

Opening statement by the World Wide Fund for Nature (WWF)

Submitted by: WWF



ASCOBANS

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

**7th Meeting of the Advisory Committee to ASCOBANS
13-16 March 2000, Bruges, Belgium**

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Background

WWFs North-East Atlantic and Baltic Programme support the work of ASCOBANS as a focus to achieve the necessary protection for small cetaceans in the Baltic and Northern Seas. Further, we support that the geographical scope of ASCOBANS should be extended in line with ecological and administrative boundaries covered by the European Union and the appropriate Pan-European regional seas agreements. We believe that the work of ASCOBANS is integral to developments in other frameworks for the goal of protecting the full range of biodiversity as is required by the Convention of Biodiversity. It is therefore with great disappointment that WWF present this opening statement, which also reflects on the lack of progress made by ASCOBANS since the 6th Advisory Group meeting. We believe that solutions for the protection of small cetaceans are required now, and these solutions need to be operational in policy, legislation and practical action.

BYCATCH

Threats to small cetaceans with respect to incidental capture in fishing gear are well documented within the ASCOBANS framework and in other fora.

Update of legal developments in European Community Waters

Article 12.4 of the EU “Habitats” Directive (Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna) requires EU Member States to take conservation measures to insure that incidental capture and killing does not have a “significant negative impact” on species listed in Annex IVa of the Directive such as cetaceans and turtles. In the UK there has been a recent High Court decision (following legal action by Greenpeace) with regard to the “Habitats” Directive – that the Directive applies to the equivalent of the UK EEZ (UK continental shelf and superjacent waters out to the 200nm fishing limit). WWF believe the requirement of the Habitats Directive cannot be achieved unless the Directive applies throughout the European EEZ (or equivalent). We also believe that Case Law with reference to the “Birds” Directive (Council Directive 79/419/EEC) supports the requirement to apply both Directives throughout the European EEZ (see **Annex I** to this statement).

As the Common Fisheries Policy (CFP) has competence over fishing activity in European Community waters, it is unclear how the requirements of the “Habitats” Directive, with respect to incidental capture of cetaceans and turtles, will be fulfilled – unless there is a mechanism integrated into the CFP. The CFP (1982-2002) is currently being reviewed. WWF believe that all Member States and the European Commission must take responsibility for the uptake of the Habitats Directive “environmental” legislation into European fisheries policy and management.

WWF are calling for “benchmarks” - denoting unacceptable levels of bycatch - and **pre-agreed** action at these levels, to be enshrined in European fisheries policy and management. We believe the ASCOBANS framework should play a critical role in determining these “benchmarks” and negotiating pre-agreed action. WWF are therefore gravely disappointed with the apparent lack of progress by ASCOBANS with respect to action on bycatch. We are particularly concerned that there is no apparent progress in organizing the workshop to provide guidance on the practicability of bycatch mitigation measures. Working towards zero bycatch of small cetaceans we also believe that “best practice” should be a part of fishing license conditions.

POLLUTION

WWF are calling for the implementation of the OSPAR Strategies with regard to Hazardous Substances, Eutrophication and Radioactive Substances as well as the HELCOM Objective with Regard to Hazardous Substances - and the Strategy to implement this Objective. We are supporting this implementation through general policy work and projects. Referring to the opening statement to the 6th Meeting WWF note with satisfaction that the ASCOBANS Secretariat has raised flags of concern at OSPAR and HELCOM level with regard to the accumulation of organotin compounds and polybrominated flame retardants in the marine food web and cetacean tissue.

We also call on ASCOBANS Contracting Parties not only to facilitate further research on the negative impacts to cetaceans particularly from persistent chemicals (see **Annex II** to this statement) but also to further contribute with data and up-to-date information to the work of relevant technical working groups of other fora. In particular, this applies to the progressing work of the OSPAR Working Group on a Dynamic Selection and Prioritisation Mechanism for Hazardous Substances (DYNAMEC) and the expert judgement therein. The outcome of this work will determine the amendment of the existing list of chemicals for priority action in very near future and hence will become critical to maintain or restore cetacean health in the ASCOBANS area.

PROTECTED AREAS

Specific: WWF welcome the designation of the waters west of the German islands Sylt and Amrum as small cetacean (harbour porpoise) sanctuary and/or Natura 2000 site by the Federal State of Schleswig-Holstein. WWF however suggest to include the adjacent waters („Amrum-Aussengrund“) in this designation due to their vital corridor function and importance for reproduction.

General: WWF convened a Workshop on Marine Protected Areas (MPAs) in the North-East Atlantic from 13-14 November 1999 in Brest, France. The workshop emphasized on discussing the concept of an ecologically representative network of MPAs and aimed at fostering new approaches and tools to make it operational. The participants considered the steps undertaken by Intergovernmental Organisations in the North-East Atlantic so far and evaluated the experiences made in other regional seas.

As the Protected Area Working Group is going to present a final report to the 7th Advisory Committee Meeting (see Report from 6th Meeting, Annex D), WWF wants to contribute to the further discussion on this topic by submitting the MPA Workshop Report under the appropriate agenda item.

Opening Statement by the World Wide Fund For Nature (WWF) -Annex I

Geographical Scope of the EU “Habitats” Directive (EU Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Flora and Fauna.

