

Proposal and justification for Ireland to sign and ratify ASCOBANS

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The Agreement on the Conservation of Small Cetaceans in the Baltic and North Seas (ASCOBANS) is a regional instrument developed under the aegis of Article IV of the Convention on the Conservation of Migratory Species of Wild Animals 1979 (Bonn Convention). ASCOBANS opened for signature in 1992 and formally entered into force on 29 March 1994.

The ASCOBANS Agreement currently applies only to “small cetaceans”, defined as all odontocetes except sperm whales. A proposal to extend the Agreement to all cetacean species was considered in 2006, but not accepted, but with a decision to further consider the issue in 2009.

ASCOBANS originally extended to “the marine environment of the Baltic and North Sea”. There are currently ten parties to the Agreement and Estonia has indicated its intention to accede. At the fourth Meeting of Parties in 2003 it was agreed to extend the boundaries to include the western seaboard of Ireland and Scotland, including the Irish Sea and waters south to southern Portugal (Fig. 1). This boundary extension has not yet been ratified by all Parties. This extension adds Ireland, Spain and Portugal as coastal range states. Spain has indicated that it will accede, but wishes all cetacean species to be covered by the Agreement. Ireland and Portugal have not ratified and have not indicated to ASCOBANS as to whether they intend to or not.

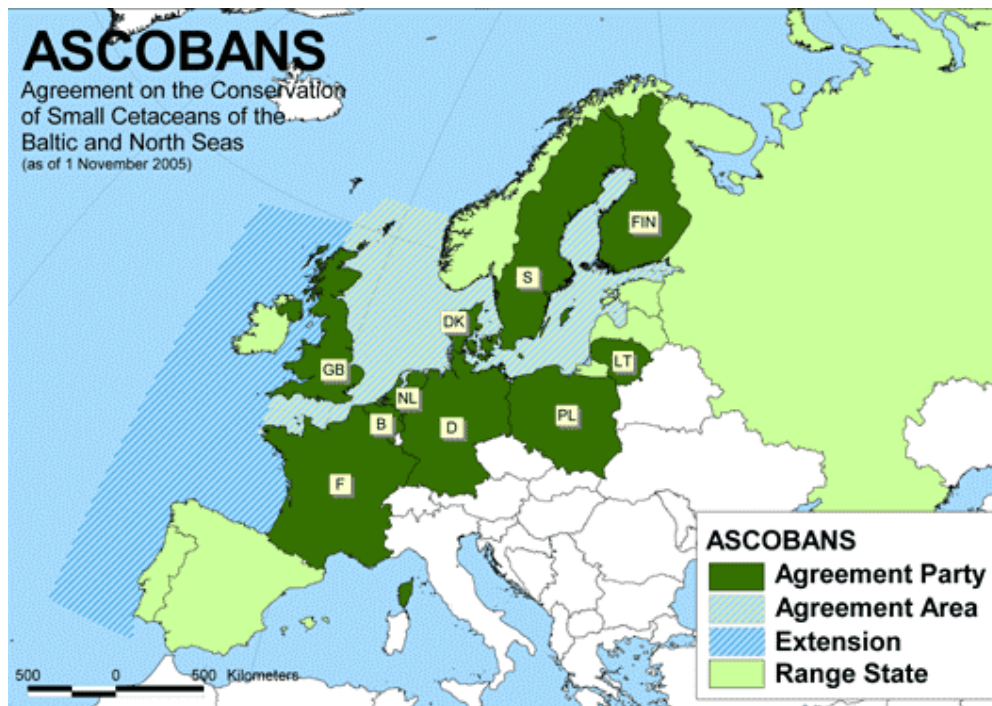


Figure 1. Map of ASCOBANS area and Parties to the Agreement

Aims and objectives of ASCOBANS

Under Article 2(1) of the Agreement, ASCOBANS aims to facilitate co-operation to achieve and maintain a “favourable conservation status” for all small cetaceans in the Agreement area. Favourable Conservation Status is widely interpreted as “seeking to maintain the species in question on a long-term basis as a viable component of its ecosystem, to ensure that its range is not reduced, to ensure sufficient habitat to maintain the species on a long-term basis and to facilitate numbers at historic coverage levels”. Annexed to the ASCOBANS text is a concise conservation and management plan, which essentially requires the parties to apply “in conjunction with other competent international bodies”, five broad conservation, research and management measures, with a particular emphasis on habitat conservation and management. The ASCOBANS conservation and management plan identifies four key areas of work in relation to habitat conservation and management, namely:

