

## REPORT OF THE ACCOBAMS FOLLOW-UP COMMITTEE

The ACCOBAMS Follow-up Committee was created by the ACCOBAMS Parties at MOP5 through the adoption of the Resolution 5.4.

### 1- COMPOSITION

For the 2022- 2022 period, the composition was the following:

#### Members nominated by Parties

<b>Moustafa FOUDA</b>	Full term: 2017- <b>2022</b>
<b>Clément PAYEUR</b>	Full term: 2017- <b>2022</b>
<b>Imane TAI</b>	Full term: 2020- <b>2025</b>
<b>Zurab GURIELIDZE</b>	Alternate

In October 2021 Mr. Clément PAYEUR left the French Ministry. **Mr. Zurab GURIELIDZE**, the alternate for members nominated by Parties, became member (full term: 2020-2025).

#### Members nominated by ACCOBAMS Partners

<b>Aurélie MOULINS</b>	Full term: 2020- <b>2025</b>
<b>Tilen GENOV</b>	Full term: 2017- <b>2022</b>
<b>Dimitar POPOV</b>	Alternate

The Third Meeting of the ACCOBAMS Follow-up Committee took place online on Tuesday 29<sup>th</sup> and Wednesday 30<sup>th</sup> March 2022.

The Follow-up Committee decided by consensus to elect Mrs. Imane TAI as President, and Mrs. Aurelie MOULINS as vice President.

### 2- Follow-up of the Committee's recommendations and involvement of ACCOBAMS Meeting of the Parties

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. This is reflected in Resolution [8.9A].

### 3- Consideration of submissions

Four submissions, all by one ACCOBAMS Partner that has reservations about a Party's follow up with its obligations under the Agreement, were still opened at the beginning of the 2020-2022 period.

- Submission by OceanCare on the assessment and control by Greece of military activities around South-East Crete

**The Follow-up Committee recommended** 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.**

**These recommendations are reflected in Resolution [8.9B]**

- Submission by OceanCare on the assessment and control by Spain of petroleum exploration activities around the Balearic Islands

**The Follow-up Committee recommended** 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.

**These recommendations are reflected in Resolution [8.9C]**

- Submission by OceanCare on the assessment and control by Portugal of petroleum exploration activities in the Algarve and Alentejo basins

**The Follow-up Committee recommended** 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**.

#### **These recommendations are reflected in Resolution [8.9D]**

- 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

**The Follow-up Committee recommended** 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**.

**These recommendations are reflected in Resolution [8.9E].**

**4- Review general issues of implementation and follow up under the agreement as requested by MOP7**

- Existing obligations and commitments related to seismic activities producing underwater noise

Members of the Follow up Committee were 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.

They adopted the following conclusions:

- 1- When referring to impact assessment, the Committee **recommends** to use best available impact assessment tools, such as Environmental Impacts Assessment under 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 “industrial activities” category, 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** that Parties are encouraged to:
  - a. 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. exchange information on the actions taken by Parties.
- 4- The Committee **recommends** that all elements mentioned in Article 4 (Research and monitoring) of ACCOBAMS Annex 2 shall be taken into consideration in connection with seismic activities.
- 5- The Committee **recommends** Parties to provide data to the noise register, with the Secretariat’s technical assistance, if 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

- 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.
- Existing obligations and commitments related military activities producing underwater noise

Members of the Follow up Committee were invited to discuss ACCOBAMS Parties obligations and commitments related to **military activities**

They adopted 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** the use of 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 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, to:
  - a. 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;

- b. exchange information on the actions taken by Parties;
- c. 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.

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

Participants were invited to discuss ACCOBAMS Parties obligations and commitments related to **interactions between humans and dolphins**.

They adopted the following conclusions:

- 1- The Committee **recommends** 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](#);
- 2- The Committee **recommends** that the ACCOBAMS Advisory Committee on semi-enclosed facilities 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.

The **Terms of Reference** for an ACCOBAMS Advisory Committee on semi-enclosed facilities are presented in MOP/2022/Doc29.