WWF has always supported that the EU Habitats Directive should apply to the limit of the European Exclusive Economic Zone (EEZ). In the UK there has been a recent High Court decision (following legal action by Greenpeace) with regard to the Habitats and Species Directive – that the Directive applies to the equivalent of the UK EEZ (UK continental shelf and superjacent waters out to the 200nm fishing limit) (hereafter referred to as the UK High Court decision). Article 4 of the “Habitats” Directive requires Member States to identify and designate sites to protect habitats and species listed in the Directive. There are two habitats listed in the Directive that occur beyond 12 nautical miles offshore. These are “reefs” (Natura 2000 code 1170) and “sandbanks” (Natura 2000 code 1110).

The “Habitats” Directive was notably modeled on the “Birds” Directive (EU Council Directive 79/419/EEC on the Conservation of Wild Birds). Sites designated for habitats and species under the “Habitats Directive” and for birds under the “Birds” Directive will together make up the Natura 2000 network to achieve “favorable conservation status” for these habitats and species across the European Union. The European Union territory includes the seabed and superjacent waters out to the limit of the European EEZ (or equivalent). It is clear that the requirements of both the “Habitats” and the “Birds” Directives will not be achieved if only the UK apply the Directive out to the UK EEZ equivalent. Immediate action is required to identify sites for offshore “sandbanks” and “reefs” throughout European EEZ waters.

“Birds” Directive case law reflects the requirements for all EU Member States to take responsibility for “transfrontier” species. It is fair to assume that the European Court of Justice decisions with regard to the “Birds” Directive is to be followed in the interpretation of the “Habitats” Directive. Cases, for example, C247/85 Commission vs Belgium (ECR 302) and C-247/85 Commission vs Italy (ECR 3073) are particularly important with regard to offshore “transfrontier” species such as whales, dolphins, porpoises and turtles. In case C-247/85 Commission vs Italy it was ruled that “effective protection of birds is typically a transfrontier environmental problem entailing common responsibilities for all member states.” Article 12.4 of the “Habitats” Directive requires EU Member States to take conservation measures to insure that incidental capture and killing does not have a “significant negative impact” on species listed in Annex IVa of the “Habitats” Directive such as whales, dolphins, porpoises and turtles. In case law these “transfrontier” species entail common responsibilities for all EU Member States. With respect to a “significant negative impact” on whales, dolphins, porpoises and turtles, for example, due to bycatch in fishing gear, there are now implications for the responsibility of all Member States. As the Common Fisheries Policy (CFP) has competence over fishing activity, it is unclear how the requirements of the “Habitats” Directive, with respect to incidental capture of cetaceans and turtles, will be fulfilled – unless there is a mechanism integrated into the CFP. The CFP (1982-2002) is currently being reviewed. All EU Member States and the European Commission must take responsibility for the uptake of the Habitats Directive “environmental” legislation into European fisheries policy and management.

WWF believe the UK High Court decision will further a process resulting in a network of marine protected areas through-out the North-East Atlantic and other Pan-European regional seas. This network include examples the full range of habitats, species and ecosystems (for which site protection is appropriate) as required by the Convention on Biodiversity. We recognize that the Directive will not deliver protection of the full range of habitats species and ecosystems as required by the Convention on Biodiversity (CBD). WWF is also focusing our marine programme on other regional seas frameworks (cf report from WWF Workshop on Marine Protected Areas in the NE Atlantic – submitted under separate cover).

Opening Statement by the World Wide Fund For Nature (WWF) - Annex II

Implementation of strategies with regard to marine pollution as endorsed by regional seas frameworks

In light of recent and past findings of high levels of anthropogenically derived contaminants in small cetaceans and possible links to the health of small cetaceans (e.g. immunosuppression, reproductive disturbance, neuro-toxic effects) WWF is calling for the following:

- ASCOBANS Contracting Parties to further support NSC, OSPAR and HELCOM in giving cessation targets of 2020 for emissions/discharges/losses of hazardous substances; and
- ASCOBANS Contracting Parties to support the International Maritime Organisation's TBT Ban (2003 application and 2008 presence).

Due to continuing eutrophication impacts in European Coastal Waters and the associated effects on marine wildlife, WWF also calls on ASCOBANS Contracting Parties to support future nutrient reduction targets of OSPAR and HELCOM.

As an example of practical work, the following four WWF projects are outlined:

1. The relationship between xenobiotic oestrogenic contaminants and testicular development and function in the harbour porpoise. (WWF UK Marine Pollution Programme)

Executant: London Zoological Society

Summary: The project is measuring a suite of toxic chemicals in blubber from harbour porpoise strandings in England and Wales. It is testing the hypothesis that the degree of exposure to endocrine disrupting chemicals (EDCs) is correlated with impairment of male reproductive development and function in the harbour porpoise.

2. Marine eutrophication in England, Wales and Scotland (WWF UK Marine Pollution Programme)

Summary: A report of the nutrient levels in estuaries, rivers and coastal waters of England, Wales and Scotland.

3. The accumulation and impact of organotins in marine mammals, seabirds, and fish for human consumption (WWF UK Marine Pollution Programme)

Summary: Paper detailing research. Available on request.

4. Averting the Toxic Threat to NE Atlantic Marine Wildlife (WWF North-East Atlantic Programme)

Summary: Review and description of impacts on marine wildlife / biota resulting from discharges, emissions or losses of Chemicals for Priority Action as identified by OSPAR/HELCOM; including proposals for action and policy reform.