1. Prevention of the release of substances which are a potential threat to the health of animals
2. Development, in the light of available data indicating unacceptable interaction of modifications of fishing gear and fishing practices in order to reduce bycatch and prevent fishing gear from getting adrift or being discarded at sea
3. Effective regulation to reduce the impact on the animals of activities which seriously affect their food resources
4. Prevention of other significant disturbance, especially of an acoustic nature

Achievements of ASCOBANS

Pollution reduction was the first issue ASCOBANS addressed and has largely been developed in collaboration with other bodies such as OSPAR and HELCOM.

Bycatch mitigation can objectively be considered to be the policy area that has attracted the greatest amount of attention under ASCOBANS to date. ASCOBANS considers that the long-term aspirational goal of ASOBANS is to ensure that no anthropogenic removals of small cetaceans occur within the Agreement area at all, but has a (more realistic) intermediate target of 1% of the estimated abundance of a cetacean population. ASCOBANS also aspires to restoring cetacean populations to 80% of their carrying capacity. It has agreed that bycatch levels above 1.7% of the best population estimate are unacceptable.

A recovery plan for the heavily depleted Baltic population of harbour porpoise has been completed and is currently being implemented.

A conservation plan for the North Sea harbour porpoise is currently being prepared.

The issue of impacts on food sources has yet to be substantially addressed by ASCOBANS.

ASCOBANS has identified sources of disturbance, which include seismic testing, shipping and seismic disturbance from military sources and whalewatching. In 2000

a Resolution on Disturbance was adopted and the AC review information on the effects of sound on an annual basis.

Institutional Arrangements

The Meeting of Parties (MOP) is the decision-making body of ASCOBANS. It meets triennially to review progress made and difficulties encountered in the implementation of the Agreement and to lay down the priorities for the next triennium. Non-Party Range States and regional economic organisations bordering on the Agreement Area, as well as a number of other relevant Organisations are entitled to send observers to the MOP; other bodies qualified in cetacean conservation and management may apply for observer status.

The Advisory Committee (AC), which meets at least annually, provides advice and information to the Secretariat and the Parties on the conservation and management of small cetaceans and on other matters related to the running of the Agreement. Each Party is entitled to appoint one member to the AC, who may be accompanied by advisors. Concerning the participation of non-Party Range States, Regional Economic Integration Organisations and other relevant bodies, similar rules to those governing the MOP apply.

The Secretariat is the coordinating hub of the Agreement. It provides administrative support, gathers and distributes information relevant to the implementation of the Agreement, organises and services the Meetings of Parties and the Advisory Committee and other, inter-sessional meetings. The Executive Secretary to ASCOBANS liaises and maintains close contacts with the Coordinating Authorities of the Parties as well as with other relevant institutions and organisations.

Justifications for signing ASCOBANS

Since the extension of the ASCOBANS area to include a significant part of Irish territorial waters, this agreement now has much greater relevance for Ireland. A number of reasons why Ireland should sign ASCOBANS include:

1. protect the interests of Ireland
2. participate in important international conventions
3. contribute to the development of ideas and conservation priorities
4. co-ordinate research and monitoring priorities to ensure more efficiency and cost-effectiveness
5. draw on the expertise of ASCOBANS and the Advisory Committee
6. influence reporting structures and consistency of methodologies
7. engage with, and learn about the concerns of, neighbouring EU countries
8. promote the work being carried out by Ireland
9. Signing ASCOBANS is an Action (No. 49) of the National Biodiversity Action Plan

ASCOBANS have strong links with other bodies including the EU and policies developed by ASCOBANS have had a significant influence on EU Regulations such

as the Bycatch Regulation 814/2004. By signing and contributing to ASCOBANS will assist Ireland in ensuring that the interests and implications of these policies to Ireland are protected and/or promoted including contributing to regional management plans.

Signing ASCOBANS is part of Recommendation 4 of the IWDG Commercial Fisheries Policy document.

