

Agenda Item 7.2

Relations with other Bodies
Proposal to Extend the ACCOBAMS
Agreement Area

Document 7-06

**Legal and Practical Implications of
the Extension of the ACCOBAMS
Geographical Scope**

Action Requested

- Take note of the assessment
- Consider the implications for ASCOBANS
- Provide guidance to the Secretariat

Submitted by

Secretariat



NOTE:
IN THE INTERESTS OF ECONOMY, DELEGATES ARE KINDLY REMINDED TO BRING THEIR
OWN COPIES OF DOCUMENTS TO THE MEETING

Secretariat's Note

This document was produced on commission by the ACCOBAMS Secretariat. The amendment proposals have been made available as AC17/Doc.7-05. The assessment done by the IUCN Environmental Law Centre upon request of the joint CMS/ASCOBANS Secretariat has been published as AC17/Doc.7-07.



Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area, concluded under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS)

Accord sur la Conservation des Cétacés de la Mer Noire, de la Méditerranée et de la zone Atlantique adjacente, conclu sous l'égide de la Convention sur la Conservation des Espèces Migratrices appartenant à la Faune Sauvage (CMS)



Fourth Meeting of the Contracting Parties

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English

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LEGAL AND PRACTICAL IMPLICATIONS OF THE EXTENSION OF THE ACCOBAMS GEOGRAPHICAL SCOPE

Delegates are kindly invited to bring their own documents to the Meeting. This document will be available only in electronic format during the Meeting.

Secretariat's Note

The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of the ACCOBAMS Secretariat concerning the legal status of any State, Territory, city or area, or of its authorities, or concerning the delimitation of their frontiers or boundaries.

LEGAL AND PRACTICAL IMPLICATIONS OF THE EXTENSION OF THE ACCOBAMS GEOGRAPHICAL SCOPE

1. The Amendment Procedure

The geographical scope of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) is clearly defined by Art. I, para. 1, *a*:

“The geographic scope of this Agreement, hereinafter referred to as the ‘Agreement area’, is constituted by all the maritime waters of the Black Sea and the Mediterranean and their gulfs and seas, and the internal waters connected to or interconnecting these maritime waters, and of the Atlantic area contiguous to the Mediterranean Sea west of the Straits of Gibraltar. For the purpose of this Agreement:

- the Black Sea is bounded to the southwest by the line joining Capes Kelaga and Dalyan (Turkey);
- the Mediterranean Sea is bounded to the east by the southern limits of the Straits of the Dardanelles between the lighthouses of Mehmetcik and Kumkale (Turkey) and to the west by the meridian passing through Cape Spartel lighthouse, at the entrance to the Strait of Gibraltar; and
- the contiguous Atlantic area west of the Strait of Gibraltar is bounded to the east by the meridian passing through Cape Spartel lighthouse and to the west by the line joining the lighthouses of Cape St. Vicente (Portugal) and Casablanca (Morocco)”.

Any change in the geographical scope of ACCOBAMS, be it an extension or a reduction, requires an amendment to Art. I, para. 1, *a*. Under the 1969 Vienna Convention on the Law of Treaties, “a treaty may be amended by agreement between the parties”. According to Art. III, para. 8, *d*, of ACCOBAMS, the decision on an amendment is taken by the Meeting of the Parties. The procedure to be used for amendments is set forth in detail in Art. X:

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

2. Proposals for amendments to the Agreement may be made by any Party. The text of any proposed amendment and the reasons for it shall be communicated to the Agreement secretariat not less than one hundred and fifty days before the opening of the session. The Agreement secretariat shall transmit copies forthwith to the Parties. Any comments on the text by the Parties shall be communicated to the Agreement secretariat not less than sixty days before the opening of the session. The Secretariat shall communicate to the Parties, as soon as possible after the last day for submission of comments, all comments submitted by that day.

3. Any additional annex or any amendment to the Agreement other than an amendment to its annexes shall be adopted by a two thirds majority of the Parties present and voting and shall enter into force for those Parties which have accepted it on the thirtieth day after the date on which two thirds of the Parties to the Agreement at the date of the adoption of the additional annex or amendment have deposited their instruments of acceptance with the Depositary. For any Party that deposits an instrument of acceptance after the date on which two thirds of the Parties have deposited their instruments of acceptance, the additional annex or amendment shall enter into force on the thirtieth day after the date on which it deposits its instrument of acceptance.

4. Any amendment to an annex to the Agreement shall be adopted by a two thirds majority of the Parties present and voting and shall enter into force for all Parties on the one hundred and fiftieth day after the date of its adoption by the Meeting of the Parties, except for Parties that have entered a reservation in accordance with paragraph 5 of this Article.

