

IWC68

Finance and Administration Committee

Paper submitted by the IWC Secretariat

Proposed Memorandum of Understanding between IWC and SPAW-UNEP

***Decision required by F&A and
Commission:***

Review and consideration of the
MoU between IWC and SPAW-UNEP
for adoption and implementation

This draft Memorandum of Understanding (MoU) was drafted by the Secretariats of the Specially Protected Areas and Wildlife (SPAW), in consultation with the UN environment Programme – UNEP and IWC. The MoU would formalize collaboration already underway between the two organisations. This MoU has been approved by UNEP and is now awaiting confirmation by the IWC.

Areas of cooperation include:

- Research funded by the IWC's Scientific Committee for research for biopsies of wintering humpback whales, in order to try to resolve which stock the Windward Island humpbacks belong to (e.g. there are matches with Cape Verde). This research would be launched in winter 2022/23 and would be included as part of the initial annual Workplan.
- IWC-provided training for entanglement response to be conducted in the region, in St. Martin, and possibly Costa Rica.
- IWC Secretariat and representatives have participated as observers in SPAW STAC (Scientific and Technical Advisory Committee), the equivalent of our IWC's Scientific Committee, and SPAW representatives have attended IWC SC meetings.
- A cetacean bycatch project is also under development which will make use of the IWC's Bycatch Expert Panel and Bycatch Mitigation Initiative.

The draft MoU is attached as Annex A.

Annex A
Proposed MoU between SPAW-UNEP and IWC

[MOU/2022/ Ecosystems Division/5627]

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)
AND
INTERNATIONAL WHALING COMMISSION

WHEREAS the United Nations Environment Programme (hereinafter referred to as UNEP) is the leading organization within the United Nations system in the field of environment and has as a major area of focus of its global mandate, the conservation, protection, enhancement and support of nature and natural resources, including biological diversity, worldwide;

WHEREAS UNEP through its Ecosystems Division has the mandate to "ensure coordinated and comprehensive development without environmental damage" through its Cartagena Convention whose mission is to identify environmental management issues for which regional and international cooperation is necessary. The Convention adopted in 1983, as a comprehensive legally binding umbrella agreement for the Protection and Development of the Marine Environment in the Wider Caribbean Region, is supplemented by three Protocols addressing oil spills, Specially Protected Areas and Wildlife (SPAW), and Pollution from Land-based Sources and Activities (LBS), which together emphasize the need for inclusion of an environmental dimension in the development process in order to minimize threats to the marine environment, and to ensure the sound use of marine and coastal resources;

WHEREAS International Whaling Commission (hereinafter referred to as "IWC") a International Convention for the Regulation of Whaling, adopted on 2 December 1946 has the mandate to provide for the proper conservation and management of whale stocks, and thus make possible the orderly development of the whaling industry;

WHEREAS UNEP and IWC (hereinafter collectively referred to as "Parties") share common objectives with regard to the conservation, protection, enhancement and support of nature and natural resources, including biological diversity worldwide, and wish to collaborate to further these common goals and objectives within their respective mandates and governing rules and regulations;

WHEREAS the Parties intend to conclude this Memorandum of Understanding (hereinafter referred to as "MOU") with the aim of consolidating, developing and detailing their cooperation and effectiveness to achieve the common objectives in the field of environment;

NOW, THEREFORE, UNEP AND IWC HAVE AGREED TO COOPERATE UNDER THIS MEMORANDUM OF UNDERSTANDING AS FOLLOWS:

Article 1

Interpretation

1. References to this MOU shall be construed as including any Annexes, as varied or amended in accordance with the terms of this MOU. Any Annexes shall be subject to the provisions of this MOU, and in case of any inconsistency between an Annex and this MOU, the latter shall prevail.

3. This MOU represents the complete understanding between the Parties and supersedes all prior MOUs, communications and representations, whether oral or written, concerning the subject matter of this MOU.

4. Any Party's failure to request implementation of a provision of this MOU shall not constitute a waiver of that or any other provision of this MOU.

Article 2

Duration

1. This MOU shall be effective upon the last date of signature of the approving officials and remain in force until 25 June 2030, unless terminated in accordance with Article 15 below.