Commitment to ASCOBANS

If Ireland did sign ASCOBANS it would be expected to send a delegation to the MOP which is held at least once every three years and to the Advisory Council which meets inter-sessionally around two to three times.

Appendix I: The Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS)

AGREEMENT ON THE CONSERVATION OF SMALL CETACEANS OF THE BALTIC AND NORTH SEAS

The Parties Recalling the general principles of conservation and sustainable use of natural resources, as reflected in the World Conservation Strategy of the International Union for the Conservation of Nature and Natural Resources, the United Nations Environment Programme, and the World Wide Fund for Nature, and in the report of the World Commission on Environment and Development,

Recognizing that by-catches, habitat deterioration and disturbance may adversely affect these populations, Convinced that small cetaceans are and should remain an integral part of marine ecosystems, Aware that the population of harbour porpoises of the Baltic Sea has drastically decreased, Concerned about the status of small cetaceans in the Baltic and North Seas, Recognizing that their vulnerable and largely unclear status merits immediate attention in order to improve it and to gather information as a basis for sound decisions on management and conservation, Confident that activities for that purpose are best coordinated between the States concerned in order to increase efficiency and avoid duplicate work, Aware of the importance of maintaining maritime activities such as fishing,

Recalling that under the Convention on the Conservation of Migratory Species of Wild Animals (Bonn 1979), Parties are encouraged to conclude agreements on wild animals which periodically cross national jurisdictional boundaries, Recalling also that under the provisions of the Convention on the Conservation of European Wildlife and Natural Habitats (Berne 1979), all small cetaceans regularly present in the Baltic and North Seas are listed in its Appendix II as strictly protected species, and Referring to the Memorandum of Understanding on Small Cetaceans in the North Sea signed by the Ministers present at the Third International Conference on the Protection of the North Sea, have agreed as follows:

1. Scope and interpretation

1.1. This agreement shall apply to all small cetaceans found within the area of the agreement. 1.2. For the purpose of this agreement: (a) "Small cetaceans" means any species, subspecies or population of toothed whales *Odontoceti*, except the sperm whale *Physeter macrocephalus*;

(b) "Area of the agreement" means the marine environment of the Baltic and North Seas, as delimited to the north-east by the shores of the Gulfs of Bothnia and Finland; to the south-west by latitude 48°30' N and longitude 5°W; to the north-west by longitude 5°W and a line drawn through the following points: latitude 60°N/longitude 5°W, latitude 61°N/longitude 4°W, and latitude 62°N/longitude 3°W; to the north by latitude 62°N; and including the Kattegat and the Sound and Belt passages but excluding the waters between Cape Wrath and St Anthony Head;

(c) "Bonn Convention" means the Convention on the Conservation of Migratory Species of Wild Animals (Bonn 1979);

2 (d) "Regional Economic Integration Organization" means an organization constituted by sovereign States, which has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this agreement;

(e) "Party" means a range State or any Regional Economic Integration Organization for which this agreement is in force;

(f) "Range State" means any State, whether or not a Party to the agreement, that exercises jurisdiction over any part of the range of a species covered by this agreement, or a State whose flag vessels, outside national jurisdictional limits but within the area of the agreement, are engaged in operations adversely affecting small cetaceans;

(g) "Secretariat" means, unless the context otherwise indicates, the Secretariat to this agreement. 2. Purpose and basic arrangements

2.1. The Parties undertake to cooperate closely in order to achieve and maintain a favourable conservation status for small cetaceans.

2.2. In particular, each Party shall apply within the limits of its jurisdiction and in accordance with its international obligations, the conservation, research and management measures prescribed in the Annex.

2.3. Each Party shall designate a Coordinating Authority for activities under this agreement.

2.4. The Parties shall establish a Secretariat and an Advisory Committee not later than at their first Meeting.

2.5. A brief report shall be submitted by each Party to the Secretariat not later than 31 March each year, commencing with the first complete year after the entry into force of the agreement for that Party. The report shall cover progress made and difficulties experienced during the past calendar year in implementing the agreement. 2.6. The provisions of this agreement shall not affect the rights of a Party to take stricter measures for the conservation of small cetaceans.