5. During the period of one hundred and fifty days provided for in paragraph 4 of this Article, any Party may by written notification to the Depositary enter a reservation with respect to an amendment to an annex to the Agreement. Such reservation may be withdrawn by written notification to the Depositary, and thereupon the amendment shall enter into force for that Party on the thirtieth day after the date of withdrawal of the reservation”.

The application of Art. X may lead to a practical problem. As stated in Art. X, para. 3, to enter into force after its adoption, an amendment has to be accepted by two thirds of the Parties to ACCOBAMS at the date of the adoption of the amendment. This implies that an amended provision may become applicable in the relationships between a majority of Parties, while for the minority of Parties the original provision continues to apply in the relationships between themselves and in the relationships between them and the Parties that have accepted the amendment. To avoid the inconvenience of two

different ACCOBAMS geographical scopes applying at the same time for a certain period, it is recommended that the Parties, at the moment of adoption of an amendment extending the ACCOBAMS geographical scope, provide that such amendment, when it enters into force, will provisionally apply also to Parties that have not yet accepted it, unless they declare the contrary within a short delay (to be specified) after having received the relevant information by the Depositary under Art. XVII, para. 3, *c*. The possibility to provisionally apply treaties is provided for in Art. 25 of the above mentioned Vienna Convention.

2. The Substance of the Amendment

In principle, there are very few limits to the right of the Parties to amend ACCOBAMS, provided that the procedure for amendments is complied with. Extensions to the geographical scope of ACCOBAMS may regard marine waters which have any legal condition, be it territorial sea, exclusive economic zone or high seas (yet ACCOBAMS applies also to the high seas, as it can be inferred from the last sentence of Art. II, para. 3).

However, to avoid a complete alteration of the object and purpose of ACCOBAMS, the waters to which ACCOBAMS is extended should be contiguous or at least connected to the original ACCOBAMS area of application. Unlike birds, cetaceans swim in the waters, without flying over them. The notion of continuity, implying contiguity or connection, complies with the ACCOBAMS definition of “range” as “all areas of waters that a cetacean inhabits, stays in temporarily, or crosses at any time on its normal migration route within the Agreement area” (Art. I, para. 3, *f*). For instance, the condition of continuity is met if the scope of application of ACCOBAMS is extended to another Atlantic area contiguous to the “contiguous Atlantic area” to which ACCOBAMS already applies or to the Red Sea which is connected to the Mediterranean Sea by the Suez Canal.

In addition, the enlargement of Atlantic area to which ACCOBAMS applies must be relevant for the fulfilment of the main purpose of ACCOBAMS that is “to achieve and maintain a favourable conservation status for the cetaceans” (Art. II, para. 1).

When adopting an amendment to extend the geographical scope of ACCOBAMS, the Parties should also consider the Agreement as a whole to determine whether, besides the case of Art. I, para. 1, *a*, there are other amendments to be done as a consequence of the main amendment. For example and depending on the circumstances, the title of the Agreement itself, Art. I, para. 3, *j* (defining a “subregion”) or Annex 1 (indicative lists of cetaceans) may also require to be amended. A provision stating that the new Parties to ACCOBAMS shall become Parties to the Agreement as amended should also be added.

3. The Relationship with ASCOBANS

The Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Sea (so-called ASCOBANS) has been adopted in New York in 1992. Covering originally only the North and Baltic Seas, ASCOBANS was in 2008 amended to include also other Atlantic waters as follows:

“Area of the Agreement means the marine environment of the Baltic and North Seas and contiguous area of the North East Atlantic, as delimited by the shores of the Gulfs of Bothnia and Finland; to the south-east by latitude 36° N, where this line of latitude meets the line joining the lighthouses of Cape St. Vincent (Portugal) and Casablanca (Morocco); to the south-west by latitude 36° N and longitude 15° W; to the north-west by longitude 15° and a line drawn through the following points: latitude 59° N / longitude 15° W, latitude 60° N / longitude 05° W, latitude, 61° N / longitude 4 W; latitude 62 N / longitude 3 W; to the north by latitude 62° N; and including the Kattegat and the Sound and Belt passages”.

The extended ASCOBANS area could in future partially overlap with an extended ACCOBAMS area. This would not seem to create particularly difficult problems. There is no evident incompatibility in the content of the substantive provisions of the two treaties. While ACCOBAMS applies to all species of cetaceans (Art. I, para. 3, *a*), ASCOBANS applies only “to all small cetaceans” (Art. 1, par. 1). For

the time being, France is the only ACCOBAMS Party that is also Party to ASCOBANS. However, in the event of a partial overlapping of the two areas of application, the Secretariats of the two Agreements should pursue and strengthen their collaboration to avoid duplications or inconsistencies in their action.