Sea		1	
<i>mandtii</i> Arctic E North America to Greenland, Jan Mayen & Svalbard E through Siberia to Alaska		1	
<i>arcticus</i> N America, S Greenland, Britain, Ireland, Scandinavia, White Sea		1	
<i>islandicus</i> Iceland		1	
<i>faeroeensis</i> Faeroes		1	

<i>Fratercula arctica</i> Atlantic Puffin			
<i>arctica</i> Hudson bay & Maine E to S Greenland, Iceland, Bear Is, Norway to S Novaya Zemlya		2a	
<i>naumanni</i> NE Canada, N Greenland, to Jan Mayen, Svalbard, N Novaya Zemlya		2a	
<i>grabae</i> Faeroes, S Norway & Sweden, Britain, Ireland, NW France		2a	

Appendix 9

Extract from the protocol concerning specially protected areas and biological diversity in the Mediterranean:

Article 3

General obligations

1. Each Party shall take the necessary measures to:

(b) protect, preserve and manage threatened or endangered species of flora and fauna.

PART III

PROTECTION AND CONSERVATION OF SPECIES

Article 11

National measures for the protection and conservation of species

1. The Parties shall manage species of flora and fauna with the aim of maintaining them in a favourable state of conservation.

3. With respect to protected species of fauna, the Parties shall control and, where appropriate, prohibit: (a) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing), the commercial trade, the transport and the exhibition for commercial purposes of these species, their eggs, parts or products;

4. In addition to the measures specified in the previous paragraph, the Parties shall coordinate their efforts, through bilateral or multilateral action, including if necessary, agreements for the protection and recovery of migratory species whose range extends into the area to which this Protocol applies.

Extract from HELCOM Recommendation 15/5: System of Coastal and Marine Baltic Sea Protected Areas (BSPA):

THE COMMISSION,

RECOMMENDS to the Governments of the Contracting Parties to the Helsinki Convention:

a) that the Contracting Parties take all appropriate measures to establish a system of Coastal and Marine Baltic Sea Protected Areas (BSPA).

Extract from ASPAR:

Annex V

On the Protection and Conservation of the Ecosystem and Biological Diversity of the Maritime Area

ARTICLE 2

In fulfilling their obligation under the Convention to take, individually and jointly, the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected, as well as their obligation under the Convention on Biological Diversity of 5 June 1992 to develop strategies, plans or programmes for the conservation and sustainable use of biological diversity, Contracting Parties shall:

- a. take the necessary measures to protect and conserve the ecosystems and the biological diversity of the maritime area, and to restore, where practicable, marine areas which have been adversely affected; and
- b. cooperate in adopting programmes and measures for those purposes for the control of the human activities identified by the application of the criteria in Appendix 3.

2003 Strategies of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic

2. Strategy

2.1 The Commission will further develop the programmes and measures needed for the protection and conservation of the ecosystems and biological diversity of the maritime area and, where practicable, for the restoration of maritime areas that have been adversely affected, taking into account the need to avoid duplication of work on the international level.

2.2 To this end the Commission will further assess which species¹ and habitats need to be protected and those human activities that are likely to have an actual or potential adverse effect on these species and habitats or on ecological processes.

2.3 Based on this, the Commission will, if necessary to meet the objective, continue to draw up programmes and measures in accordance with Annex V of the 1992 OSPAR Convention with a view to:

- a. controlling the human activities that have an adverse impact on species and habitats that need to be protected or conserved

Extract from the Black Sea Biodiversity and Landscape Conservation Protocol to the Bucharest Convention:

Article 4

3. The Contracting Parties shall adopt a List of Species of Black Sea Importance That May Be Threatened, or Important by Reason of Their Role in Ecosystem Functioning or Other Significance for the Region preferably within three years of this Protocol coming into force. Such a list will form Annex II to this Protocol and will be subject to special measures as described in Annex III.
5. The Contracting Parties shall act, directly or in co-operation with competent international organisations and in consistency with other Protocols to this Convention, in the conservation and sustainable use of biological and landscape diversity.

The Contracting Parties shall produce and commonly agree on the Strategic Action Plan for the Black Sea Biodiversity and Landscape Conservation Protocol within three years of the Protocol coming into force which shall be reviewed every five years

7. On the basis of the Strategic Action Plan for the Black Sea Biodiversity and Landscape Conservation Protocol, the Contracting Parties shall adopt strategies, national plans and/or programmes for the conservation of biological and landscape diversity and the sustainable use of marine and coastal biological and landscape resources and shall integrate them into their national sectoral and intersectoral policies.

Extract from the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea:

B. Living resources management

Biological diversity protection

61. A regional Black Sea Red Data Book, identifying and describing endangered species, will be prepared and published by December 1998. It is advised that the work on the Red Data Book be coordinated by the Istanbul Commission, through its Advisory Group on the Conservation of Biological Diversity.

Extract from the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

Article 1

1 . This directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the member states to which the treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2 . It shall apply to birds, their eggs, nests and habitats.

3 . This directive shall not apply to Greenland.

Article 2

Member states shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1 . In the light of the requirements referred in article 2, member states shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in article 1

2 . The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

(A) Creation of protected areas;

(B) Upkeep and management in accordance with the ecological needs of habitats inside and outside of the protected zones;

(C) Re-establishment of destroyed biotopes;

(D) Creation of biotopes.

Article 4

1 . The species mentioned in annex 1 shall be subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(A) Species in danger of extinction;

(B) Species vulnerable to specific changes in their habitat;

(C) Species considered rare because of small populations or restricted local distribution;

(D) Other species requiring particular attention for reasons of specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member states shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this directive applies.

2 . Member states shall take similar measures for regularly occurring migratory species not listed in annex 1, bearing in mind their need for protection in the geographical sea and land area where this directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, member states shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

Article 8

1 . In respect of the hunting, capture or killing of birds under this directive, member states shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in annex IV (A).

Annex IV

(a) — Snares (with the exception of Finland and Sweden for the capture of *Lagopus lagopus lagopus* and *Lagopus mutus* north of latitude 58°N), limes, hooks, live birds which are blind or mutilated used as decoys, tape recorders, electrocuting devices.

— Artificial light sources, mirrors, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter.

— Explosives.

— Nets, traps, poisoned or anaesthetic bait.

— Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.