

REPORT ON THE IMPLEMENTATION OF RESOLUTION 4.18

Background

ACCOBAMS provides that research activities at sea that are likely to cause harassment of cetaceans must be prohibited unless the Party in question decides to grant an exception, in which case such exception should be granted only after obtaining advice from the Scientific Committee.

Guidelines on the granting of exceptions have been adopted by the Parties in 2010 through Resolution 4.18, in order to provide guidance in the implementation of these provisions. An explanatory note on the ACCOBAMS legal provisions on the matter is included in Annex 1.

Many activities generating harassment within the meaning of these Guidelines are possibly carried out in the ACCOBAMS area. However, no request for advice has ever been submitted to the Scientific Committee.

The Fifth Meeting of the ACCOBAMS Extended Bureau (Monaco, 26-27 April 2022) mandated the Secretariat to address a letter to all National Focal Points, Scientific Committee members, Sub-Regional Coordinating Units, Partners and relevant partner organizations, to recall the applicable procedure for granting exemptions to research activities at sea that are likely to cause harassment of cetaceans. Additionally, the Bureau further requested that Parties inform the Secretariat about exemptions that may have been granted over the past five years.

In a letter sent to all National Focal Points in July 2022, the ACCOBAMS Secretariat invited Parties to share information on exemptions that they may have granted since 2017.

Out of the 24 Parties to ACCOBAMS, 10 replies were received, as presented below.

❖ Albania

No reply received.

❖ Algeria

Algeria has not granted any exceptions during the last five years. Research work at sea is limited to observations of cetacean populations carried out during opportunistic campaigns. These remain non-harmful and without taking biological samples.

❖ Bulgaria

For the last five years (01.01.2017-05.09.2022) Bulgaria has issued only one derogation as follows:
Derogation No 921/ 14.3.2022 under requirements Bulgarian Biodiversity Act with duration to 31.12.2024, which grants possibilities for capturing and marking of maximum 3 specimens from *Phocoena phocoena* via single pin attached satellite transmitter (manufacturer Wildlife Computers-USA) on the dorsal fin. It is granted on NGO "Green Balkans", but there is still no information for implemented activities, as these are reported in the Ministry on yearly base. It is non-lethal in situ research, based on best practices and would approach only specimen that are within "dalyan" fishing gear by urgent reaction by dedicated team, including veterinarian doctor, for marking and releasing of the specimen. It is based on chance and signals received by fishermen.

❖ **Croatia**

Regarding the exemptions that have been granted during the past five years in Croatia for the purpose of non-lethal in situ research since 2017:

1. Permit holder (organisation): Blue World Institute

Permit validity period: November 2018 – November 2020

Planned cetaceans research activities: PhotoID research of local populations of cetaceans, aerial survey, biopsy sampling using a crossbow (biopsy sample of one individual of *Balaenoptera physalus* was taken using crossbow in September 2020), passive acoustic monitoring

2. Permit holder (organisation): Blue World Institute

Permit validity period: January 2021 – January 2023

Planned cetaceans research activities: PhotoID research of local populations of cetaceans, aerial survey, biopsy sampling using a crossbow, passive acoustic monitoring

3. Permit holder (organisation): Faculty of Veterinary Medicine, Zagreb

Permit validity period: November 2018 – November 2020

Planned cetaceans research activities: PhotoID research of local populations of cetaceans, post mortem examination and sampling of deceased cetaceans, release of bycaught cetaceans from fishing gear

4. Permit holder (organisation): Faculty of Veterinary Medicine, Zagreb

Permit validity period: January 2021 – January 2023

Planned cetaceans research activities: PhotoID research of local populations of cetaceans in Croatian part of Adriatic Sea, post mortem examination and sampling of deceased cetaceans, release of bycaught cetaceans from fishing gear

❖ **Cyprus**

No applications and no exceptions permits have been issued in relation to Article II, paragraph 1, for the purpose of non-lethal in situ research in waters under the jurisdiction of Cyprus and to Cypriot nationals conducting research wherever in the Agreement Area.

