

REPORT OF THE THIRD MEETING OF THE ACCOBAMS FOLLOW UP COMMITTEE



Online, 29-30 March 2022

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REPORT OF THE THIRD MEETING OF THE ACCOBAMS FOLLOW-UP COMMITTEE

1. OPENING OF THE MEETING

1. The Third Meeting of the ACCOBAMS Follow-up Committee took place online on Tuesday 29th and Wednesday 30th March 2022.
2. The following Committee Members took part in the Meeting: Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS and Mrs. Imane TAI.
3. In accordance with the amendments to the Rules to the Follow up Procedure (Resolution 6.8), a member of the ACCOBAMS Scientific Committee has been appointed to participate at the Meeting: Mr. Joan GONZALVO.
4. The following Observers attended the Meeting: Mrs. Marie-Thérèse GAMBIN, from Malta, Mr. Nicolas ENTRUP and Mr. Johannes MUELLER, from OceanCare, and Mr. Ross COMPTON, from IOGP.
5. The ACCOBAMS Secretariat was represented by the Executive Secretary of ACCOBAMS, Mrs. Susana SALVADOR, the Programme and project Officer, Mrs. Maylis SALIVAS, and the ACCOBAMS legal advisor, Prof. Tullio SCOVAZZI.
6. The full list of participants is attached as [Annex 1](#) to the present report.
7. The Meeting was opened on Tuesday 29th March 2022 by the Executive Secretary who welcomed all members and observers. She recalled that the ACCOBAMS Follow up Committee had been created at the Fifth Meeting of the Parties in 2013 so that Parties could make use of the Follow up Procedure as a cooperation means for preventing and settling disputes.
8. She recalled that observers were granted the right to intervene and are given the floor usually after the Committee members express their views. The following order should be followed: Committee Members, Observer Parties and Observer Partners.
9. Given that the Rules of Procedure of the Follow-up Committee (Annex 1 of Resolution 6.8) had been conceived for presential meetings and did not include procedures for online meetings, the Executive Secretary requested the participants to agree applying, *mutatis mutandis*, the Bureau Rules for online meeting, adopted by the BU13 meeting, which they accepted.

2. ADOPTION OF THE AGENDA

10. Following the presentation of the Draft Agenda and Timetable, the Executive Secretary invited the Follow-up Committee members to review or/and adopt it, making amendments if necessary.
11. The ACCOBAMS Follow-up Committee adopted the reviewed agenda, as shown in [Annex 2](#), and no subjects were proposed by the participants to be addressed under agenda item 7 "Other Business".

3. ELECTION OF PRESIDENT AND VICE-PRESIDENT OF THE FOLLOW UP COMMITTEE

12. The Follow-up Committee was invited to elect its President and its Vice-President, according to Art.3, para.12, of the Rules on the ACCOBAMS Follow-up Procedure, following a preliminary consultation initiated by the Executive Secretary.
13. The Follow-up Committee decided by consensus to elect Mrs. Imane TAI as President, and Mrs. Aurelie MOULINS as vice President, for the duration of their mandate in the Committee (2025).

4. IMPARTIALITY AND CONFIDENTIALITY AGREEMENT

14. According to Article 3, paragraph 11, of the Rules on the ACCOBAMS Follow-up Procedure (Annex 1 of Resolution 6.8), participants were recalled that *“the Committee members and their alternates shall serve in their personal capacity and shall act objectively in the best interest of the Agreement. Every Committee member shall, before taking up his or her duties, make a solemn declaration that he or she will perform his or her functions impartially and conscientiously”*.
15. The Executive Secretary explained that in view of such principles, members of the Follow-up Committee were requested to provide the Secretariat with signed letters committing to “perform their functions impartially and conscientiously”. She informed that four members of the Follow-up Committee had provided such letter.
16. In the absence of such letter, Mr. Zurab GURIELIDZE declared that he committed to perform his functions impartially and conscientiously.

5. FOLLOW-UP OF EXISTING SUBMISSIONS

a. Follow-up of the Committee’s recommendations and involvement of ACCOBAMS Meeting of the Parties

17. The legal advisor of the ACCOBAMS Secretariat reminded the participants that, according to Art. 12, para. 1, of the Rules on the ACCOBAMS Follow-up Procedure, *“the Meeting of the Parties may decide, upon consideration of recommendations of the Committee and taking in account the capacity of the Party concerned and factors such as the cause, type, degree and frequency of non-follow-up, to: a) endorse the measures recommended by the Committee; b) take any other non-confrontational action it deems appropriate”*.
18. In order to ensure visibility of the ACCOBAMS decisions in general, and, in particular, of the Follow-up Committee recommendations regarding the submissions presented under the follow-up procedure, Members agreed to recommend the Meeting of the Parties to take decisions in the form of *ad hoc Resolutions* in what concerns the recommendations issued by the Follow-up Committee on the existing submissions.
19. Recommendation **FC3.1** “Consideration of Committee’s Recommendations by the Meeting of Parties”, reflected in [Annex 3](#), was adopted by consensus.

