

Report of the ASCOBANS Expert Workshop on the Requirements of Legislation to Address Monitoring and Mitigation of Small Cetacean Bycatch

In general, WDC opposes the idea that the correct way to offer the strict protection required by the Habitats Directive to cetaceans (and other marine wildlife) should be focused on a 'sustainable removal rate'. Adherence to such an approach will shift the way of thinking towards acceptance of such removals and 'managing' rather than fully protecting cetaceans.

We recall that the new discussion about what "unacceptable interactions" are arose during the meeting of the Advisory Committee in Warsaw in 2013 with a **call for societal decisions to be made** as a basis for the way forward. We now observe that this matter is being taken forward in expert groups in various fora mainly without any civil societal participation, as far as we are aware.

Based on these key points, WDC is not supportive of using PBR or any other statistical approach which provides an 'acceptable' number of individuals to be removed from a population as the result of human activities (referring to Section 5.2 of the report).

However, we also acknowledge that, with biological and bycatch data limitations in mind, determinations must be made to look at population level impacts in order for threats to be understood, measured and reduced. It is in this spirit that WDC urges that BLA (Bycatch Limit Algorithm), PBR, CLA or other statistical approaches are **only used as tools to move towards a zero human induced mortality goal**.

We would like to emphasise that this goal is also valid for ASCOBANS, as it has been highlighted in various documents (for example ASCOBANS/MOP2/DOC.4 and ASCOBANS/MOP5/DOC.5, see http://www.ascobans.org/sites/default/files/document/MOP5_2006-5_IncidentalTake_1.pdf) as well as Resolution 3.3 of MOP 3 which states that "*total anthropogenic removal is reduced by the Parties to below the threshold of unacceptable interactions' with the precautionary objective to reduce bycatch to less than 1% of the best available abundance estimate and the general aim to minimise bycatch (i.e. to ultimately reduce to zero)*".

We further note that there are **essential requirements** that must be put in place before any regulations that use BLA or any other statistical approaches can be successfully implemented. These include, at a minimum:

- Definition of a meaningful biological population and scientifically valid management units within the species' range;
- Clear identification and delineation of population range;
- Minimum population estimate, with confidence limits;
- Current population status and trends;
- Estimates of all human induced serious injury and mortality;
- Assessment of additive/cumulative as well as synergistic impacts from all anthropogenic factors; and
- Clarity in all uncertainties that exist surrounding any or all of the points above.

Where a BLA/PBR-type approach is employed it is widely known that without regular population surveys it is possible that a population can be in decline for several years without this being recognised. Hence it is essential that an adequate monitoring programme is in place to ensure that appropriate data be available to calculate its key statistics.

Any approach to the conservation of marine mammals requires specific mitigation actions for all anthropogenic threats including, but not limited to: directed takes, fisheries interactions, vessel strikes,

habitat destruction, harassment (including from intense noise sources), marine debris, prey depletion, climate change, and the cumulative impacts of these threats.

Moreover, WDC is concerned that BLA/PBR does not **evaluate the fitness consequences of social units and culture in cetaceans**. As further evidence becomes available on social dynamics and associated conservation implications, the metric may need to be redeveloped for the range of social structures exhibited by cetacean species. Finally, adequate enforcement of mitigation actions to ensure they are effective, and regular monitoring of the population(s) is essential.

These comments are meant to offer aid to any regulatory bodies that are considering the use of BLA, PBR or similar removals-based management in their marine mammal conservation efforts but we stress again that conservation based on notional sustainable removals is not acceptable.

While it is necessary to compile more data on harbour porpoise bycatch numbers in European waters, **WDC is not convinced that we need to call for more data before initiating mitigation measures**. It is more than clear that bycatch levels are (heavily) exceeding reproduction rates in probably most range states. Therefore, while scientific studies on the causes of death are essential, this should not be used as an argument to postpone the urgently needed action to significantly reduce bycatch rates.

We note that on page 33 (Annex 7 North Sea and NE Atlantic regional working group recommendations) the report reads: *“ASCOBANS advises taking the Precautionary Approach, if within a defined time-frame, Member States cannot agree upon setting bycatch limits and/or a way for allocating the limits between them. The Precautionary Approach implements mandatory mitigation measures and monitoring obligations based on, but modified from, Reg. (EC) 812/2004 and requires that a robust enforcement strategy with penalties should be introduced”*.

We strongly encourage Member States to follow this proposed route, i.e. to apply the precautionary approach and to actively implement and enforce comprehensive mitigation measures alongside monitoring, particularly in known trouble hotspots and within MPAs or with reference to populations under threat, such as the remaining roughly 450 individuals of the harbour porpoise population in the central Baltic Sea. Also, we think it is a good suggestion to turn matters around and make it a requirement for Member States to conduct the monitoring needed to prove the fisheries did not have a negative impact (see page 16).

We also strongly **support the ASCOBANS position on retaining Reg 812/2004 rather than repealing it**. Having an explicit legislative tool such as this regulation in place helps focus on the requirement of concrete mitigation measures (plus *“sending a stronger political signal, while allowing for more effective and flexible regional management”* as well as *“avoiding the risk of losing the necessary focus required for effective assessment and appropriate management of cetacean bycatch”* see page 26 f.). However, given the weaknesses of the Regulation (highlighted on page 12 of the report), a revision and incorporation of improvements seems urgently needed.

Page 23 of the report identifies a ‘Proposed Strategy’ and includes two approaches to management. **Approach 1** is unacceptable to us for all the reasons identified above. However, the more precautionary **Approach 2** is acceptable.

There are further recommendations in Annexes 5-7. WDC **supports the recommendations of the Baltic Sea working group** (Annex 5, page 29): *“ASCOBANS recommends that one of the targets of EU financial support aiming at the reduction of bycatch (e.g., through the European Maritime and Fisheries Fund) should be the Baltic Sea harbour porpoise population. Development and use of mitigation measures, such as alternative, ecologically sustainable fishing methods, interactive pingers, pingers not audible to seals or switch-outs aiming at reducing bycatch, should be the centre of particular financial efforts to guarantee the survival of harbour porpoises.”*

We also **agree with the mitigation, monitoring and data collection of fishing vessel strategies of the Western Baltic working group** (Annex 6, page 30-31), although no recommendations are clearly made.

We **agree with ASCOBANS** that “Member States should be required to show that they meet the defined conservation objectives”, however **we would not agree that the recommendations from the working groups on the North Sea and the North East Atlantic** (Annex 7, pages 32-35) that “**fisheries do not exceed agreed bycatch limits**”, given the concerns raised in this brief.

We **agree with ASCOBANS** that “the Precautionary Approach implements mandatory mitigation measures and monitoring obligations based on, but modified from, Reg. (EC) 812/2004 and requires that a robust enforcement strategy with penalties should be introduced.”

It is clear that **Member States with a poor track record to date in terms of implementing cetacean bycatch mitigation measures must immediately address this** with adequate monitoring of fishing fleets. We further identify the urgent need to apply mitigation measures to vessels smaller than 12 m as in many countries the largest fraction of the total fleet are smaller boats.