❖ **Egypt**

No reply received.

❖ **France**

No reply received.

❖ **Georgia**

No reply received.

❖ **Greece**

No reply received.

❖ **Italy**

Since 2021, Italy has agreed two exemptions:

- Report on the activities carried out in the period 2019-2021 relating to the authorization in derogation of Presidential Decree 357/97 Prot. 0018799 / PNM and request for renewal of the authorization "sent by the University of Siena with prot. n. 0083856 of 06.04.222 and acquired under prot. n. 0044631 of 06.04.22. Concerning "Plastic Busters MPAs", "Mo.Ri-Net", "PNRR Program - Spoke 2 Marine Biodiversity" requires the renewal of the authorization notwithstanding the DPR 357/97, already in possession of the research group, for activities related to the aforementioned projects, for the authorization to carry out skin biopsies on the cetacean species for the assessment of the impact of marine litter and emerging contaminants in cetacean populations of the Mediterranean Sea.

- 2. Request for an opinion for authorization in derogation from the provisions of articles 8 and 9 of Presidential Decree 357/97 for satellite markings on Zifio - CIMA Foundation - Prot. MATTM 0062292 of 10/06/2021. Submitted by the CIMA Foundation relating to the request for authorization in derogation from articles 8, 9 and 11 of Presidential Decree 3657/97 for tagging activities (application of a spatial control system) on a maximum of 10 specimens of zifio (*Zifius cavirostris*) in the Ligurian, Tyrrhenian and Ionian seas, outside the territorial waters but within the ecological protection zone (ZPE, as per the Decree of the President of the Republic October 27, 2011, n.209).

❖ **Lebanon**

No reply received.

❖ **Libya**

No reply received.

❖ **Malta**

Malta has implemented a project in 2021 which involved boat-based and aerial surveys within two Marine Protected Areas, with the main aim of developing a long-term monitoring process for marine reptiles and mammals that will enable the continuous assessment of the status of these species. This research activity did not involve harassment or taking of cetaceans and was thus considered low impact as per the guidelines in Resolution 4.18. Furthermore, such research was carried out by experts in the field who were knowledgeable on how to maintain a low-impact activity as per the same guidelines.

❖ **Monaco**

The Department of Maritime Affairs and the Department of the Environment, have not received any requests for exemptions since 2017.

❖ **Montenegro**

No reply received.

❖ **Morocco**

Morocco has not granted any authorization/derogation to conduct research activities at sea that may cause harassment of cetaceans in the last five years.

❖ **Portugal**

No reply received.

❖ **Romania**

No reply received.

❖ **Slovenia**

No reply received.

❖ **Spain**

The permits given by the Ministry since 2021:

Year	TYPE	GROUP SPECIES	TARGET SPECIES	GEOGRAPHIC SCOPE	CAMPAIGN DETAILS											
					SAMPLING	SATELLITE MARKING	VISUAL SAMPLING	ACOUSTIC SAMPLING	OBSERVATION	PHOTOGRAPHY ON THE COAST	PHOTOGRAPHY FROM BOAT	UNDERWATER PHOTOGRAPHY	DRONE PHOTOGRAPHY	SHIP	AIRPLANE	
2021	RESEARCH	CETACEANS	FIN WHALE (<i>Balaenoptera physalus</i>) & VARIOUS	DENIA COAST	X	X	X	X	X						X	-
2021	RESEARCH	CETACEANS	FIN WHALE (<i>Balaenoptera physalus</i>)	DENIA COAST			X	X	X						X	X
2021	RESEARCH	CETACEANS	FIN WHALE (<i>Balaenoptera physalus</i>)	BALEARIC SEA	X	X		X	X			X	X	X	X	-
2021	RESEARCH	CETACEANS	KILLER WHALE (<i>Orcinus orca</i>)	CRITICAL AREAS FOR KILLER WHALES (STRAIT AND GULF OF CADIZ)			X		X			X			X	-
2021	RESEARCH	CETACEANS	FIN WHALE (<i>Balaenoptera physalus</i>)	BALEARIC SEA	X	X		X	X			X	X	X	X	-
2022	RESEARCH	CETACEANS	VARIOUS	SOUTHERN PENINSULAR				X	X			X		X	X	
2021	RESEARCH	CETACEANS	SPERM WHALE (<i>Physeter macrocephalus</i>)	BALEARIC				X	X			X		X	X	-
2021	RESEARCH	CETACEANS	SPERM WHALE (<i>Physeter macrocephalus</i>)	BALEARIC				X	X			X		X	X	-
2021	CONSERVATION	CETACEANS	VARIOUS	BALEARIC ISLANDS COAST	X						X				X	-