b. Submission by OceanCare on the assessment and control by Greece of military activities around South-East Crete and adoption of the relevant recommendation

20. After a presentation by the ACCOBAMS Secretariat on background information (ACCOBAMS-FC3/2022/Doc **04**), participants were invited to discuss the follow-up to the submission presented by OceanCare, in 2016, on the assessment and control by Greece of military activities around South-East Crete.
21. In accordance with Article 4, para. 6, of the Rules on the ACCOBAMS Follow-up Procedure, this submission was discussed at a later stage, exclusively amongst Members, in view of the elaboration of considerations and recommendations.
22. Recommendation **FC3.2** “follow-up submission by OceanCare on the assessment and control by Greece of military activities around South-East Crete”, as presented in [Annex 3](#), was adopted by consensus.

c. Submission by OceanCare on the assessment and control by Spain of petroleum exploration activities around the Balearic Islands and adoption of the relevant recommendation

23. After a presentation by the ACCOBAMS Secretariat on background information (ACCOBAMS-FC3/2022/Doc **05**), participants were invited to discuss the follow-up of the submission presented by OceanCare in 2016, on the assessment and control by Spain of petroleum exploration activities around the Balearic Islands.
24. In accordance with Article 4, para. 6, of the Rules on the ACCOBAMS Follow-up Procedure, this submission was discussed at a later stage, exclusively amongst Members, in view of the elaboration of considerations and recommendations.
25. Recommendation **FC3.3** “Follow-up submission by OceanCare on the assessment and control by Spain of petroleum exploration activities around the Balearic Islands”, as presented in [Annex 3](#), was adopted by consensus.

d. Submission by OceanCare on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins and adoption of the relevant recommendation

26. After a presentation by the ACCOBAMS Secretariat on background information (ACCOBAMS-FC3/2022/Doc **06**), participants were invited to discuss the follow-up of the submission presented by OceanCare, in 2016, on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins.
27. In accordance with Article 4, para. 6, of the Rules on the ACCOBAMS Follow-up Procedure, this submission was discussed at a later stage, exclusively amongst Members, in view of the elaboration of considerations and recommendations.
28. Recommendation **FC3.4** “Follow-up submission by OceanCare on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins”, as presented in [Annex 3](#), was adopted by consensus.

e. **Submission by OceanCare on the failure by Albania, Algeria, Croatia, Cyprus, Egypt, France, Greece, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia to implement the ACCOBAMS Conservation Plan for Mediterranean common dolphins and adoption of the relevant recommendation**

29. After a presentation by the ACCOBAMS Secretariat on background information (ACCOBAMS-FC3/2022/Doc 07), participants were invited to discuss the follow up of the submission presented by OceanCare, in 2016, on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins.
30. In accordance with Article 4, para. 6, of the Rules on the ACCOBAMS Follow-up Procedure, this submission was discussed at a later stage, exclusively amongst Members, in view of the elaboration of considerations and recommendations.
31. Recommendation **FC3.5** "Follow-up submission by OceanCare on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins", as presented in [Annex 3](#), was adopted by consensus.

6. REVIEW GENERAL IMPLEMENTATION ISSUES AND FOLLOW-UP AS REQUESTED BY MOP6 AND MOP 7

32. The Secretariat recalled that during the Sixth Meeting of the Parties (Monaco, 22-25 November 2016), Parties took note of the Follow-up Committee report and approved its six recommendations, especially Recommendation 4 on priority to be first given to specific submissions, followed by general implementation and follow-up issues.

In the framework of Article 6, paragraph 1, d, of the ACCOBAMS Follow-up Procedure, Recommendations 2 and 3 reviewed the legal and technical issues associated with implementation and follow up of:

- existing obligations and commitments related to seismic and military activities producing underwater noise,
- interactions between humans and dolphins, as addressed by Resolution 3.13 (Dolphin interaction programme).

