

DRAFT RESOLUTION 9.7
AMENDMENTS TO THE FOLLOW-UP PROCEDURE

The Meeting of the Parties to the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area:

Recalling Article III, paragraph 8 c), of the Agreement and Resolution 5.4 on the establishment of the ACCOBAMS Follow-up Procedure,

Stressing that this Follow-up Procedure is to be considered as a means for preventing disputes and for facilitating the implementation of the Agreement,

Noting with appreciation the work accomplished by the Follow-up Committee,

Desirous to improve and facilitate the functioning of the ACCOBAMS Follow-up Procedure,

1. *Decides* to amend Annex 1 (Rules on the ACCOBAMS Follow-up Procedure) to Resolution 6.8:
2. *Approves* the amended text of the Rules on the ACCOBAMS Follow-up Procedure, as annexed to this Resolution (amendments in bold);
3. *Approves* the submissions form as annexed to this Resolution;
4. *Encourages* the Parties, the Permanent Secretariat and the ACCOBAMS Partners to make use of the Follow-up Procedure as a non-confrontational means for preventing and settling disputes;
5. *Decides* that the present Resolution replaces Resolution 6.8.

ANNEX 1

RULES ON THE ACCOBAMS FOLLOW-UP PROCEDURE¹

Article 1 - Legal Basis

The following Follow-up Procedure (hereinafter referred to as “the Procedure”) is based on Article III, paragraph 8 c), of the Agreement.

Article 2 - Objectives and Nature of the Procedure

1. The objective of the Procedure is to monitor, facilitate and promote follow-up with the provisions of the Agreement, taking into account the specific situation of each Party and with a view to preventing disputes. The Procedure shall complement the work performed by other bodies of the Agreement.
2. The Procedure shall be carried out in a simple, flexible, expeditious, fair, transparent, cost-effective and non-confrontational way.

Article 3 - Structure and Election of the Follow-up Committee

1. A Follow-up Committee (hereinafter referred to as “the Committee”) is hereby established.
2. The Committee shall consist of five members and two alternate members elected during the Meetings of the Parties. Three of the members and one alternate member shall be elected by secret ballots by Parties from a list of candidates nominated, one by each Party. Two of the Members and one alternate member shall be elected by secret ballots by the organizations and institutions having the status of ACCOBAMS Partner (hereinafter referred to as “ACCOBAMS Partners”) from a list of candidates nominated, one by each of them. The alternate members are the candidates who immediately follow for the number of votes received the members elected by the Parties and the members elected by the ACCOBAMS Partners.
3. The alternate member elected by the Parties shall serve in the absence of a Committee member elected by the Parties. The alternate member elected by the ACCOBAMS Partners shall serve in the absence of a Committee member elected by the ACCOBAMS Partners.
4. The full term of office of the Committee members commences at the end of an ordinary Meeting of the Parties and runs until the end of the second ordinary Meeting of the Parties thereafter.
5. At the time of the first election, the term of office of two Committee members elected by the Parties and of one Committee member elected by the ACCOBAMS Partners shall be limited to the period between the end of this ordinary Meeting of the Parties and the end of the subsequent one. The Committee members in question shall be drawn by lots.
6. The Committee members elected by the Parties shall not include more than one national of the same Party.
7. Nominated candidates shall be persons of high moral character and shall have recognized competence in the fields dealt with by the Agreement, including legal matters. In the election of the Committee members, consideration shall be given to the diversity of experiences and competences and to the equitable geographical and gender distribution of membership. Members of the Bureau cannot be members of the Committee at the same time.
8. The procedure for the nomination of candidates for the Committee shall be the following:
 - a) nominations shall be sent to the Secretariat of the Agreement not later than twelve weeks before the opening of the Meeting of the Parties during which the election is to take place;
 - b) each nomination shall be accompanied by a *curriculum vitae* **of the candidate, including personal contact details**, in at least one of the official working languages of the Agreement;
 - c) the Secretariat shall distribute the nominations and the *curricula vitae*.

¹ Amendments in bold.

- ~~9. In derogation to paragraph 8 above, the first election of the members of the Committee can take place at the Meeting of the Parties when the Resolution on the ACCOBAMS Follow-up Procedure is adopted, on the basis of nominations and *curricula vitae* previously submitted by the Parties and the ACCOBAMS Partners on request by the Bureau.~~
9. The Committee members shall not serve for more than two consecutive terms.
10. The Committee members and their alternates shall serve in their personal capacity and shall act objectively in the best interest of the Agreement. Committee **members and alternate members** shall, before taking up **their** duties, **sign** a solemn declaration that **they** will perform **their** functions impartially and conscientiously.
11. The Committee shall elect its own President and Vice-President. The Vice-President shall, in addition, serve as the *rapporteur* of the Committee.