2022	RESEARCH	CETACEANS	ATLANTIC BOTTLENOSE DOLPHIN (<i>Tursiops truncatus</i>) THE STRIPED DOLPHIN (<i>Stenella coeruleoalba</i>) LONG-FINNED PILOT WHALE (<i>Globicephala melas</i>)	SAC 'VALLES SUBMARINOS DEL ESCARPE DE MAZARRÓN' and SCI 'SUR DE ALMERÍA-SECO DE LOS OLIVOS'.	X									X	X
2022	RESEARCH	CETACEANS & SEA TURTLES	SPERM WHALE (<i>Balaenoptera physalus</i>)	BALEARIC SEA	X	X		X	X		X	X	X	X	-
2022	RESEARCH	CETACEANS	KILLER WHALE (<i>Orcinus orca</i>)	CRITICAL AREAS FOR KILLER WHALES (STRAIT AND GULF OF CADIZ)			X		X		X	x	x	X	-

❖ **Syria**

No reply received.

❖ **Tunisia**

No reply received.

❖ **Türkiye**

There has been no exception for the purpose of non-lethal in situ research that has been granted by Türkiye since 2017.

❖ **Ukraine**

No reply received.

Proposals for next steps

Those Parties that have not yet provided information are encouraged to do so as soon as possible.

Parties may also decide to include a section on this matter in the national report format.

The Secretariat will provide a report to the Ninth Meeting of Parties on the number of requests for advice submitted to the Scientific Committee during 2023-2025.

Finally, all Parties are encouraged to remind the procedure on the granting of exceptions to all research groups/organizations concerned in their country by research activities at sea that are likely to cause harassment of cetaceans within the meaning of the Resolution 4.18.

ANNEX 1

EXPLANATORY NOTE ON THE LEGAL PROVISIONS ON THE GRANTING OF EXCEPTIONS FOR THE PURPOSE OF NON-LETHAL IN SITU RESEARCH IN THE AGREEMENT AREA LIKELY TO CAUSE HARASSMENT OF CETACEANS

Under Art. II, para. 1, of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (Monaco, 1996; ACCOBAMS),

“Parties shall prohibit and take all necessary measures measures to eliminate, where this is not already done, any deliberate taking of cetaceans”.

According to Art. I, para. 3, the term “taking” is to be intended in the broad meaning as it is defined in Art. I, para. 1, i, of the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979), that is *“taking, hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct”*.

Art. II, para. 2, of the ACCOBAMS allows for exceptions to para. 1, which are subject to a number of conditions:

“Any Party may grant an exception to the prohibition set out in the preceding paragraph only in emergency situations as provided for in Annex 2, paragraph 6, or, after having obtained the advice of the Scientific Committee, for the purpose of non-lethal in situ research aimed at maintaining a favourable conservation status for cetaceans. The Party concerned shall immediately inform the Bureau and the Scientific Committee, through the Agreement secretariat, of any such exception that has been granted. The Agreement secretariat shall inform all Parties of the exception without delay by the most appropriate means”.

It may be inferred from the provision that, apart from emergency situations, exceptions to the prohibition of “taking” may be granted by Parties only if four substantive conditions are cumulatively met, namely:

- the exception is granted for research purposes;
- the research is non-lethal;
- the research is *in situ*;
- the research aims at maintaining a favourable conservation status for cetaceans.