33. In this context, the Second Follow-up Committee meeting (Monaco, 5-6 March 2018) had been invited to review the legal and technical issues of implementation and follow up of existing obligations and commitments related to:

- seismic activities producing underwater noise (ACCOBAMS-FC3/2022/Doc 08)
- military activities producing underwater noise in the ACCOBAMS Area. (ACCOBAMS-FC3/2022/Doc 09)
- interactions between humans and dolphins by Resolution 3.13 (Dolphin interaction programme) (ACCOBAMS-FC3/2022/Doc 10)

a. **Existing obligations and commitments related to seismic and military activities producing underwater noise**

34. The Followup Committee Members were invited to:
- note the review of legal and technical issues linked to the implementation and follow up of existing obligations and commitments in relation to seismic activities producing underwater noise, as proposed by the Follow up Committee (Monaco, 5-6 March 2018),
 - provide guidance on the followup of such review and consider recommending action by MOP.

35. Their conclusions on the follow-up of existing obligations and commitments in relation to seismic activities producing underwater noise are shown in [Annex 4](#).

36. The Follow up Committee Members were then invited to:

- note the review of legal and technical issues linked to the implementation and follow up of existing obligations and commitments in relation to military activities producing underwater noise in the ACCOBAMS Area, as proposed by the Follow up Committee (Monaco, 5-6 March 2018),
- provide guidance on the follow up of such review and consider recommending action by MOP.

37. Their conclusions on the follow-up of existing obligations and commitments in relation to military activities producing underwater noise in the ACCOBAMS Area are shown in [Annex 5](#).

b. Interactions between humans and dolphins addressed by Resolution 3.13 (Dolphin interaction programme).

38. The Follow up Committee Members were then invited to:

- note the legal or technical issues to be further discussed related to interactions between humans and dolphins by Resolution 3.13 (Dolphin interaction programme) as proposed by the Meeting of the Follow-up Committee (Monaco, 5-6 March 2018),
- provide guidance on the follow up of such issues and consider recommending action by MOP.

39. Their conclusions on the follow-up of existing obligations and commitments in relation to interactions between humans and dolphins by Resolution 3.13 (Dolphin interaction programme) are shown in [Annex 6](#).

7. OTHER BUSINESS

40. There were no subjects proposed for discussion under this agenda item.

8. CLOSURE OF THE MEETING

41. Following the customary exchange of courtesies, the President closed the Third Follow up Committee Meeting at 1.30 pm, on Wednesday 30th March 2022.

ANNEX1 - LIST OF PARTICIPANTS

MEMBERS OF THE FOLLOW UP COMMITTEE

Members nominated by Parties:

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<p>Zurab GURIELIDZE Ilia State University 3/5 Cholokashvili Ave 0162 Tbilisi GEORGIA Tel: +995 599 56 80 31 zurab_gurielidze@iliauni.edu.ge</p>	<p>Alternate / Suppléant</p>

Members nominated by ACCOBAMS Partners:

<p>Aurélie MOULINS CIMA Foundation Via Magliotto, 2, 17100 Savona (Italy) (+39) 019 230271 aurelie.moulins@cimafoundation.org</p>	<p>Full term / mandat complet :2020-2025</p>
<p>Tilen GENOV MORIGENOS - Slovenian Marine Mammal Society Kidricevo nabrezje 4 6330 Piran SLOVENIA Tel : +386 41 981 990 tilen.genov@gmail.com</p>	<p>Full term / mandat complet : 2017-2022</p>

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ANNEX 2 - AGENDA

- 1. OPENING OF THE MEETING**
- 2. ADOPTION OF THE AGENDA**
- 3. ELECTION OF PRESIDENT AND VICE-PRESIDENT OF THE FOLLOW UP COMMITTEE**
- 4. IMPARTIALITY AND CONFIDENTIALITY AGREEMENT**
- 5. FOLLOW-UP OF EXISTING SUBMISSIONS**
 - a. Follow-up of the Committee's recommendations and involvement of MOP
 - b. submission by OceanCare on the assessment and control by Greece of military activities around South-East Crete and adoption of the relevant recommendation
 - c. submission by OceanCare on the assessment and control by Spain of petroleum exploration activities around the Balearic Islands and adoption of the relevant recommendation
 - d. submission by OceanCare on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins and adoption of the relevant recommendation
 - e. submission by OceanCare on the failure by Albania, Algeria, Croatia, Cyprus, Egypt, France, Greece, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia to implement the ACCOBAMS Conservation Plan for Mediterranean common dolphins and adoption of the relevant recommendation
- 6. REVIEW GENERAL IMPLEMENTATION ISSUES AND FOLLOW-UP AS REQUESTED BY MOP6 AND MOP 7**
 - a. Existing obligations and commitments related to seismic and military activities producing underwater noise
 - b. Interactions between humans and dolphins addressed by Resolution 3.13 (Dolphin interaction programme).
- 7. OTHER BUSINESS**
- 8. CLOSURE OF THE MEETING**