3. The Coordinating Authority

3.1. The activities of each Party shall be coordinated and monitored through its Coordinating Authority which shall serve as the contact point for the Secretariat and the Advisory Committee in their work.

4. The Secretariat

4.1. The Secretariat shall, following instructions provided by the meetings of the Parties, promote and coordinate the activities undertaken in accordance with Article 6.1 of this agreement and shall, in close consultation with the Advisory Committee, provide advice and support to the Parties and their Coordinating Authorities.

4.2. In particular, the Secretariat shall: facilitate the exchange of information and assist with the coordination of monitoring and research among Parties and between the Parties and international organizations engaged in similar activities; organize meetings and notify Parties, the observers mentioned in Article 6.2.1 and the Advisory Committee; coordinate and circulate proposals for amendments to the agreement and its Annex; and present to the Coordinating Authorities, each year no later than 30 June, a summary of the Party reports submitted in accordance with Article 2.5, and a brief account of its own activities during the past calendar year, including a financial report.

4.3. The Secretariat shall present to each Meeting of the Parties a summary of, *inter alia*, progress made and difficulties encountered since the last Meeting of the Parties. A copy of this report shall be submitted to the Secretariat of the Bonn Convention for information to the Parties of that Convention.

4.4. The Secretariat shall be attached to a public institution of a Party or to an international body, and that institution or body shall be the employer of its staff.

5. The Advisory Committee

5.1. The Meeting of the Parties shall establish an Advisory Committee to provide expert advice and information to the Secretariat and the Parties on the conservation and management of small cetaceans and on other matters in relation to the running of the agreement, having regard to the need not to duplicate the work of other international bodies and the desirability of drawing on their expertise.

5.2. Each Party shall be entitled to appoint one member of the Advisory Committee.

5.3. The Advisory Committee shall elect a chairman and establish its own rules of procedure.

5.4. Each Committee member may be accompanied by advisers, and the Committee may invite other experts to attend its meetings. The Committee may establish working groups. 6. The Meeting of the Parties

6.1. The Parties shall meet, at the invitation of the Bonn Convention Secretariat on behalf of any Party, within one year of the entry into force of this agreement, and thereafter, at the notification of the Secretariat, not less than once every three years to review the progress made and difficulties encountered in the implementation and operation of the agreement since the last Meeting, and to consider and decide upon:

(a) The latest Secretariat report;

(b) Matters relating to the Secretariat and the Advisory Committee;

(c) The establishment and review of financial arrangements and the adoption of a budget for the forthcoming three years;

(d) Any other item relevant to this agreement circulated among the Parties by a Party or by the Secretariat not later than 90 days before the Meeting, including proposals to amend the agreement and its Annex; and

(e) The time and venue of the next Meeting.

6.2.1. The following shall be entitled to send observers to the Meeting: the Depositary of this agreement, the secretariats of the Bonn Convention, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of European Wildlife and Natural Habitats, the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, the Convention for the Prevention of Marine Pollution from Land based Sources, the Common Secretariat for the Cooperation on the Protection of the Wadden Sea, the International Whaling Commission, the North-East Atlantic Fisheries Commission, the International Baltic Sea Fisheries Commission, the Baltic Marine Environment Protection Commission, the International Council for the Exploration of the Sea, the International Union for the Conservation of Nature and Natural Resources, and all non-Party Range States and Regional Economic Integration Organizations bordering on the waters concerned.

6.2.2. Any other body qualified in cetacean conservation and management may apply to the Secretariat not less than 90 days in advance of the Meeting to be allowed to be represented by observers. The Secretariat shall communicate such applications to the Parties at least 60 days before the Meeting, and observers shall be entitled to be present unless that is opposed not less than 30 days before the Meeting by at least one third of the Parties.

6.3. Decisions at Meetings shall be taken by a simple majority among Parties present and voting, except that financial decisions and amendments to the agreement and its Annex shall require a three-quarters majority among those present and voting. Each Party shall have one vote. However, in matters within their competence, the European Economic Community shall exercise their voting rights with a number of votes equal to the number of their member States which are Parties to the agreement.

6.4 The Secretariat shall prepare and circulate a report of the Meeting to all Parties and observers within 90 days of the closure of the Meeting.