Two procedural conditions must be met as well, namely:

- the interested Party must inform the Bureau and the Scientific Committee, through the Secretariat;

- the Scientific Committee must provide its previous advice on the exception. As remarked in the Guidelines annexed to Resolution 4.18, “a Party is not legally bound to follow the Committee’s advice, although a general obligation of good faith applies to treaty implementation”.

The obligation to inform the Bureau and the Scientific Committee, through the Secretariat, applies also in case of exceptions granted in emergency situations.

To comply with all the conditions set forth in Art. II, para. 2, is a legal obligation mandatory for all ACCOBAMS Parties, as *“every treaty in force is binding upon the Parties to it and must be performed by them in good faith”*¹.

Resolution 4.18 of the Meeting of the Parties to the ACCOBAMS gives further guidance on the subject matter. The resolution is based on both the recognition of the value of non-lethal in situ research to provide sound scientific foundation to the decisions of the Parties and the warning that such activity entails risks to cetacean populations and impacts to individual welfare that may be difficult to evaluate or predict. It recommends Parties:

- “- to limit exception permits to ‘taking’ that only has the potential to disturb a cetacean population by causing disruption of behavioural patterns, and excluding those takings which have the potential to injure a cetacean or cetacean population;*
- to consider that harassment risk begins when a vessel is voluntarily closer than the minimum distance identified in common rules of commercial cetaceans watching (Resolution 4.7)”*.

By the same Resolution 4.18 the Meeting of the Parties adopted the “Guidelines on the granting of exceptions to Article II, paragraph 1, for the purpose of non-lethal in situ research in the Agreement area”, as annexed to the resolution, to be applied for research in waters under the jurisdiction of States Parties and to their nationals conducting research wherever in the Agreement area. It also recommended:

- “Parties, other Riparian States and Range States, when granting such exceptions permit, in line with Resolution 2.15 on tissue banks, to request that all materials collected or obtained under this exception shall be maintained according to accepted curatorial standards”*.

The Guidelines to Resolution 4.18 indicate, *inter alia*, the legal threshold for obligatory research permits, the conditions for low-impact research, the criteria for evaluating permit applications and the factors to be examined in granting a permit. They also set forth the role of the Scientific Committee.

¹ Art. 26 of the Convention on the Law of Treaties (Vienna, 1969).

Unfortunately, as remarked by the Executive Secretary during the last Bureau Meeting², while many activities generating harassment within the meaning of the Guidelines of Resolution 4.18 are possibly carried out in the ACCOBAMS Area, no request for advice has ever been submitted to the Scientific Committee.

Consequently,

“The Bureau emphasized this was a major issue and the procedure should be reminded to all ACCOBAMS constituents and relevant stakeholders. The Bureau mandated the Secretariat to address an official letter accompanied by an explanatory note on relevant legal provisions to all National Focal Points, Scientific Committee Members, Sub-Regional Coordinating Units, Partners and relevant partner organizations in order to remind all about the applicable procedure for granting exemptions to research activities at sea that are likely to cause harassment of cetaceans, and to invite the Parties to inform the Secretariat about exemptions that they may have granted during the five past years”³.

In order not to cause undue delays to research activities carried out by the Parties, the Bureau, in agreement with the Chairperson of the Scientific Committee, invited the Scientific Committee to provide its advice on future requests by the Parties on the week following the receipt of a request, envisaging a procedure of implied consent if no timely advice is provided:

“With regard to future requests to be sent to the Secretariat for advice by the Scientific Committee, and considering the need to implement this procedure as efficiently as possible so as not to hinder the implementation of research activities, and in agreement with the Chair of the Scientific Committee, the Bureau invited the Scientific Committee to provide its advice on the week following the receipt of a request for exemption. If no advice is received after this period, the requesting Party may consider the advice of the Scientific Committee is favorable”⁴.

² See *Report of the Fifth Meeting of the ACCOBAMS Extended Bureau*, Monaco, 26-27 April 2022, para. 33.

³ *Ibidem*, Conclusion 1.

⁴ *Ibidem*, Conclusion 2.