Article 4 - Meetings of the Committee

1. The quorum of the Committee shall consist of three members, including at least two members elected by the Parties.
2. The Committee shall meet at least once every three years.
3. Depending on the workload, the Committee may decide to hold additional meetings, in particular in conjunction with other bodies established by the Agreement;
4. The Secretariat shall arrange for and service the meetings of the Committee.
5. The Committee meetings shall be open, as observers, to ACCOBAMS Parties, **to the Chairperson of the Bureau**, to one member of the Scientific Committee, as nominated by it, and, unless the Party whose follow-up is in question requests otherwise, to ACCOBAMS Partners.
6. **The submitting Party or Partner and** the Party whose follow-up is in question **are entitled to** participate in the consideration of the submission by the Committee and shall have the opportunity to present **their** views and any relevant information, expert advice and document.
7. The Party whose follow-up is in question, other Parties and ACCOBAMS Partners shall not take part in the elaboration and adoption of the related Committee recommendation, nor shall they be involved in the adoption of the report of the Committee. **The Secretariat can attend the elaboration and adoption of the Committee's recommendations and reports only for the purpose to provide services to the meeting of the Committee.**
8. Without prejudice to the previous paragraphs, the Committee may, in appropriate circumstances, undertake some of its activities through electronic communications.

Article 5 - Adoption of Recommendations and Reports

1. The Committee shall make every effort to adopt its recommendations and reports by consensus. If all efforts to reach a *consensus* have been exhausted and no recommendation or report has been adopted, they shall be **adopted** by a majority of the members present and voting.
2. Any Committee member or alternate member shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. When a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of the matter. If the majority of the other Committee members find that the conflict occurs, the concerned member shall not participate in the elaboration and adoption of a recommendation or report of the Committee in relation to that matter.
3. Any Committee member can attach his or her dissenting or separate opinion to the relevant recommendation or report.

Article 6 - Functions of the Committee

1. The Committee shall:
 - a) consider any submission made in accordance with Articles 7 to 9 below, with a view to determining the facts and causes of the matter of follow-up and assisting the Party concerned in its resolution;
 - b) adopt recommendations that it considers appropriate to resolve such a follow-up issue;
 - c) ensure the follow-up of its recommendations and of the relevant decisions of the Meeting of the Parties and report the results to the latter, based on the synthesis of the Parties implementation reports and other relevant information;
 - d) at the request of the Meeting of the Parties, review general issues of implementation and follow-up under the Agreement and prepare a report, including relevant recommendations on them, to be presented at the Meeting of the Parties;
 - e) report on its activities at each ordinary Meeting of the Parties and make recommendations as it considers appropriate.
2. The Committee's recommendations shall include motivations and, wherever appropriate to assist the Party concerned to implement the Agreement, legal and technical advice on the required measures, strategies and time schedules.
3. Recommendations and reports shall be finalized by the Committee not later than twelve weeks in advance of the Meeting of the Parties at which they are to be considered.
4. The Committee, through the Secretariat, shall notify the Party concerned in writing of its recommendations. The Party concerned shall be given the opportunity to comment in writing on the recommendations.

Article 7 - Submissions by Parties

1. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's follow-up with its obligations under the Agreement.
2. A submission made under paragraph 1 above shall be addressed in writing to the Secretariat and shall be supported by corroborating information. The Secretariat shall, within one week of receiving a submission, send a copy of it to the Party whose follow-up is in question. Any reply and supporting information shall be submitted to the Secretariat and to the Parties involved within three **months or longer period in particular circumstances, but in no case later than six months**. The Secretariat shall transmit the submission and the reply, as well as all corroborating information, to **the submitting Party and to the Committee**, which shall consider the matter as soon as practicable.
3. A submission may be brought before the Committee by a Party that concludes that, despite its best efforts, it is or will be unable to comply fully with its obligations under the Agreement.
4. A submission made under paragraph 3 above shall be addressed in writing to the Secretariat and shall explain the specific circumstances that the Party considers to be the cause of its non-follow-up. The Secretariat shall transmit the submission and the supporting information to the Committee, which shall consider the matter as soon as practicable.
5. The Committee may decide not to proceed with a submission which it considers is:
 - a) an abuse of the right to make such submission; or
 - b) manifestly ill-founded or unreasonable; or
 - c) incompatible with the provisions of the Agreement or this Procedure.

