

REPORT

ASCOBANS Expert Workshop 'Unacceptable Interactions & Bycatch

1. Opening of the Meeting

1.1 *Welcoming Remarks*

Melanie Virtue (Head of Aquatic Species Team) welcomed participants to the workshop, which she had been asked to chair. She introduced Aline Kühl-Stenzel, the new ASCOBANS Coordinator who was replacing Heidrun Frisch-Nwakanma, who was moving on to new duties concerning marine turtles in the Indian Ocean. Ms Kühl-Stenzel was familiar with the work of CMS having previously served as assistant to the Executive Secretary and as Associate Programme Officer in the terrestrial species team; she had also worked at the RAC/SPA in Tunis.

By way of background, Ms Virtue explained that the UK Department of the Environment, Food and Rural Affairs (Defra) had hosted the first workshop on unacceptable interactions two years before. She then conducted a tour de table inviting all those present to introduce themselves. She particularly noted that ACCOBAMS was represented by Executive Secretary, Florence Descroix-Comanducci, Project Assistant, Célia Le Ravallec and the Chair of the Scientific Committee, Simone Panigada. The list of participants attending the workshop can be found at Annex 1.

Ms Virtue presented the agenda and invited comments from the floor. She sought opinions regarding the aims of the meeting and the linkages to other processes. Bycatch was a problem affecting other taxa and other regions than those covered by ASCOBANS. Other bodies within and beyond the CMS Family, such as ACCOBAMS, the Sharks MOU and the International Whaling Commission, were also addressing the issue. She noted that the European Commission was actively involved in the Sharks MOU, but was less engaged in ASCOBANS.

1.2 *Objectives and Aims of ASCOBANS in Relation to Bycatch*

Peter Evans (Sea Watch Foundation) set the scene, running through the history of Resolutions passed by ASCOBANS Meetings of the Parties, the most recent of which, MOP8 had passed Resolution 8.5, Monitoring and Mitigation of Small Cetacean Bycatch. This had among other things reiterated the commitment to reduce and eliminate mortality and restore populations to 80 per cent of the Agreement Area's carrying capacity. The 1.7 per cent removal rate mentioned was not to be interpreted as a target, and also as a limit as it was too high for depleted populations or species other than the harbour porpoise. The previous decisions on similar subjects were Resolutions No. 3 of MOP3 (2000) and No. 5 of MOP5 (2006).

Among the requests to the Advisory Committee and the Parties was a call to continue engagement with the European Commission, make inputs into assessments undertaken in other fora and cooperate with the working groups established by other bodies. In its dealings with the European Commission, ASCOBANS had more contacts with DG Environment than with DG Mare. Most recently, ASCOBANS had communicated its opinions on revisions to European regulations concerning bycatch, writing on 30 October 2015 and 1 July 2016. It was clear that the submission made by ASCOBANS had not been taken fully into account, as the latest draft seen did for example not mention triggers or limits. The provisions relating to data collection, which ASCOBANS advised should be more explicit, were missing. The previous Regulation (812/2004) included arbitrary vessel size limits that were irrelevant to bycatch and this had also not been rectified. ASCOBANS had also raised the use of pingers as a mitigation

measure, various gear types, the treatment of Natura 2000 sites, reporting requirements concerning bycatch mitigation measures and of incidents of bycatch and the use of bycaught specimens for scientific purposes.

Fabian Ritter (Whale and Dolphin Conservation) found Mr Evans' report alarming. There was a considerable difference between what ASCOBANS sought to achieve and what was being accomplished on the ground. He urged the Secretariat to reach out to Parties in next few days to ensure that the views of ASCOBANS were being heard in the Commission.

He added that several hundred common dolphins had been washed ashore in Western France and they bore marks which had clear signs that the animals had been victim of bycatch. The incident had only become public knowledge because the carcasses had been washed ashore by a storm. There was no observer programme on the fisheries concerned, no mitigation measures were in place and bycatch was not being reported. It was not the case that European waters were the most protected.

Participants noted the deadline of 27 February for EU members, including the ten ASCOBANS Parties, to submit comments on the latest draft of the EC Technical Regulation¹. Those that had seen the draft were concerned about its shortcomings and highlighted how the current draft did not align with policy already adopted by the ten Parties under ASCOBANS. In order to make Parties aware of this situation and for these to potentially rectify a clash of EU and ASCOBANS law at the national level, the meeting prepared a letter during the course of the day to be sent to Parties' National Coordinators (see Annex 2).