Article 3

Purpose

1. The purpose of this MOU is to provide a framework of cooperation and understanding, and to facilitate collaboration between the Parties to further their shared goals and objectives in regard to the support of the conservation and management of whale populations to prevent them from becoming threatened or endangered in the Wider Caribbean region.

2. The objectives of this MOU shall be achieved through:

- Regular dialogue and meetings between UNEP and IWC;
- A joint commitment between the parties to cooperate within the scope of their shared interests and responsibilities in promoting the conservation and management of whale populations
- Execution of a mutually agreed workplan to implement actions on whale conservation activities
- An agreed voluntary commitment to collaborate on areas of mutual concern in the development of initiatives and activities of joint interest

Article 4

Areas of Cooperation

1. Areas of Cooperation are agreed jointly through the cooperation mechanism in the MOU. Policies and priorities under this MOU may also be jointly reviewed after 2 years by the Parties pursuant to Article 5 to allow the Parties to respond to newly emerging issues in the realm of environment and sustainable development.

2. The Parties have agreed to the following preliminary and areas of cooperation for this MOU, which form part of UNEP's mandate and programme of work and have been approved by UNEP's Governing Body. The items listed below are also priorities or ongoing activities of IWC, in accordance with its mandate. All could be strengthened through the cooperation of the Parties.

- Identify and develop synergies, and ensure effective cooperation in pursuit of common goals and objectives within each Parties respective mandates and governing rules and regulations
- Improve information and data sharing on the status and abundance of cetacean species
- Promote and encourage the conservation and management of key cetacean species and population
- Enhance collaboration on research, prevention of, and response to anthropogenic threats

3. The above list is not exhaustive and should not be taken to exclude or replace other forms of cooperation between the Parties on other issues of common interest.

Article 5

Organization of the Cooperation

1. The Parties shall hold regular bilateral meetings on matters of common interest, in accordance with an agenda agreed to in advance by the Parties, for the purpose of developing and monitoring collaborative projects. Such meetings shall take place at least once every 6 months months to:

- a. discuss technical and operational issues related to furthering the objectives of this MOU; and

b. review progress of work undertaken by IWC pursuant to a separate legal instrument in the priority areas of cooperation mentioned in Article 4 above.

2. Within the context defined above, further bilateral meetings at desk-to-desk and at expert level shall be encouraged and set up on an ad hoc basis as deemed necessary by the relevant UNEP divisions and IWC to address matters of common interest for the implementation of activities in specific areas, countries and regions.

3. In implementing activities, projects and programmes in the agreed priority areas, the Parties shall execute a separate legal instrument appropriate for the implementation of such initiatives in accordance with Article 1.2 above. In identifying the areas of cooperation under this MOU, due regard shall be given to IWC's geographic coverage; capacity for implementation and experience in the related field.

4. Where IWC is/are organizing a meeting with external participation at which policy matters related to the aims of this MOU shall be discussed, IWC shall, as appropriate, either invite UNEP to participate in the meeting or update UNEP on relevant policy matters discussed at the meeting. Each Party undertakes to share knowledge and information in its area of operations and expertise relevant to the MOU with the other Party.

Article 6

Status of the Parties and their Personnel

1. The Parties acknowledge and agree that IWC is/are an entity(ies) separate and distinct from the United Nations, including UNEP. The employees, personnel, representatives, agents, contractors or affiliates of IWC, including the personnel engaged by IWC for carrying out any of the project activities pursuant to this MOU, shall not be considered in any respect or for any purposes whatsoever as being employees, personnel, representatives, agents, contractors or affiliates of the United Nations, including UNEP, nor shall any employees, personnel, representatives, agents, contractors or affiliates of UNEP be considered, in any respect or for any purposes whatsoever, as being employees, personnel, representatives, agents, contractors or affiliates of IWC.

2. Neither Party shall be entitled to act or make legally binding declarations on behalf of the other Party. Nothing in this MOU shall be deemed to constitute a joint venture, agency, interest grouping or any other kind of formal business grouping or entity between the Parties.

