

Agenda Item 7.2

Relations with other Bodies
Extension of the ACCOBAMS Agreement
Area

Document 7-03

**Extension of the ACCOBAMS
Agreement Area**

Action Requested

- Take note
- Consider the implications for ASCOBANS

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

At the 17th Meeting of the ASCOBANS Advisory Committee, the Secretariat drew the meeting's attention to proposals submitted by Portugal and Spain to the ACCOBAMS MOP4 to extend the Agreement Area of ACCOBAMS into waters of the Atlantic already covered by ASCOBANS (see AC17/Doc.7-05, 7-06 and 7-07).

The Committee agreed that the Secretariat should contact ACCOBAMS to seek the postponement of the discussion of extending the Agreement Area until the Future Shape process had run its course. The Acting Executive Secretary was also mandated to present the views of the ASCOBANS Parties to the Meeting of the Parties to ACCOBAMS.

The Acting Executive Secretary conveyed this message both to the Secretariat and the Parties to ACCOBAMS. However, the proposals were adopted at ACCOBAMS MOP4 and the amendment to the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) will come into force when the required number of Parties has ratified it. The Government of Monaco has already done so.

This document contains extracts of the ACCOBAMS MOP4 Report relevant to this issue, as well as the Amendment Resolution as adopted.

143. The delegate of France declared that despite the general instructions to agree only to budget increases in line with national inflation of 2-3 %, it would be possible to accept the proposed rise of about 5% in the French contribution because of the importance of the work carried out by ACCOBAMS and given the fact that the sums involved were modest.
144. Similarly, the Spanish representative said that despite the budget freeze for other conventions, he could accept the proposed level of increase taking into consideration the importance of the issues to be addressed in the next triennium.
145. The Italian delegation said that in the light of the financial constraints, it had a clear mandate to keep increases in the contributions to a minimum. However, Italy recognised its role in ACCOBAMS and could therefore accept the 3,000 Euros annual increase. It highlighted that there was a lack of financial commitment from many ACCOBAMS Parties since 80% of the budget was being met by just three Parties.
146. The Greek delegate offered to increase the ordinary annual contribution of his country to the Trust Fund up to 20,000 € ¹.
147. It was pointed that in some cases (Romania for instance), the contribution to the budget increase substantially. The Secretariat explained that this situation was generated mainly by changes in 2010 of UN Key for some ACCOBAMS Parties
148. The importance of Parties paying their contributions in full and on time was stressed. Italy suggested that Parties paying the minimum contributions should make a single payment at the beginning of the triennium and that Parties be given a firm deadline to clear any arrears. Some Parties proposed that flexibility in terms of periodicity of payments should be kept as financial rules and procedures may vary from one country to another.
149. The Resolution was **adopted** at later stage, as Resolution 4.3 ([Annex X](#)).

Agenda Item 13 – Proposal of Amendments to the Agreement

150. The Executive Secretary drew the Meeting's attention to the "Proposal from Portugal for the extension of ACCOBAMS geographical scope" (ACCOBAMS-MOP4/2010/Doc29), the "Proposal from Spain for the extension of ACCOBAMS geographical scope" (ACCOBAMS-MOP4/2010/Doc30), the Draft Resolution A/4.1 and the "Legal and practical implications of the extension of the Agreement geographical scope" (ACCOBAMS-MOP4/2010/Inf15). A letter from the European Commission supporting the proposal to extend the ACCOBAMS Agreement Area was also circulated. Portugal and Spain were then asked to explain their proposal.