It was noted that the shortcomings outlined in the letter applied equally to ACCOBAMS. After some discussion the participants however agreed that it was preferable for ASCOBANS to write individually at this stage given that more detailed mandates relating to bycatch which were directly relevant to the EC Technical Regulation had been adopted under this agreement. ACCOBAMS would write to its Parties at a later state, with a consistent message.

2. Collaboration to Address Cetacean Bycatch Effectively

2.1. Development of Terms of Reference for a Joint ASCOBANS/ACCOBAMS Bycatch Working Group (JBWG - as mandated by ASCOBANS Res. 8.2 and ACCOBAMS Res. 6.5)

Draft ToR will be presented and developed further at the workshop. They should cover points such as: composition, functions, responsibilities, role, and modus operandi.

Ms Frisch-Nwakanma introduced the draft terms of reference, noting that the Meetings of Parties of both ASCOBANS and ACCOBAMS had agreed to establish a joint working group on bycatch along similar lines to the one dealing with noise. The draft was based on the terms of reference for the trilateral CMS-ASCOBANS-ACCOBAMS Joint Working Group on noise, as well as the tasks identified for the existing ASCOBANS bycatch working group. The draft had already received input from the ACCOBAMS Scientific Committee.

The open questions remaining related to the position of chair and whether there should in fact be two co-chairs, one from the ASCOBANS side and the other from ACCOBAMS, and to the confirmation of the key tasks.

The draft text was projected on screen and the meeting reviewed the proposed provisions in detail. After a number of changes had been made, the final text of the Terms of Reference was agreed by the participants. The text would be sent to the Parties of both ASCOBANS

¹ Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005

and ACCOBAMS for consultation and for adoption through a process of email correspondence. The ACCOBAMS Scientific Committee would also be consulted. If as expected the only changes to be proposed during the consultation were editorial in nature, the Terms of Reference could be adopted in a matter of weeks and the Joint Committee could then start its work.

2.2. Relationship to the new IWC Bycatch Initiative

The Initiative will be introduced and options for ensuring close collaboration with the JBWG discussed. A concrete proposal will be developed for approval by Parties to the respective instruments.

Mark Simmonds (Humane Society International) described cetacean bycatch as a significant global threat which had not been specifically addressed at a global level until the IWC had started its own initiative. At the last Commission meeting in October 2016, the Conservation Committee had endorsed the initiative and the IWC had approved it. A Steering Committee was being set up and Parties were being asked to join; some follow-up was needed to ensure Parties came forward to serve on it. It was also foreseen that that an expert panel would be established and a coordinator would also be appointed. In the interim, Mr Simmonds was serving as acting coordinator. The process was in its infancy but it filled a large gap and ACCOBAMS and ASCOBANS (and CMS and CBD) were welcome to participate.

Greg Donovan (IWC) said that the IWC was not trying to dominate the subject but wanted an open and practical process bringing as many threads together as possible. Bycatch was a global problem with regional and taxonomic variants. Mr Simmonds highlighted that the IWC work on large whale disentanglement and ship strikes provided models for the new bycatch initiative.

Ms Frisch-Nwakanma asked whether it would be possible for the co-chairs of the ASCOBANS/ACCOBAMS Joint Working Group on Bycatch to join the expert panel. Mr Simmonds agreed that this would make sense but the Steering Committee, which would have to decide such an issue, was still being established. He suspected that the Steering Committee would be open to such a proposal.

Mr Donovan said that the bycatch initiative needed funding and was being financed through voluntary contributions. It seemed realistic to expect the Steering Committee to be operating by the end of the year and the IWC would consider longer-term financial arrangements at its 2018 meeting. ASCOBANS and ACCOBAMS should decide whether it was preferable to be represented on the Steering Group (management) or the Expert Panel (advice).

Mr Simmonds and Mr Donovan were requested to keep the Secretariats and Parties informed of progress.

