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THIRD MEETING OF THE TECHNICAL COMMITTEE OF THE AGREEMENT ON THE  
CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS (AEWA)  
TANZANIA, 27-28 MAY 2002

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**CENTRAL ASIAN INDIAN FLYWAY:**

*three options for concerted conservation activities for migratory waterbirds*

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**Introduction**

In 1999 the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) entered into force. The AEWA is the most ambitious agreement developed so far under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), encompassing whole Africa, Europe, Middle East and part of Central Asia.

Article IV paragraphs 3 and 4 of CMS invites the CMS Parties to conclude Agreements for migratory species (or higher taxa) which have an unfavourable conservation status or would benefit significantly from international concerted conservation activities.

In the mid nineties the idea was born in the CMS Secretariat to organize a workshop in Central Asia to evaluate the need for transboundary coordinated and concerted action the so-called Central Asian Indian Flyway (CAIF). Due to all kind of unforeseen problems this workshop had to be postponed several times.

The African-Eurasian Flyway GEF project provided a new opportunity to synergise, i.e. to organize a workshop in Central Asian on both the CAIF issue and the AEWA GEF project. By combining efforts of Wetlands International, CMS and AEWA Secretariat a workshop to discuss the idea to develop an Action Plan for the Central Asian Indian Flyway (CAIF) could be organized back to back with the GEF outreach workshop.

During the CAIF workshop, which took place from 18 to 19 August 2001 in Tashkent, Uzbekistan three different options for concerted conservation activities in the future were discussed. These options are:

1. Development of a new CMS Agreement for CAIF;
2. Extending the AEWA Agreement area and to included the CAIF;
3. Development of an Action Plan under the Asia Pacific Migratory Waterbird Conservation Strategy.

In this paper the pros and cons of each of these three options will be presented.

## 1. Development of a new CMS Agreement

One of the options presented at the CAIF workshop is the development of a new Agreement under CMS, similar to AEWA focusing on migratory waterbirds. CMS gained a lot of experience regarding contents of such an Agreement. Based on this for the new Agreement the format of the AEWA Agreement, that has proven to be very useful and well accepted by the Range States, will be used again. This means that the Agreement will consist of two parts. Firstly the Preamble and the Agreement text. This part will describe the provisions made regarding the establishment of an Agreement Secretariat, Technical Committee, the obligations for the Contracting Parties and the procedure of how to become a Contracting Party to the Agreement. Secondly the Agreement will consist of an Action Plan. In the Action Plan it will be clearly stated what is expected from the Contracting Parties to maintain and/ or restore populations of migratory waterbird species to a favourable conservation status. Similar as in the AEWA Agreement the population of each species will be listed in a table showing the conservation status. The Agreement text as well as the Action Plan is legally binding to the Contracting Parties.

### THE PROS ARE:

#### *Problems of the CAIF region are better recognized*

A specific Agreement for CAIF would address the specific problems of the region and could have a positive effect. The outside world would easily recognize the problems the CAIF region has to deal with.

An Agreement under CMS is legally binding for the Contracting Parties. CMS Agreements are International Treaties. Parties are obliged to contribute annually to cover the cost for a permanent Secretariat and some of its activities. Finally if Parties wish, the Secretariat could be administered by UNEP. This could provide a window for additional funding for the implementation of CAIF

### THE CONS ARE:

#### *It takes a long time to develop a new Agreement*

Although CMS gained a lot of experience during the drafting of AEWA the development of such an Agreement could not be done overnight. Of course this experience will certainly have a positive impact on the time needed to draft such an agreement. However, the time needed for drafting the Agreement, for official consultation with the Range States and moreover for negotiation on the new Agreement text should not be underestimated. Approximately a period of 5 years is needed for the whole procedure from start to the final negotiation meeting. For your information the development of AEWA took more than ten years. In case consensus is reached during the negotiation meeting it will take at least a few months up to one year before the Agreement could be opened for signature. Depending on the number of ratifications needed to let the Agreement enter into force it will take again 3 to 5 years before the Agreement will formally enter into force. Summarizing from scratch to the moment that the Agreement will enter into force it will take at least ten years.

Besides the development of such a new agreement is very time-consuming another problem for the CAIF would be that in the Agreement area no industrialized countries are located who could support the implementation of the Agreement. Lessons learned from AEWA shows that Western European countries through their development aid support the implementation of the Agreement in particular in Africa.

Another cons is the fact that there is large overlap between AEWA and the CAIF region. Countries e.g. Armenia, Azerbaijan, Georgia, Turkmenistan, Uzbekistan, Kazakhstan, Iran and Turkey are located in both flyways. It is foreseen that it will be hard to convince the respective Governments to join both Agreements.

## **2. THE ASIAN-PACIFIC WATERBIRD CONSERVATION STRATEGY**

Instead of a legally binding treaty Wetlands International developed the Asia-Pacific Waterbird Conservation Strategy (APWCS). Although the long-term goal is still to develop an international binding treaty at the time the APWCS has been drafted there was insufficient support of the Range States for this idea.

### **THE PROS:**

#### APWCS is not legally binding

The APWCS is not a legally binding international treaty. This could be seen as pros but on the other hand also as cons. The APWCS has the character of a memorandum of understanding. It is not an international treaty so not legally binding. Signatories are not obliged to contribute annually neither to cover the cost of coordination of the activities by Wetlands International nor to cover any cost of implementation of the Strategy. The goal of the strategy is to work towards an International treaty as indicated above.

### **THE CONS:**

#### Limited resources

For the implementation Wetlands International receives some voluntary contribution from Japan and Australia. Unfortunately these contributions are very limited. In practice this means that these resource are just enough to cover the cost of a part-time coordinator provided by Wetlands International and some costs to develop information materials.