¹ subject to Greek Government approval

151. Portugal stated that it had always been its intention to apply ACCOBAMS to the waters under its jurisdiction. This made good sense administratively as well as ecologically because of Portugal's closer affinity of its cetacean populations to those of Mediterranean than to the North Sea and the Baltic.
152. Spain also said that the cetaceans found off its North West and North coasts were more closely related to the populations of Portugal than those of Northern European Seas. There would also be conservation benefits in applying the provisions of ACCOBAMS to all cetacean populations of the jurisdictional waters of Spain and Portugal. Administratively, it made more sense to have a single regime and a single Agreement to implement, consistent with the EU Habitats Directive applying to all and not just small cetaceans. The Spanish representative concluded his remarks by stating that it had never been his country's intention to accede to ASCOBANS, while this Agreement did not cover all cetacean species.
153. France, the only country that was Party to both ASCOBANS and ACCOBAMS, understood the rationale of Spain and Portugal wanting to have a single Agreement covering all their waters but voiced concern that the extension as proposed would lead to an overlap of the Areas of ACCOBAMS and ASCOBANS and he wanted to examine the legal and governance implications of this.
154. Several Parties said that they were content to support the proposed extension given the fact that the two countries most directly affected had initiated the move. Morocco expressed its objection to this extension of the Agreement.
155. Replying to a question from the Italian delegation who asked whether the extension would have any financial implications, the Executive Secretary said that as the number of Parties was not affected there should be none.
156. The Executive Secretary of UNEP/CMS fully understood the desire of Spain and Portugal to have a single Agreement applying to their waters and for it to cover all cetaceans. She pointed out that ASCOBANS had not excluded the possibility of extending its species range and had an informal working group which dealt with large cetaceans. When ASCOBANS had extended its Agreement Area, it had done so in full consultation with ACCOBAMS and with Spain, Portugal and Ireland in order to facilitate their accession. In the light of the "Future Shape" process looking into options to restructure the entire CMS Family, the Advisory Committee of ASCOBANS and the parent Convention urged that ACCOBAMS Parties defer consideration of the extension until after the next CMS COP when the outcome of the review would be known. There were also possible legal complications with two separate Agreements covering the same area which might implicate the

International Law of the Sea. Consideration might also be given to the feasibility of merging the two Agreements at some time in the future.

157. The Legal Adviser felt that the extension presented no legal problems as the overlap was theoretical given that neither Spain nor Portugal was Party to ASCOBANS. Given its coverage of all cetacean species and its far clearer provisions concerning the prohibition of lethal take, he felt ACCOBAMS was the more effective instrument. The extension also would not prevent the two Agreements from cooperating and indeed might even encourage them to do so. Spain concurred that the overlap was a theoretical problem and pointed to the fact that many other instruments overlapped such as the London and Barcelona Conventions without resulting in any difficulties.
158. The representative of Portugal concurred with the opinion expressed by the Legal Adviser and also mentioned the importance of the feasibility of merging the two Agreements in a near future. But given the different scopes of the two instruments this process may take more time than expected and, in the meantime, the extension of the ACCOBAMS geographical area into the Portuguese continental EEZ would allow the inclusion of all cetacean populations present in this area into one agreement that already covers the south part of the country.
159. The Chair concluded that the consensus of the Parties was that the draft Resolution should be put forward for adoption, and he took note of the questions raised by France concerning governance and the request from the Executive Secretary of CMS that the decision be deferred until MOP5 after the conclusion of the Future Shape process.
160. The Resolution was **adopted** as Resolution A/4.1 ([Annex X](#)).

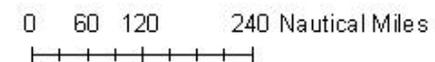
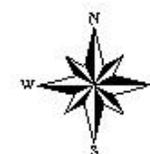
Agenda Item 14 - Adoption of Resolutions

161. In addition to the Resolutions adopted under the above Agenda items, the Meeting reviewed and **adopted** the following Resolutions ([Annex X](#)):

ACCOBAMS-MOP4/2010/Res4.9	Fisheries interactions with cetaceans
ACCOBAMS-MOP4/2010/Res4.14	Climate change
ACCOBAMS-MOP4/2010/Res4.17	Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area
ACCOBAMS-MOP4/2010/Res4.18	Guidelines on the granting of exceptions to Article II, paragraph 1, for the purpose of non-lethal in situ research in the Agreement area
ACCOBAMS-MOP4/2010/Res4.21	ACCOBAMS logos: conditions for use