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RECOMMENDATION FC3.1

CONSIDERATION OF COMMITTEE'S RECOMMENDATIONS BY THE MEETING OF THE PARTIES

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

Considering that, according to Art. 12, para. 1, of the Rules on the ACCOBAMS Follow-up Procedure, "the Meeting of the Parties may decide, upon consideration of recommendations of the Committee and taking in account the capacity of the Party concerned and factors such as the cause, type, degree and frequency of non-follow-up, to: a) endorse the measures recommended by the Committee; b) take any other non-confrontational action it deems appropriate",

Convinced that it is appropriate to ensure visibility to the recommendations of the Follow-up Committee on submissions to the follow-up procedure and to the relevant decisions by the Meeting of the Parties,

Adopts by consensus the following recommendation to be transmitted to the Meeting of the Parties:

The Follow-up Committee recommends

that the Meeting of the Parties considers taking its decisions on the recommendations by the Follow-up Committee relating to submissions to the follow-up procedure in the form of *ad hoc* resolutions.

RECOMMENDATION FC3.2

**FOLLOW-UP SUBMISSION BY OCEAN CARE ON THE ASSESSMENT AND CONTROL BY GREECE OF MILITARY
ACTIVITIES AROUND SOUTH-EAST CRETE**

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE,
Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

Bearing in mind that it considered the above-mentioned submission at its second meeting of 5-6 March 2018,

Given that it:

- found “that the second part of the submission is not admissible and not founded”;
- found “that the first part of the submission is admissible”;
- found “that it is likely that the atypical mass stranding of beaked whales brought to its attention by this submission was the result of the military exercises taking place from 31 March to 10 April 2014, in which Greece was also involved”;
- invited “Greece to pursue all efforts to be in line with the ACCOBAMS resolutions addressing the impact of anthropogenic noise on cetaceans, such as Resolution 4.17” and commended “Greece for what is being done in this direction”;
- invited “Greece to provide information to the ACCOBAMS Secretariat about how the Guidelines annexed to the Resolution 4.17 have been implemented after 2014 till now”;
- invited “the Secretariat to share the received information from Greece with the Scientific Committee”;
- invited “the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Party and the Partner concerned”;

Considering that the 7th Meeting of the Parties “endorsed the measures recommended by the Follow-up Committee” (para. 64 of the report of the 7th Meeting of the Parties);

Considering that Greece did not provide the requested information to the ACCOBAMS Secretariat;

Adopts by consensus the following recommendations to be transmitted to the Meeting of the Parties and to the Party concerned, under Art. 6, para 4, of the ACCOBAMS Follow-up Procedure, as well as to the Partner concerned:

The Follow-up Committee recommends

that the Meeting of the Parties, on the basis on the findings and the motivations of the Follow-up Committee, adopts a Resolution:

- **recalling** that the follow-up procedure is a non-confrontational procedure that requires the co-operation by the ACCOBAMS Parties;

-
- **inviting** Greece to provide information to the ACCOBAMS Secretariat about how, since 2014, the Guidelines annexed to Resolution 4.17 and the Guidelines annexed to Resolution 7.13, which in 2019 replaced the previous ones, have been implemented;
 - **requesting** the Follow-up Committee to remain seized of the submission.

RECOMMENDATION FC3.3

**FOLLOW-UP SUBMISSION BY OCEAN CARE ON THE ASSESSMENT AND CONTROL BY SPAIN OF PETROLEUM
EXPLORATION ACTIVITIES AROUND THE BALEARIC ISLANDS**

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE,
Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

Bearing in mind that it considered the above-mentioned submission at its second meeting of 5-6 March 2018,
also in light of the written reply provided by Spain on 12 April 2016;

Given that it:

- found “that the second part of the submission is not admissible and not founded”;
- found “that the first part of the submission is admissible”;
- found “that there is no evidence that the authorities of the State concerned either authorized noise producing activities from July 2012 to July 2013 or were negligent in controlling what was taking place in the waters or seabed subject to the Spanish jurisdiction”;
- recommended “for consideration by the Meeting of the Parties the elaboration of a resolution calling for the development of a co-operation mechanism among Parties to identify the source of long-distance underwater noise in order to address its transboundary effects”;
- invited “the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Party and the Partner concerned”;

Considering that the 7th Meeting of the Parties “endorsed the measures recommended by the Follow-up Committee” (para. 64 of the report of the 7th Meeting of the Parties);

