

Agenda Item 3.1

Review of New Information on Threats to Small  
Cetaceans

Bycatch

Document 3.1

**Revision of EU Legislation on  
Cetacean Bycatch**

**Action Requested**

- Take note
- Give guidance

Submitted by

Secretariat



**NOTE:  
DELEGATES ARE KINDLY REMINDED  
TO BRING THEIR OWN COPIES OF DOCUMENTS TO THE MEETING**



## Revision of EU Legislation on Cetacean Bycatch

1. Document [AC20/Doc.3.1.d](#) presented to the ASCOBANS Advisory Committee in 2013 outlined the process currently under way regarding a possible revision or replacement of EC Reg. 812/2004. In this context, the European Parliament had proposed the following wording: “The Commission shall no later than 31 December 2015 review the effectiveness of the measures laid down in this Regulation and accompany this review with an overarching legislative proposal for ensuring the effective protection of cetaceans.”
2. Germany wishes to use part of its 2014 voluntary contribution to ASCOBANS to prepare a strategic paper with which to give guidance concerning the envisaged revision process, e.g. by drafting essential and desirable elements for new bycatch legislation to be made available to the Commission. The suggestion was discussed with the Jastarnia Group and endorsed, as it was a chance for ASCOBANS to step in and make its opinion matter.
3. The 10<sup>th</sup> Meeting of the Jastarnia Group therefore recorded in Action Point 7: “The Secretariat should commission a consultant to draft a position paper with ASCOBANS input for the revision process of EC Reg. 812/2004, based on Terms of Reference to be drafted by the Secretariat. These Terms of Reference should be approved by National Coordinators, in consultation with the AC Chair.”
4. A draft was circulated to National Coordinators and the chairs of the regional working groups on 22 August 2014, requesting comments by 10 September. A revised version was then forwarded to the chair of the Bycatch Working Group for his advice and comments. The Coordinator for the North Sea Harbour Porpoise Conservation Plan was also involved in the discussions.
5. Several suggestions for amendments to the draft ToR were made, and more general points discussed. Views differed in particular regarding the question whether a legally trained expert and / or bycatch experts were required; and whether the best way of ensuring the appropriate input from bycatch experts was through a consultant or an expert workshop.
6. Presented with the different options, those who responded were mostly in favour of a combination of arranging a bycatch expert workshop and hiring a legal consultant who would look at the recommendations made by the ASCOBANS Advisory Committee and its working groups, as well as by the bycatch expert workshop, and develop a proposal about how these could be translated into meaningful legislation. It was suggested that such an expert workshop could be held back-to-back with the next meeting of ICES WGBYC (tentatively planned for 2-6 February 2015, place to be confirmed), as a good number of the experts would be present there.

### Possible Way Forward

7. Possible steps for developing ASCOBANS input to the Commission’s revision of the bycatch legislation could therefore be:
  - A. The Secretariat and Germany seek to clarify the status, process and timelines with the European Commission and the Secretariat will prepare an overview of the current situation and future process for revisions of bycatch regulations at EU level (ongoing)
  - B. The Secretariat and the Bycatch Working Group, if possible supported by a small consultancy, will review and compile ASCOBANS positions regarding bycatch by:
    - Compiling previous recommendations related to bycatch made by ASCOBANS Parties, the Advisory Committee and its working groups

- Identifying specific observations regarding the strengths and weaknesses of EC Reg. 812/2004, also taking into account the issues highlighted by the ICES WGBYC
- C. The Secretariat and the Bycatch Working Group, if possible supported by a small consultancy, will:
- Identify the experts to invite to the workshop and consult with the ICES Secretariat and the chair of ICES WGBYC in order to arrange a back-to-back meeting, if possible
  - Develop an agenda and ToR for the workshop
- D. Early in 2015, the Secretariat could hire a legally trained consultant, allowing the incumbent to come on board in time to attend the expert workshop and based on the outputs to:
- Identify how, using the experience with Regulation 812/2004, recommendations from ASCOBANS regarding bycatch could be addressed within revised legislation to support existing requirements within the Habitat's Directive and the MSFD
  - Develop, in collaboration with the Bycatch Working Group and making use of the input from the expert workshop, a draft ASCOBANS position paper and proposals for essential and desirable elements for revised EU bycatch legislation for submission to the European Commission to facilitate the Commission's work
  - In collaboration with the Secretariat, undertake consultations with Parties and produce revised drafts as required

### **Guidance Required**

8. The Advisory Committee is requested to comment on the above proposal, specify timelines and needs of the Parties, and give concrete guidance to the Secretariat on the desired way forward. In particular, guidance is required on
- a) The proposal to hold a technical expert workshop in early 2015
  - b) The proposal to assist the Secretariat and Bycatch Working Group with the preparations for such a workshop by means of a small consultancy
  - c) The proposal to hire a legally trained consultant in early 2015 (this may require additional funds)