162. Referring to Resolution 4.9, the IUCN representative stressed that he would caution against being too prescriptive in specifications for acoustic deterrent devices, as the 3 devices covered by the two

**PORTUGUESE AND SPANISH PROPOSAL OF ACCOBAMS AMENDMENT
(EXTENSION OF ACCOBAMS GEOGRAPHICAL SCOPE)**



RESOLUTION A/4.1

AMENDMENTS: EXTENSION OF THE ACCOBAMS GEOGRAPHICAL SCOPE

The Meeting of the Parties to the Agreement on the Conservation of the Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area (ACCOBAMS):

Noting that cetacean populations present in the North of Portugal, Galician and Cantabric Seas are connected, as shown by the most recent scientific studies,

Noting that the European Directive 2008/56/EC, establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive), and the OSPAR Convention for the protection of the marine environment of the North-East Atlantic, create the sub-region “Bay of Biscay and the Iberian Coast” in order to implement their obligations,

Noting that the scopes of the ACCOBAMS Agreement and of the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS) are slightly different, with the former including all cetacean species, and the latter focusing only on small cetaceans,

Recognizing that the implementation of the above mentioned international Instruments together with the ACCOBAMS Agreement, would be coherent,

Affirming their willingness to strengthen their collaboration with the ASCOBANS Parties and Secretariat in order to establish synergies in matters and activities of common interests,

Recognizing that the implementation of conservation and management measures for all cetacean populations along marine waters covered by the sovereignty or jurisdiction of both Portugal and Spain would benefit from the inclusion of all species and populations within one single Agreement,

1. *Replaces* the name of the Agreement with: “Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and neighbouring Atlantic Area”;

2. *Replaces* the Article 1.a) with:

“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 neighbouring Atlantic Area 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 neighbouring Atlantic Area west of the Strait of Gibraltar is bounded to the east by the meridian passing through Cape Spartel lighthouse (Morocco); to the west by the line joining the lighthouses of Casablanca (Morocco) and Cape St. Vicente (Portugal) until this line reaches the parallel of latitude 36° N, then by the parallel of latitude 36° N until it reaches the external limit of marine waters covered by the sovereignty or jurisdiction of Portugal, then by the external limit of marine waters covered by the sovereignty or jurisdiction of Portugal and Spain until the land border between Spain and France.

3. *Replaces* the Article I, paragraph 3.j) with:
““Subregion”, depending on the particular context, means either the region comprising the coastal States of Black Sea or the region comprising the coastal States of the Mediterranean Sea and neighbouring Atlantic Area; any reference in the Agreement to the States of a particular subregion shall be taken to mean the States which have any part of their territorial waters within that subregion, and States, flag vessels of which are engaged in activities which may affect the conservation of cetaceans in that subregion;”
4. *Replaces* the Article XIV (entry into force), paragraph 1, with:
“This Agreement shall enter into force on the first day of the third month following the date on which at least seven coastal States of the Agreement area or regional economic integration organizations, comprising at least two from the subregion of the Black Sea and at least five from the subregion of the Mediterranean Sea and neighbouring Atlantic Area, have signed without reservation in respect of ratification, acceptance or approval, or have deposited their instruments of ratification, acceptance or approval in accordance with Article XIII of this Agreement”;
5. *Replaces* the headline of the second part of the Annex 1 with:
“Indicative List of cetaceans of the Mediterranean Sea and neighbouring Atlantic Area to which this Agreement applies”;
6. *Replaces* the paragraph 3 of the Annex 2 (Conservation Plan) with:
“3. Habitat protection.
Parties shall endeavour to establish and manage specially protected areas for cetaceans corresponding to the areas which serve as habitats of cetaceans and/or which provide important food resources for them. Such specially protected areas should be established within the framework of the Regional Seas Conventions (OSPAR, Barcelona and Bucharest Conventions), or within the framework of other appropriate instruments”.