Bearing in mind that the 7th Meeting of the parties adopted Resolution 7.13 on noise, which “strongly encourages Parties to contribute to the ACCOBAMS register for impulsive noise sources, especially by sharing their data” and “calls the Parties for the development of a co-operation mechanism to identify the source of long-distance underwater noise in order to address its long-distance effects”;

Adopts by consensus the following recommendations to be transmitted to the meeting of the Parties and to the Party concerned, under Art. 6, para 4, of the ACCOBAMS Follow-up Procedure, as well as to the Partner concerned:

The Follow-up Committee recommends

that the Meeting of the Parties, on the basis on the findings and the motivations of the Follow-up Committee,
adopts a Resolution:

-
- **finding** that there is no evidence that the authorities of the State concerned either authorized noise producing activities from July 2012 to July 2013 or were negligent in controlling what was taking place in the waters or seabed subject to the Spanish jurisdiction;
 - **declaring** the follow up procedure closed as regards the implication of Spain;
 - **requesting** the Follow-up Committee to ensure the follow-up of Resolution 7.13, in so far as it “strongly encourages Parties to contribute to the ACCOBAMS register for impulsive noise sources, especially by sharing their data” and “calls the Parties for the development of a co-operation mechanism to identify the source of long-distance underwater noise in order to address its long-distance effects”.
 - **stressing** the importance of monitoring impulsive noise sources and the need for awareness and workshops in this regard at the national and regional level, in light of Scientific Committee recommendation 14.6 on noise.

RECOMMENDATION FC3.4

**FOLLOW-UP SUBMISSION BY OCEAN CARE ON THE ASSESSMENT AND CONTROL BY PORTUGAL OF PETROLEUM
EXPLORATION ACTIVITIES IN THE ALGARVE AND ALENTEJO BASINS**

The Follow-up Committee,

*composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE,
Mrs. Aurélie MOULINS,*

meeting electronically on 29 and 30 March 2022,

Bearing in mind that it considered the above-mentioned submission at its second meeting of 5-6 March 2018;

Given that it:

- found “that the submission is admissible”;
- regretted “that the Party concerned has not provided information on the issue raised in the submission” and invited “Portugal to ensure co-operation to address the submission”;
- recalled “that ACCOBAMS Parties are bound, inter alia, to apply the precautionary principle (Art. II, para. 4. ACCOBAMS), to require impact assessment for allowing or prohibiting activities that may affect cetaceans or their habitat, such as offshore exploration and exploitation (see ACCOBAMS Annex 2, para. 1, c) and that, to address the concern of underwater noise, the ACCOBAMS Parties adopted Resolution 4.17, which includes a set of “Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area”;
- invited “the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Party and the Partner concerned”;
- invited “the Meeting of the Parties to consider the next steps, if need be”;

Taking note that a written reply was provided by Portugal through a letter sent on 31 October 2019;

Taking also note that a statement by Ocean Care was forwarded to the Follow-up Committee;

Considering that the 7th Meeting of the Parties “endorsed the measures recommended by the Follow-up Committee” (para. 64 of the report of the 7th Meeting of the Parties);

Having elaborated and discussed the subject of the submission;

Adopts by consensus the following considerations and recommendations to be transmitted to the Meeting of the Parties and to the Party concerned, under Art. 6, para. 4, of the ACCOBAMS Follow-up Procedure, as well as to the Partner concerned:

The submission alleges that the Portuguese authorities did not assess and control petroleum exploration activities (specifically seismic surveys), in a manner consistent with ACCOBAMS Resolution 4.17.

The Committee notes that the submission includes exploration concessions located in an area falling under the scope of the ACCOBAMS Area and in an area falling under its subsequent extension, which is not yet in force, and consequently limits its considerations only to the former one.

The Committee is mandated to limit its action to cases where there are “reservations about a Party’s follow up with its obligations under the Agreement” and cannot elaborate, as the submission does, on whether there are other obligations, such as those arising from European Union instruments, under which the Party concerned is bound to carry out Environmental Impact Assessments and public consultations for the activities in question.

The Committee notes that the ACCOBAMS Agreement provides for a number of specific obligations relating to the subject matter of the submission. In particular, the Committee finds it appropriate to recall that ACCOBAMS Parties are bound, inter alia, to require impact assessment for allowing or prohibiting activities that may affect cetaceans or their habitat, such as offshore exploration and exploitation (see ACCOBAMS Annex 2, para. 1, c) and that, to address the concern of underwater noise, the ACCOBAMS Parties adopted a number of Resolutions, including Resolution 4.17, which sets “Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area”, replaced by Resolution 7.13 which sets “Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area”. Moreover, under Art. II, para. 4, the Parties are bound to apply the precautionary principle in implementing the conservation, research and management measures prescribed in Annex 2 to the Agreement.