3- Preparation for a Second Workshop on 'Unacceptable Interactions'

3.1. Outcomes of the ASCOBANS Workshop on 'Unacceptable Interactions' Part I (10 July 2015) and AC22

Sinéad Murphy (GMIT Galway Campus) reported back on the 1st workshop held in London in July 2015. She highlighted some of the main discussions and decisions from the meeting referring to the [meeting report](#) which was projected on screen throughout her presentation. Key points included identifying triggers and environmental limits, a discussion of whether the zero target should be retained, the usefulness of the 1.7 per cent anthropogenic take and 80 per cent carrying capacity figures, and sensible timeframes (which depended on specific

populations, population size and species). The workshop considered how the US Marine Mammal Protection Act was being implemented and whether its PBR (Potential Biological Removal) approach would work in Europe.

Mr Simmonds said that the report showed that the workshop had covered a great deal of ground and valuable follow-up work had been achieved. As well as the conservation effects of bycatch, it had raised some welfare issues of concern to NGOs, as the manner of death as well as the numbers was important.

Mr Donovan pointed out that there were no modellers present and there were many misconceptions concerning catch limit algorithms (CLA) and PBR. Algorithms required a modelling framework to be set up to test their results.

Kelly Macleod (UK) said that the Sea Mammal Research Unit under contract with JNCC was doing simulations, and the results were expected to be available in a few weeks. Delays had arisen because of the absence of a key member of staff but indications were that the results were encouraging.

The Advisory Committee in 2015 had decided that further workshops would be required and assigned to the current meeting the task of framing an agenda for subsequent sessions.

3.2. Terms of Reference and Agenda

The ToR for the Second Workshop were agreed by AC22 in 2015 (see AC22/Doc.4.1.c). The workshop participants will be invited to review and amend these as necessary, and to develop a draft agenda for the workshop.

Ms Frisch-Nwakanma followed up on Ms. Murphy. The draft TOR had already received some comments in the run-up to this workshop, and she had circulated a version showing the proposed changes. This would form a basis for setting the agenda of the Part II workshop.

The draft text was projected on screen and the meeting reviewed the proposed provisions in details. After a number of changes had been made, the final text of the Terms of Reference was agreed by the participants and can be found in Annex 3.

3.3. Necessary Preparatory Work

The first workshop identified a number of questions/points of clarification for the second workshop, which are reflected in the ToR made available above. Participants should consider in detail what preparatory work is required to enable the Part II workshop to fulfil its mandate, e.g. by developing terms of reference for consultancies.

Based on the ToR agreed under 3.2 the participants produced a table with more detailed action points for internal management purposes amongst the Steering Group, including timelines and responsibilities for individual tasks. The meeting further recalled that the 1st Workshop on "Unacceptable Interactions" (10 July 2015, London, UK) recommended that a simple guide to models and modelling terminology be produced to help inform future discussions and minimise misunderstandings.

The meeting noted that the members of the Steering Group are: Sarah Dolman, Greg Donovan, Peter Evans, Jan Haelters, Katarzyna Kaminska, Kelly Macleod, Sinéad Murphy, Iwona Pawliczka, Eunice Pinn, Jamie Rendell, Meike Scheidat and Mark Simmonds.

4. Conclusion

Ms Virtue thanked the participations for their active participation, and Mr Simmonds thanked Ms Virtue for guiding the meeting through the agenda, bidding farewell to Ms Frisch-Nwakanma who was attending her last ASCOBANS meeting and welcoming Ms Kühl-Stenzel. The meeting ended at 15:40.

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Annex 2

Sent on 22 February 2017

Dear National Coordinators,

We understand that EU Parties have been requested to provide comments to the General Secretariat of the Council^[1] on the EC Technical Regulation^[2] **by 27 February 2017**. Given ASCOBANS decisions are relevant to this process, we would like to remind you of the formal discussions we have had with DG MARE in 2015/2016. You were provided with copies of this communication and we hereby reattach all the relevant documents for your information.