Article 7

Fundraising

1. To the extent permitted by the Parties' respective regulations, rules and policies, and subject to sub-article 2, the Parties may engage in fundraising from the public and private sectors to support the activities, projects and programmes to be developed or carried out pursuant to this MOU.

2. Neither Party shall engage in fundraising with third parties in the name of or on behalf of the other, without the prior express written approval of the other Party in each case.

Article 8

Intellectual Property Rights

1. Nothing in the MOU shall be construed as granting or implying rights to, or interest in, intellectual property of the Parties, except as otherwise provided in Article 8.2.

2. In the event that the Parties foresee that intellectual property that can be protected shall be created in relation to a particular activity, project or programme to be carried out under this MOU, the Parties shall negotiate and agree on terms of its ownership and use in the relevant legal instrument concluded as per Article 1.2.

Article 9

Use of Name and Emblem

1. Neither Party shall use the name, emblem or trademarks of the other Party, its subsidiaries and/or affiliates, or any abbreviation thereof, in connection with its business or for public dissemination without the prior expressly written approval of the other Party in each case. In no event shall authorization of the UN or UNEP name or emblem be granted for commercial purposes.

2. IWC acknowledge(s) that it is/they are familiar with the independent, international and impartial status of the UN and UNEP, and recognizes that their names and emblems may not be associated with any political or sectarian cause or otherwise used in a manner inconsistent with the status of the UN and UNEP.

3. The Parties agree to recognize and acknowledge this partnership, as appropriate. To this end, the Parties shall consult with each other concerning the manner and form of such recognition and acknowledgement.

Article 10

United Nations Privileges and Immunities

1. Nothing in or relating to this MOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Article 11

Confidentiality

1. The handling of information shall be subject to each Party's corporate confidentiality policies.

2. Before disclosing internal documents, or documents that by virtue of their content or the circumstances of their creation or communication must be deemed confidential, of the other Party to third parties, each Party shall obtain the express, written consent of the other Party. However, a Party's disclosure of another Party's internal and/or confidential documents to an entity the disclosing Party controls or with which it is under common control, or to an entity with which it has a confidentiality agreement, shall not be considered a disclosure to a third party, and shall not require prior authorization.

3. For UNEP, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations shall be deemed to be a legal entity under common control.

Article 12

Responsibility

1. Each Party will be responsible for dealing with any claims or demands arising out of its actions or omissions, and those of its respective personnel, in relation to this MOU.

2. IWC shall indemnify, hold and save harmless and defend at its own expense, the United Nations and UNEP, their officials, personnel and representatives, from and against all suits, claims, demands and liability of any nature or kind which may arise in relation to this MOU due to any actions or omissions attributable to IWC.

Article 13

Dispute Settlement

1. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this MOU. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then prevailing, or according to such other procedure as may be agreed between the Parties.

2. Any dispute, controversy or claim between the Parties arising out of this MOU which is not settled amicably in accordance with the foregoing sub-article may be referred by either Party to arbitration under the UNCITRAL Arbitration Rules then in force. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

Article 14

Notification and Amendments

1. Each Party shall promptly notify the other in writing of any anticipated or actual material changes that will affect the execution of this MOU.

2. The Parties may amend this MOU by mutual written agreement, which shall be appended to this MOU and become an integral part of it.

Article 15

Termination

1. Either Party may terminate this MOU by giving 3 months' prior written notice to the other Party.
2. Upon termination of this MOU, the rights and obligations of the Parties defined under any other legal instrument executed pursuant to this MOU shall cease to be effective, except as otherwise provided in this MOU.
3. Any termination of the MOU shall be without prejudice to (a) the orderly completion of any ongoing collaborative activity and (b) any other rights and obligations of the Parties accrued prior to the date of termination under this MOU or legal instrument executed pursuant to this MOU.
4. The obligations under Articles 8-13 do not lapse upon expiry, termination of or withdrawal from this MOU.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

For United Nations Environment Programme For: International Whaling Commission

Name: Christopher Corbin

Name: Rebecca Lent

Title: Acting Coordinator

Title: Executive Secretary

Date:

Date:

DRAFT - NOT VALID FOR SIGNING