The Committee takes note that, since the time of the submission (2016), the Portuguese legislation on petroleum exploration and exploitation has been strengthened and improved under the environmental point of view, to ensure an approach guided by the precautionary principle, culminating in the adoption of Law number 37/2017, and that today, as stated by the Party concerned, all activities of petroleum exploration and exploitation fall under the environmental impact assessment regime, according to the characteristics of the project and the location.

The Committee also takes note, with appreciation, of the statement by the Party concerned that it is deeply committed to the protection and safeguarding of sea life, specifically cetaceans, in full respect of the ACCOBAMS.

The Committee believes that useful guidance in addressing problems in petroleum exploration and exploitation activities can also be found in the Committee’s recommendation related to seismic activities in the ACCOBAMS Area, approved by its Third Meeting.

As regards the misunderstandings in the communications between the Party and the Partner concerned, the Committee does not deem advisable to enter into the question and is confident that the Party and the Partner will be able to settle it in a cooperative spirit.

All this considered,

The Follow-up Committee recommends

that the Meeting of the Parties, on the basis of the findings and the motivations of the Follow-up Committee, adopts a resolution:

- **recalling** that ACCOBAMS Parties are bound, inter alia, to apply the precautionary principle (Art. II, para. 4. ACCOBAMS), to require impact assessments for allowing or prohibiting activities that may affect cetaceans or their habitat, such as offshore exploration and exploitation (see ACCOBAMS Annex 2, para. 1, c) and that, to address the concern of underwater noise, the ACCOBAMS Parties adopted Resolution 4.17, which includes a

set of “Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area”, replaced by Resolution 7.13 which sets “Guidelines to address the impact of anthropogenic noise on cetaceans in the ACCOBAMS area”.

- **taking note** that, after the presentation of the submission, the Portuguese legislation on petroleum exploration and exploitation activities has been strengthened and improved under the environment point of view, so to ensure an approach guided by the precautionary principle and that today all activities of petroleum exploration and exploitation fall under the environmental impact assessment regime, according to the characteristics of the project and its location;
- **believing** that useful guidance in addressing problems in petroleum exploration and exploitation activities can also be found in the Follow-up Committee’s recommendation related to seismic activities in the ACCOBAMS Area, approved at the Third Meeting of the Committee;
- **appreciating** the statement by the Party concerned that it is deeply committed to the protection and safeguarding of sea life, specifically cetaceans, in full respect of ACCOBAMS;
- **inviting** the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Party and the Partner concerned;
- **declaring** the follow-up procedure closed.

RECOMMENDATION FC3.5

FOLLOW-UP SUBMISSION BY OCEAN CARE ON THE FAILURE BY ALBANIA, ALGERIA, CROATIA, CYPRUS, EGYPT, FRANCE, GREECE, ITALY, LEBANON, LIBYA, MALTA, MONACO, MONTENEGRO, MOROCCO, SLOVENIA, SPAIN, SYRIA AND TUNISIA TO IMPLEMENT THE ACCOBAMS CONSERVATION PLAN FOR MEDITERRANEAN COMMON DOLPHINS

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

Bearing in mind that it considered the above-mentioned submission at its second meeting of 5-6 March 2018, also in the light of the written replies provided by Morocco on 20 March 2017 and by Spain on 2 March 2018;

Given that it:

- found “that the submission is admissible”;
- regretted “that sixteen Parties concerned have not provided information on the issue raised in the submission” and invited “them to ensure co-operation to address the submission”;
- recalled “that ACCOBAMS Parties are bound, inter alia, to apply Resolution 4.13, which stresses that the implementation of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea is a high priority in the region”;
- invited “all the Parties concerned to provide information to the ACCOBAMS Secretariat on specific measures taken for the implementation of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea, or any other measures considered relevant for their protection”;
- invited “the Secretariat to share the information received from Parties with the Scientific Committee”;
- invited “the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Parties and the Partner concerned”;
- invited “the Meeting of the Parties to consider the next steps, including giving priority to the review and updating of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea”;

Considering that the 7th Meeting of the Parties “endorsed the measures recommended by the Follow-up Committee” (para. 64 of the report of the 7th Meeting of the Parties);

Taking note that during the 7th Meeting of the Parties Albania, Algeria, Egypt, France, Lebanon, Malta and Morocco made remarks regarding the modalities and the difficulties in ensuring the implementation of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea;

Taking note that a written reply was provided by Malta on 27 August 2020;

Adopts by consensus the following recommendations to be transmitted to the Meeting of the Parties and to the Parties concerned, under Art. 6, para 4, of the ACCOBAMS Follow-up Procedure, as well as to the Partner concerned:

The Follow-up Committee recommends

that the Meeting of the Parties, on the basis on the findings and the motivations of the Follow-up Committee, adopts a Resolution:

- **recalling** that the follow-up procedure is a non-confrontational procedure that requires the co-operation by the ACCOBAMS Parties;
- **recalling** “that ACCOBAMS Parties are bound, inter alia, to apply Resolution 4.13, which stresses that the implementation of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea is a high priority in the region”;
- **inviting** Albania, Algeria, Croatia, Cyprus, Egypt, France, Greece, Italy, Lebanon, Libya, Monaco, Montenegro, Slovenia, Syria and Tunisia to provide information to the ACCOBAMS Secretariat on specific measures taken for the implementation of the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea, or any other measures considered relevant for their protection;
- **inviting** the Secretariat to share the information received from Parties with the Scientific Committee;
- **inviting** the Secretariat to transmit these considerations and recommendations to the Meeting of the Parties, as well as to the Parties and the Partner concerned;
- **regretting** that it now appears that the Conservation Plan for short-beaked common dolphins in the Mediterranean Sea, as welcomed by Resolution 2.20 and recalled by Resolution 4.13, has not yet been fully implemented, and confident that the forthcoming Conservation Management Plan for *Delphinus delphis* which is now under elaboration by the Scientific Committee, will address the encountered difficulties in a satisfactory way;
- **considering** that there is an urgent need to have a Conservation Management Plan in place for the Mediterranean area and to have it implemented at national and transboundary level, as evidenced by the recent (December 2021) IUCN Red List assessment of the Inner Mediterranean subpopulation of common dolphins as Endangered, and of the Gulf of Corinth subpopulation as Critically Endangered;
- **stressing** that the proper implementation of Conservation Management Plans is critical to ensure the credibility of the ACCOBAMS mandate as an effective intergovernmental agreement of regional cooperation;
- **reserving** to make further recommendations on the replies submitted by Malta, Morocco and Spain, at a later stage, when more national replies will be collected;
- **requesting** the Follow-up Committee to remain seized of the submission.

**ANNEX 4 - CONCLUSIONS ON THE FOLLOW UP OF EXISTING OBLIGATIONS AND COMMITMENTS
RELATED TO SEISMIC ACTIVITIES IN THE ACCOBAMS AREA**

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

having reviewed at its Second Meeting (Monaco, 5-6 March 2018), on the request of the Meeting of the Parties, the legal and technical issues of implementation and follow-up of existing obligations and commitments in relation to seismic activities producing underwater noise, has reached the following conclusions:

- 1- When referring to impact assessment, the Committee **recommends** to use the best available impact assessment tools, such as Environmental Impacts Assessment under the European Union instruments, the CMS EIA Guidelines, the ESPOO procedure or any other tools as appropriate, such as the ACCOBAMS qualified Marine Mammals Observers / Passive Acoustics Monitoring operators. The Committee also recommends to share information about practices used by the Parties.
- 2- The Committee **considers** that seismic activities fall under the category of “industrial activities” and, therefore:
 - a. Parties have to collect, analyze and report data on direct and indirect interactions between humans and cetaceans in relation to such activities. In that context, the noise register that is being developed under Resolution 6.17 is relevant.
 - b. Parties should implement the relevant ACCOBAMS Guidelines for seismic surveys (Annex 2 of the Resolution 7.13).
- 3- The Committee **recommends** to encourage Parties :
 - a. to avoid or minimize producing noise in marine protected areas, as well as, in particular, in areas containing critical habitat of cetaceans likely to be affected by man-made noise (paragraph 16 of the Resolution 7.13);
 - b. to exchange information on the actions taken by Parties.
- 4- The Committee **recommends** that all elements mentioned in Article 4 (Research and monitoring) of Annex 2 of the ACCOBAMS shall be taken into consideration in connection with seismic activities.
- 5- The Committee **recommends** Parties to provide data in the noise register with the technical assistance of the Secretariat, as need be.
- 6- The Committee **recommends** Parties to:
 - a. implement Resolutions 4.16 and 7.14 and Scientific Committee recommendation 14.4;
 - b. provide data to MEDACES (Mediterranean Database of Cetacean Strandings).
- 7- The Committee

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- a. **considers** that seismic activities can determine “exceptionally unfavorable or endangering conditions” leading to emergency situations and, therefore, emergency responses should be considered;
 - b. **recommends** Parties to exchange information on codes of conduct already implemented and data collected during emergency situations, in particular when a link with seismic activities is suspected.

