

Report of the meeting to conclude the text of the
MEMORANDUM OF UNDERSTANDING ON THE CONSERVATION AND
MANAGEMENT OF MARINE TURTLES OF THE INDIAN OCEAN
AND SOUTH-EAST ASIA

Convened by the Department of Fisheries, Malaysia
Kuantan, Pahang, Malaysia, 11-14 July 2000

BACKGROUND

The meeting was attended by participants from 24 countries (Annex 1 contains a complete list). It was convened as a follow-up to the first intergovernmental meeting held in Perth, Australia, from 19-22 October 1999, which had adopted a resolution outlining the basic elements of a regional agreement for the conservation and management of marine turtles and their habitats.

The meeting began by adopting the provisional agenda and work programme (Annexes 2 and 3). The ensuing discussions focussed *inter alia* on resolving a number of substantive issues, described in detail below, before the text of the Memorandum of Understanding (MoU) was agreed with the consent of all delegates present. Thereafter, representatives of each of the Governments present were invited to sign a Final Act which described the outcome of the negotiation session, defined further steps to be taken to conclude a Conservation and Management Plan (CMP), and confirmed the arrangements for an interim secretariat.

ISSUES UNDER CONSIDERATION

1. Participation of States from outside of the Region

Whilst the provisions of the MoU focus mainly on Range States in whose national territorial waters marine turtles occur, the desirability of providing for the participation of States from outside the Region (defined as All of the waters and coastal States of the Indian Ocean and South-East Asia and adjacent seas, extending eastwards to the Torres Strait@) was raised. There was general agreement that the dispersal of marine turtles extends to States outside the Region, and that other non Range States, though having no marine turtles in their territorial waters, are also implicated in the conservation and management of these highly endangered migratory species. This might include, for example, non Range States whose nationals or vessels conduct activities that threaten marine turtles, or States with the capacity and interest to contribute to the implementation of the MoU and the CMP by providing resources and expertise. It was thus concluded that, without defining them explicitly, States from outside the Region should be given an opportunity to sign the MoU and to uphold its provisions.

2. High Seas and Jurisdictional Matters

The basis for consideration of the high seas was due to the highly migratory nature of marine turtles, and the fact that many activities within the high seas (such as the tuna fishery in the Indian Ocean) threaten marine turtles. It was agreed, as a basic principle, that the MoU should be implemented by the signatory States, within their jurisdictional limits, with respect to a) marine areas in the Region under their national jurisdiction and b) vessels operating in the Region under their flag. Reference was made in the preamble of the MoU to the relevance of other international conventions in this regard, such as UNCLOS, the FAO Code of Conduct for Responsible Fisheries, MARPOL and the Convention on Biological Diversity.

3. Institutional Framework

The Perth Resolution recognized the desirability of closer collaboration among all States concerned with the conservation of marine turtles and their habitats, and that a new regional instrument would serve this purpose. The present meeting reached consensus that such an instrument should be developed as an Article IV(4) agreement under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals, a global convention with considerable expertise in the development of appropriately adapted regional protocols. In addition to offering the possibility of synergies with comparable institutional frameworks already developed in other regions, CMS could provide critical support in the development phase of the MoU, in terms of depositary and interim secretariat functions.

4. Administrative Structures

i) Establishment of a Secretariat

The draft agreement prepared on the basis of the Perth consultations and circulated prior to the meeting envisaged the appointment of a Coordinator to facilitate communication and reporting and to co-ordinate activities between and amongst signatory States. However, the meeting considered that term ACoordinator@, indicative of a single executive officer, too narrow in relation to the breadth of activities that would need to be carried out to facilitate effective implementation of the MoU and CMP. The meeting decided to revert to the formulation proposed during the Perth consultations, and agreed that a small secretariat should be established to service the MoU. CMS offered to provide basic secretariat services for an interim period, pending agreement of the signatory States on a permanent host. In this regard, various options could be envisaged, such as co-locating the secretariat within a national administration or an existing UN organization that would provide office space and other facilities. The representative of the U.A.E. expressed a willingness to make available office space, and it was noted that the UNEP office in Bangkok, institutionally linked to CMS, might also be able to accommodate such an office. There was no further discussion and it was agreed that all options should be considered.