As you know ASCOBANS is legally binding for its ten Parties, all of which are EU members. We are concerned that the new draft EC Technical Regulation may not be in line with what has been adopted by the Parties under ASCOBANS. In order to avoid a situation where the law that your country adopted under ASCOBANS does not align with new EC law, we would urge you to take note of the following key points based on [ASCOBANS Resolution 8.5 on Monitoring and Mitigation of Small Cetacean Bycatch](#) and share them with relevant colleagues involved in providing comments on the draft EC Technical Regulation:

- 1) Where appropriate, there is a need to identify **environmental limits and triggers** for action based upon bycatch and other anthropogenic factors that affect status (e.g. ship strikes, pollution), as is being developed in the MSFD process, given limited resources and the need to set priorities. (based on Res.8.5 2a)
- 2) Regulation 812/2004 has not been successful at addressing robust monitoring of bycatch for cetaceans. It has focused on vessels above 15m length, monitoring effort has been insufficient, and the parameters to quantify fishing effort adequately have not been included (for example, in addition **it is essential to have data on soak time, as well as more precise information on gear type and deployment method**). **It is very important that a risk-based approach is taken. This should include vessels of any size, gear type and geographic area, if they pose a risk.** As a result, the policy guidance that can be extracted from this methodology is too limited to e.g. identify those regions/fisheries where more monitoring effort is required. (based on Res.8.5 3a)
- 3) Mitigation measures should not be limited to Acoustic Deterrent Devices (e.g. pingers) or to vessels above 12m length. There should be **additional mitigation measures (for example net modification) to all gear types causing cetacean bycatch**. (based on Res.8.5 3b)
- 4) The regulations should explicitly require that any marine mammal bycatch and mitigation measures be reported annually.
- 5) Efforts to monitor and mitigate bycatch should be implemented across the entire ASCOBANS region, even where not currently required under the regulation 812/2004.

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^[2] Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005

We would be grateful if you could share this message with your fisheries colleagues involved in negotiating this EC Technical Regulation and kindly acknowledge receipt of this message. Please do not hesitate to contact the Secretariat if you have further questions with regards to these points.

Kind regards,

Aline and colleagues

Cc to participants at the ASCOBANS "Unacceptable interactions" and Bycatch Workshop

¹secretariat.dgb2a@consilium.europa.eu

²Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005

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Annex 3

DRAFT TERMS OF REFERENCE FOR A JOINT BYCATCH WORKING GROUP OF ACCOBAMS AND ASCOBANS

Joint Bycatch Working Group composition

This Working Group will be comprised of members and observers of the scientific and advisory bodies of ACCOBAMS and ASCOBANS. The current ASCOBANS Bycatch Working Group will cease to exist once the Joint Working Group is established. In the interest of generating the best possible advice for Parties, the working group may decide that it is necessary to add additional group members. External experts (including those from non-Party Range States) may be added with the agreement of the Secretariats and the Co-Chairs.

The Group will nominate and elect two Co-Chairs from among the members, advisers as well as observers of the advisory bodies of ACCOBAMS and ASCOBANS. The combined expertise of the Co-Chairs should cover the ACCOBAMS and ASCOBANS areas. In line with the practice in many other working groups, the Co-Chairs will serve for a term of three years, after which an election will be called. The Co-Chairs are eligible for re-election.

Joint Bycatch Working Group *modus operandi*

The Working Group will generally operate by using the "ASCOBANS Advisory Committee Workspace" (workspace.ascobans.org) for its discussions. Where appropriate (and funding permitting) face-to-face meetings may take place and some tasks may be contracted out.

Joint Bycatch Working Group tasks

The Working Group will address the mandates of relevant Resolutions of the two organizations, such as [ACCOBAMS Res 2.12](#), [ACCOBAMS Res 2.13](#), [ACCOBAMS Res 2.21](#), [ACCOBAMS Res A/3.1](#), [ACCOBAMS Res 3.8](#), [ACCOBAMS Res 4.9](#), [ACCOBAMS Res 6.16](#), [ASCOBANS Res.8.5](#), [ASCOBANS Res.5.5](#) and [ASCOBANS Res.3.3](#), as well as any relevant Resolutions still to be passed. It will present reports on progress and new information relevant to the respective region to each meeting of the ACCOBAMS Scientific Committee and ASCOBANS Advisory Committee, as appropriate. In providing its advice, the working group will liaise as necessary with other relevant bodies and fora, including working groups of the two Agreements, the CMS Bycatch Councillor, the ICES Working Group on Bycatch of Protected Species, the IWC Scientific Committee, the IWC bycatch initiative, HELCOM, OSPAR, FOMLR - Advisory Group on the Environmental Aspects of the Management of Fisheries and other Marine Living Resources (Black Sea Commission), NAMMCO, Regional Fisheries Management Organizations (RFMOs) and NGOs active in the field.