## **3. EXTENDING THE AEWA AGREEMENT AREA**

Taking into account the overlap between both flyways another option was presented at the CAIF workshop namely to extend the AEWA Agreement Area.

## **THE PROS ARE:**

### *Inclusion of the CAIF into AEWA could be easily done and is not time consuming:*

Instead of developing a complete new Agreement under CMS, which is very time consuming, CAIF could be easily added to the AEWA Area. The current Agreement Area of AEWA is laid down in Annex 1 a. In accordance to Article X of the Agreement

paragraph 1: *This Agreement may be amended at any ordinary or extraordinary session of the Meeting of the Parties.*

### Furthermore:

paragraph 5: *Any additional annexes and nay amendments to an annex shall be adopted by a two-thirds majority of the Parties present and voting and shall enter into force for all Parties on the ninetieth day after the date of its adoption by the Meeting of the Parties, except for Parties which have entered a reservation in accordance with paragraph 6 of this Article.*

Paragraph 6: *During a period of ninety days provided for in paragraph 5 of this Article, any Party may by written notification to the Depositary enter a reservation with respect to an additional annex or an amendment to an annex. Such reservation may be withdrawn at any time by written notification to the Depositary, and thereupon the additional annex or the amendment shall enter into force for that Party on the thirtieth day after the date of withdrawal of the reservation.*

The text of the paragraphs mentioned above makes clear that no ratification procedure is needed to amend the Annexes. By just a majority of two-thirds of the Parties present and voting the Agreement Area could be amended. An important pros is that timely procedure for drafting of a new Agreement, consultation of main stakeholders on the Agreement text, etc. could be skipped in case CAIF would be included in AEWA. However, there is a need for official consultation of the Technical Committee and the Contracting Parties to AEWA on the idea to extend the AEWA Agreement Area. For this consultation the time could be used between MOP2 (September 2002) and MOP3 (2005). If no big problems arise during the consultation the amendment of Annex 1a could be submitted to MOP3.

Another important pros is that in the AEWA region Europe is included. This means better chances for support for the implementation of the Agreement also in the CAIF region.

The total number of countries included in the CAIF region will be 20 of which 11 are located outside the AEWA agreement area. Besides geographical overlap there is also quiet some overlap in species. Although the draft CAIF Action Plan shows a list of species that could be included there is a need to identify which of the species are real migratory species according to the definition used by CMS/ AEWA. Anyway the different populations could be easily added to the existing AEWA Action Plan. However, this will mean that the problems for the CAIF region could not easily be recognized among the problems of the whole AEWA region. This is certainly a disadvantage although paying special attention in a separate Action Plan to the CAIF region could easily solve this.

In accordance with Article XIII of the AEWA Agreement text paragraph 3 which reads as follows: *This Agreement shall be open for accession by any Range State or regional economic organization mentioned in paragraph 1 above on and after the date of entry into force of the Agreement.* In paragraph 3 reference is made to paragraph 1 regarding any Range States or regional economic organisation mentioned in paragraph 1. In paragraph 1 it is clearly stated that any Range State, whether or not areas under its jurisdiction lie within the Agreement Area could join the Agreement as a Contracting Party. This provides the possibility to become a Contracting Party even preceding the formal decision on the extension of the AEWA Agreement Area. As Contracting Party this will give the given country the possibility to play an important role in the decision making process on inclusion of CAIF in AEWA during MOP3.

The name of the Agreement refers already to Asia. So in this respect also no problems are foreseen.

Finally AEWA is legally binding for the Contracting Parties and is one of the International Treaties. Contracting Parties have to contribute annually to cover the costs of the UNEP/AEWA Secretariat and some of its activities. Furthermore some Parties are willing to provide a voluntary contribution to support the implementation of the Agreement. Via UNEP some additional funds for the implementation could probably be raised.

#### **THE CONS ARE:**

##### *The problems of the CAIF region are less recognizable*

By inclusion of the CAIF Flyway in the AEWA Agreement area this Flyway becomes just a part of the huge Agreement Area. This could cause that the problems the CAIF region is facing regarding conservation of waterbirds and their habitats could be less recognizable, at least if this options would be compared by the options to develop a separate Agreement for CAIF under CMS. However, there is a possibility, if the Meeting of the Parties to AEWA agrees, to develop the Agreement and in particular the Action Plan in a way that problems of specific regions could be better addressed.

#### **CONCLUSION**

There are three options for concerted conservation actions for migratory waterbirds and their habitats that could be taken in the Central Asian Indian Flyway. The pros and cons of each option were given above and also summarized in Annex 1. Which option is most favourable for the Range States of the CAIF region depends on what they prefer, a legally or non-legally binding instrument. In case consensus could be reached that a legally binding treaty would be desirable, the UNEP/ CMS Secretariat as well as the UNEP/ AEWA recommends going for extending the AEWA Agreement area. The option of including CAIF in the AEWA although this seems the best solution the final decision has to be made by the Range States of the CAIF and of course by the Contracting Parties of AEWA.

Option	Pros/ Cons regarding Development of an Action Plan/ Agreement		Legally binding international treaty	Cost Secretariat/ coordination covered by the Parties	Feasibly to raise funds for implementation of the Action Plan		Overlap with existing international treaties on migratory waterbirds	Problems of the regions could be easily recognized in the Action Plan
	Time	Costs			Parties	UNEP		
New CMS Agreement	5-10 years	high	yes	yes	low	high	high	Yes
Extending AEWA	1-4 years	-	yes	yes	high	high	-	Partly
APWCS	1 year	-	no	no	low	low	high	Partly