ii) Technical/Advisory Body

It was pointed out that while CMS benefited from both a standing committee (providing political and administrative guidance) and a scientific committee (offering scientific advice), in several of the subsidiary Agreements concluded under CMS these functions were combined in a single advisory committee. The present meeting decided similarly that an Advisory Committee should be established to provide scientific, technical and legal advice. While identifying the various fields of expertise that should be present on the committee, the meeting left details of the size, composition and terms of appointment for the signatory States to work out at their first meeting. Bearing in mind limitations in resources, it was suggested that at least initially, communication and correspondence be undertaken via electronic communication facilities.

iii) Regularity of Meetings

There was a general consensus that, at least during the initial development phase of the MoU, a regular (i.e. annual) meeting of signatory States was necessary. Such meetings would be convened by the Secretariat and hosted by one of the signatory States. The periodicity of such meetings would be subject to review and alteration, as appropriate, by consensus.

5. Funding Mechanisms

Whilst for the legally-binding agreements concluded under CMS it was common to make provision for a funding mechanism and equitable sharing of costs, this was not the case for less formal, non legally-binding memoranda of understanding. This was a by-product of the relatively uncomplicated procedure through which memoranda of understanding are concluded, as well as the membership=s ability to pay fixed contributions (often limited where developing countries are concerned). Nonetheless, it was recognized that effectiveness of implementation would, of course, depend on available resources and that this subject should be addressed by the signatory States at their first meeting.

It was suggested that the Secretariat should also play an active role in soliciting funds for a financially sustainable operation over the longer term. In addition, the possibility of setting up a fund-raising committee should also be considered. Voluntary contributions should also be solicited from more affluent signatory States as a commitment to the implementation the MoU and the CMP.

The meeting took note of pledges of support from the Government of Australia and the United States, the latter being subject to Congressional approval. It was reported that WWF was also prepared to fund marine turtle conservation activities in the region, though it was questionable as to whether the MoU activities could be covered.

6. Perspective on a Legally-binding Instrument

The present meeting reflected the consensus reached in Perth that, at least initially, the instrument should not be legally-binding. Concern was raised that the overly prescriptive language proposed for certain provisions of the MoU departed from this original intent.

One advantage of a non-binding memorandum is that it can be signed more readily (e.g at a Ministerial level or through delegated authority), without the need to go through a lengthy parliamentary ratification process. Signatory States would still bear a moral obligation to implement its provisions, and some countries might even have more flexibility to participate and contribute actively to its work.

There was not a clear consensus as to when consideration should be given to amending the MoU to make it legally-binding, thereby strengthening its legal authority, however a number of the delegations present indicated a preference for this matter to be reviewed within the first few years of the MoU becoming fully operational.

7. Implementation of the MoU

It was pointed out that notwithstanding the non-binding character of the MoU, this would not preclude signatory States from implementing stronger national measures than those specified in the Conservation and Management Plan. This recognized that some States may be in a position to implement the terms of the MoU and CMP more rigorously than others, perhaps even going beyond the agreed provisions. The meeting also acknowledged and encouraged the development of sub-regional conservation/management plans consistent with the MoU, such as those already in existence (in the ASEAN region) or in preparation (Southwest Indian Ocean). Similar arrangements could be envisaged for both the Western and Northern Indian Ocean.

8. Conservation and Management Plan

It was acknowledged that effective implementation of the MoU would depend largely on the Conservation and Management Plan, the terms of which have not been agreed yet. A first draft prepared on the basis of the Perth consultations had been circulated prior to the meeting, but was not considered in Kuantan due to time constraints. The main purpose of the next intergovernmental

meeting will be to conclude the CMP, before the Memorandum of Understanding (including the CMP) is formally opened for signature.

9. Definitions

The meeting agreed that all terms and phrases appearing in the text of the MoU that convey a specific meaning and that may have direct implication for the effective implementation of the MoU and the CMP need to be clearly defined. In this regard, the terms Amarine turtle@, Ahabitats@, ARegion@, AConservation status of marine turtles@ and Afavourable conservation status@ were defined explicitly in a separate section of the MoU reserved for this purpose.

10. Review and Revision of the MoU

It was agreed that the MoU and the CMP might require review and revision in the future, to take account of new circumstances. The principle of allowing for such amendment, by consensus, was thus incorporated in the MoU text.

11. Language of the MoU

The meeting recognized that while financial considerations limited the working language of the MoU to English, the final text of Memorandum would be prepared in Arabic, English and French languages. In the event of any discrepancies, the English version would be considered definitive.