The working group is asked to, with respect to the areas and species covered by the agreements:

- 1) Collate and prepare an overview of scientific information² relevant to bycatch of relevant cetacean species,

² Related to abundance and management units, including population dynamics.

- 2) Review information on IUU (Illegal, Unreported and Unregulated) fishing, recreational fishing, identification of bycatch risk areas, fishing techniques and gears involved in both agreement areas related to bycatch;
- 3) Contribute to the assessment process of the MSFD criteria and associated targets;
- 4) Review and provide updates on bycatch mitigation measures currently available or under development and their effectiveness, using existing sources;
- 5) Prepare an overview of national and international legislation and other measures relevant to the monitoring and management of cetacean bycatch, and include an overview of actions taken to deliver on ACCOBAMS and ASCOBANS obligations,
- 6) Prepare, as appropriate, and in coordination with ICES WGBYC, advice on:
 - a. target setting including potential conservation and user objectives³, in accordance with the policies of the two Agreements
 - b. monitoring cetacean bycatch and fishing operations;
- 7) Provide technical support as required to facilitate dialogue with relevant bodies that have certification schemes, such as the Marine Stewardship Council (MSC), by actively contributing to the assessment of relevant fisheries with respect to cetacean bycatch
- 8) Comment on requests for information or advice received through the Secretariats
- 9) Report back to ACCOBAMS Scientific Committee and ASCOBANS Advisory Committee meetings, and where appropriate provide input intersessionally to other relevant meetings or working groups under the two agreements.

³ See for example Hall, M.A. and Donovan, G.P. 2001. Environmentalists, Fishermen, Cetaceans and Fish: Is There a Balance and Can Science Help to Find it? Chapter 14, pp. 491-521 In: Marine mammals: biology and conservation Eds PGH Evans and J.A Raga. Kluwer Academic/Plenum Publishers, New York.

Annex 4

Terms of Reference for the Second Workshop on 'Unacceptable Interactions'

OBJECTIVE:

To develop a number of practical conservation options, explaining their strengths and weaknesses and associated 'costs', to assist the Parties of ASCOBANS in meeting their conservation objectives with respect to cetacean bycatch. If this cannot be achieved in one workshop, develop a final strategy for achieving it.

1) Conservation Objective

Discuss whether the ASCOBANS objective of 'restoring and/or maintaining biological or management units to/at 80% or more of the carrying capacity in the short term' continues to be appropriate and feasible

2) Assessment of the status of small cetacean populations/management units

Assessment of populations/management units that have been proposed for regularly occurring species, identifying depleted populations/management units, along with data gaps, uncertainties in parameter requirements, mortalities and impacts from other threats including cumulative effects

3) Identify conservation options

- a) *Mitigation methods, e.g. pingers, area-based management, gear change*
- b) *Conservation management approaches, e.g. the ACAP/direct mitigation, bycatch limit rule with or without feedback (PBR, CLA-type etc.), risk mapping, maximum annual removal rate of 1.7%/bycatch rate of 1%, AIDCP (dolphin safe tuna), integrated economic/population model*
- c) *Where appropriate, agree the timeframes over which operating model scenarios should be generated to evaluate whether conservation goals are being met; depending on species' characteristics such as generation times, desired timescale for a management response, population/species status (i.e. depleted/non-depleted populations), and degree of certainty required*

4) Evaluation

For each of the options, taking account of species⁴ and area, consider:

- *Practicality of implementation (including examples)*
- *Data requirements and the likelihood of availability*
- *Methods to address efficacy*

⁴ Initial focus will be on the harbour porpoise, common dolphin, bottlenose dolphin, Risso's dolphin and Atlantic white-sided dolphin

- *Practicality of using it as an indicator for OSPAR / the MSFD*

5) Costs, strengths and weaknesses⁵

- *Associated costs, such as field, desk/laboratory work and management costs (see example prepared for modelling approach) at each stage for each option*
- *Practicalities of using such an approach in the Agreement Area*
- *Required oversight arrangements and the possibility of their establishment*
- *Whether obligations under ASCOBANS and elsewhere, such as under the Habitats Directive, would be met*

6) Recommendations

Based on the above analyses, recommendations will be made.

⁵ A further socio-economic analysis that will involve different expertise might be required at a later stage based on the results of the workshop.