**ANNEX 5 - CONCLUSIONS ON FOLLOW UP OF EXISTING OBLIGATIONS AND COMMITMENTS
RELATED TO MILITARY ACTIVITIES PRODUCING UNDERWATER NOISE IN THE ACCOBAMS AREA**

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

having reviewed at its Second Meeting (Monaco, 5-6 March 2018) on the request of the Meeting of the Parties, the legal and technical issues of implementation and follow up of existing obligations and commitments related to military activities producing underwater noise in the ACCOBAMS Area, has reached the following conclusions:

- 1- The Committee **understands** that military activities are in principle within the scope of application of the ACCOBAMS, as there is no provision in the Agreement that excludes its application to such activities. Military activities are consequently not allowed if they result in the “taking” of cetaceans, as defined under article 1, para I, of the Bonn Convention, meaning “taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conducts”.
- 2- The Committee **is fully aware** of Article 236 of the United Nations Convention on the Law of the Sea, which states: *“The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with the said Convention”*. In this regard, the Committee notes that the second sentence of Article 236 obliges the UNCLOS Parties to operate State vessels and aircraft in the manner consistent with UNCLOS, so far as reasonable and practicable and without impairing operations or operational capabilities. Moreover, Article 237 of the UNCLOS does not prejudice agreements, such as ACCOBAMS, which may be concluded in furtherance of the general principles of UNCLOS. Such principles include the general principle of preservation and protection of the environment.
- 3- When referring to impact assessment, the Committee **recommends** to use the best available impact assessment tools, such as the ACCOBAMS noise Guidelines and CMS EIA Guidelines. It is also recommended to share information about practices used by the Parties in connection with impact assessment related to different military activities.
- 4- The Committee **encourages** Parties to provide information on military activities relevant to human-cetacean interactions, in particular those producing underwater noise, and report them to the noise register, in accordance with paragraph 11 of Resolution 7.13.
- 5- The Committee **recommends** encouraging Parties engaged in military activities:
 - a. to avoid or minimize producing noise in marine protected areas, as well as in particular in areas containing critical habitat of cetaceans likely to be affected by man-made noise, in accordance with paragraph 16 of Resolution 7.13;

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- b. to exchange information on the actions taken by Parties;
 - c. to address impacts that such activities may have in the cetacean acoustic habitat.
- 6- The Committee **considers** that military activities can determine “exceptionally unfavourable or endangering conditions” leading to emergency situations and, therefore, emergency responses should be considered.

ANNEX 6 - CONCLUSIONS ON FOLLOW UP OF EXISTING OBLIGATIONS AND COMMITMENTS RELATED TO INTERACTIONS BETWEEN HUMANS AND DOLPHINS BY RESOLUTION 3.13 (DOLPHIN INTERACTION PROGRAMME)

The Follow-up Committee,

composed of Mrs. Imane TAI (Chairperson), Mr. Moustafa FOUDA, Mr. Tilen GENOV, Mr. Zurab GURIELIDZE, Mrs. Aurélie MOULINS,

meeting electronically on 29 and 30 March 2022,

reserving to its next meeting further consideration on the general and specific questions caused by interactions between humans and dolphins, as listed in annex 1 to document ACCOBAMS-FC3/2022/Doc 10,

convinced that the question of semi-enclosed facilities for cetaceans is becoming an increasing concern in several ACCOBAMS Parties

recommends:

- a. **that**, as advised by the ACCOBAMS Scientific Committee, the Meeting of the Parties considers establishing an ACCOBAMS Advisory Committee on semi-enclosed facilities that should provide guidance, based on best scientific evidence, to interested Parties on all the questions related to semi-enclosed facilities for cetaceans, taking also in consideration the studies "*Taking of cetaceans, dolphinarium and quasi-dolphinarium: a legal analysis relating to ACCOBAMS Parties*" - [ACCOBAMS-MOP7/2019/Inf 09](#) and « *Scientific perspective on "potential marine semi-enclosed facilities" in the ACCOBAMS Area* » - [ACCOBAMS-SC14/2021/Doc34](#);
- b. **that** the Committee should be composed of leading experts in different fields, including :
 - Ecology and behavior expertise on odontocetes, primarily on bottlenose dolphins;
 - odontocete husbandry (e.g., food, medical care, handling, transportation);
 - veterinary medicine focused on marine mammals;
 - stranding, rescue, captive rehabilitation and release techniques and procedures;
 - structural, functional and logistic aspects of the prospective hosting facility;
 - ecological impact assessment of concerned marine environments;
 - assessment of the economic sustainability of any proposed project and the operational costs of the center, once established;
 - educational, awareness and research design;
 - relationships with the main stakeholders.