Article 8 - Submissions by the Secretariat

1. Where the Secretariat, also on request by the Scientific Committee, becomes aware of possible non-follow-up by a Party with its obligations under the Agreement, it may request the Party concerned to furnish necessary information about the matter.
2. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require, but in no case later than six months, the Secretariat shall bring the matter to the attention of the Committee, which shall consider it as soon as practicable. The Secretariat shall immediately inform the Party concerned of its submission. **Any reply and supporting information shall be submitted to the Secretariat within three months or longer period in particular circumstances, but in no case later than six months. The Secretariat shall transmit the reply, as well as all corroborating information, to the Committee, which shall consider the matter as soon as practicable.**

Article 9 - Submissions by ACCOBAMS Partners

1. A submission may be brought before the Committee by one or more ACCOBAMS Partners that have reservations about a Party's follow-up with its obligations under the Agreement.
2. A submission made under paragraph 1 above shall be addressed in writing to the Secretariat and shall be supported by corroborating information. The Secretariat shall, within one week of receiving a submission, send a copy of it to the Party whose follow-up is in question. Any reply and supporting information shall be submitted to the Secretariat and to the Partner involved within three months or **longer period in particular circumstances, but in no case later than six months.** The Secretariat shall transmit the submission and the reply, as well as all corroborating information, to the Committee, which shall consider the matter as soon as practicable.
3. The Committee may decide not to proceed with a submission which it considers is:
 - a) an abuse of the right to make such submission; or
 - b) manifestly ill-founded or unreasonable; or
 - c) incompatible with the provisions of the Agreement or this Procedure.

Article 10 - Procedure before the Committee

In carrying out its functions, the Committee may:

- a) consider any relevant information submitted to it by the Party whose follow-up is in question, by other ACCOBAMS Parties, by the Secretariat or by ACCOBAMS Partners;
- b) request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate;
- c) undertake, with the agreement of the Party concerned, information gathering in the territory of one Party;
- d) consult with other Agreement bodies and in particular with the Scientific Committee;
- e) request information from any Parties, through the Secretariat, on the general issues of implementation and follow-up under its consideration.

Article 11 - Confidentiality

1. The procedure before the Committee and the documents examined by the Committee are confidential, unless the Party concerned agrees to their publicity.
2. **The Committee members, alternate members, observers and members of the Secretariat attending the Committee's meeting shall sign a confidentiality agreement.**

Article 12 - Consideration by the Meeting of the Parties

1. 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.
2. The Meeting of the Parties' decisions under paragraph 1 above also include motivations.
3. The Meeting of the Parties, through the Secretariat, shall notify the Party concerned in writing of its decisions.

Article 13 - Relationship between settlement of disputes and the Follow-up Procedure

The present Follow-up Procedure shall be without prejudice to Article XII of the Agreement on the settlement of disputes.

Article 14 - Enhancement of Cooperation

In order to enhance cooperation between this and other Follow-up Procedures adopted under other treaties, the Meeting of the Parties may request the Committee to communicate, as appropriate, with the relevant bodies of those treaties and report back to it with any relevant recommendation.

ANNEX 2 SUBMISSIONS FORM

1. Name of the submitting Party or Organization / institution having the status of ACCOBAMS Partner:
(If the submission is presented by the Secretariat, indicate "Secretariat")

2. Contact person:
(Person who has the capacity to represent the submitting Party or organization / institution having the status of ACCOBAMS Partner. If the submission is presented by the Secretariat, this information is not necessary)
 - Name and position:
 - Address for correspondence:
 - Tel.:
 - E-mail:

3. Name of the Party concerned by the submission:

4. Relevant provision(s) of the Agreement concerned by the alleged non-follow-up situation:
(List as precisely as possible the provisions of the Agreement that the Party concerned is alleged not to follow-up)

5. Statement identifying the question of non-follow-up:
(Include all matters of relevance to the assessment and consideration of the submission. When a submission is made by a Party regarding its own non-follow-up, it has to provide the specific circumstances that it considers to be the cause of its situation)

6. Information supporting the submission:
(Relevant national legislation, national decisions, results of other procedures, etc. Indicate if any other domestic or international procedures have been undertaken to address the issue of non-follow-up which is the subject of the communication)

7. Any other information (existence of an environmental impact assessment (EIA), size of projects, maps of the area, etc.)

8. List of the documents annexed to the submission:
(Only copies are accepted)

Date:

Signature:

(of the person specified under No. 2 or, in case of a submission by the Secretariat, of the ACCOBAMS Executive Secretary)

This form has to be sent to the ACCOBAMS Follow-up Committee through the Secretariat at the following address:

ACCOBAMS Executive Secretary

Les Jardins d'Apolline - Bât. C

1, Promenade Honoré II

98000 Monaco (Principality of Monaco)

E-mail: secretariat@accobams.net