6.5 This agreement and its Annex may be amended at any Meeting of the Parties.

6.5.1. Proposals for amendments may be made by any Party.

6.5.2. The text of any proposed amendment and the reasons for it shall be communicated to the Secretariat at least 90 days before the opening of the Meeting. The Secretariat shall transmit copies forthwith to the Parties.

6.5.3. Amendments shall enter into force for those Parties which have accepted them 90 days after the deposit of the fifth instrument of acceptance of the amendment with the Depositary. Thereafter they

shall enter into force for a Party 30 days after the date of deposit of its instrument of acceptance of the amendment with the Depositary.

7. Financing

7.1. The Parties agree to share the cost of the budget, with Regional Economic Integration Organizations contributing 2.5 per cent of the administrative costs and other Parties sharing the balance in accordance with the United Nations scale, but with a maximum of 25 per cent per Party.

7.2. The share of each Party in the cost of the Secretariat and any additional sum agreed for covering other common expenses shall be paid to the Government or international organization hosting the Secretariat, as soon as practicable after the end of March and in no case later than before the end of June each year.

7.3. The Secretariat shall prepare and keep financial accounts by calendar years. 8. Legal matters and formalities

8.1 This is an agreement within the meaning of the Bonn Convention, Article IV (4).

8.2 The provisions of this agreement shall in no way affect the rights and obligations of a Party deriving from any other existing treaty, convention, or agreement.

8.3 The Secretary-General of the United Nations shall assume the functions of Depositary of this agreement.

8.3.1 The Depositary shall notify all Signatories, all Regional Economic Integration Organizations and the Bonn Convention Secretariat of any signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the agreement, amendments, reservations and denunciations.

8.3.2 The Depositary shall send certified true copies of the agreement to all signatories, all non-signatory Range States, all Regional Economic Integration Organizations and the Bonn Convention Secretariat.

8.4. The agreement shall be open for signature at the United Nations Headquarters by 31 March 1992 and thereafter remain open for signature at the United Nations Headquarters by all Range States and Regional Economic Integration Organizations, until the date of entry into force of the agreement. They may express their consent to be bound by the agreement (a) by signature, not subject to ratification, acceptance or approval, or (b) if the agreement has been signed subject to ratification, acceptance or approval, by the deposit of an instrument of ratification, acceptance or approval. After the date of its entry into force, the agreement shall be open for accession by Range States and Regional Economic Integration Organizations.

8.5. The agreement shall enter into force 90 days after six Range States have expressed their consent to be bound by it in accordance with Article 8.4. Thereafter, it shall enter into force for a State and Regional Economic Integration Organization on the 30th day after the date of signature, not subject to ratification, acceptance or approval, or of the deposit of an instrument of ratification, acceptance, approval or accession with the Depositary.

8.6. The agreement and its Annex shall not be subject to general reservations. However, a Range State or Regional Economic Integration Organization may, on becoming a Party in accordance with Article

8.4 and 8.5, enter a specific reservation with regard to any particular species, subspecies or population of 5 small cetaceans. Such reservations shall be communicated to the Depositary on signing or at the deposit of an instrument of ratification, acceptance, approval or accession.

8.7. A Party may at any time denounce this agreement. Such denunciation shall be notified in writing to the Depositary and take effect one year after the receipt thereof. In witness whereof the undersigned, being duly authorized thereto, have affixed their signatures to this agreement. Done at New York on 17 March 1992, the English French, German and Russian texts of the agreement being equally authentic.

ANNEX Conservation and management plan

The following conservation, research, and management measures shall be applied, in conjunction with other competent international bodies, to the populations defined in Article 1.1:

1. Habitat conservation and management

Work towards (a) the prevention of the release of substances which are a potential threat to the health of the animals, (b) the development, in the light of available data indicating unacceptable interaction, of modifications of fishing gear and fishing practices in order to reduce by-catches and to prevent fishing gear from getting adrift or being discarded at sea, (c) the effective regulation, to reduce the impact on the animals, of activities which seriously affect their food resources, and (d) the prevention of other significant disturbance, especially of an acoustic nature.

2. Surveys and research

Investigations, to be coordinated and shared in an efficient manner between the Parties and competent international organizations, shall be conducted in order to (a) assess the status and seasonal movements of the populations and stocks concerned, (b) locate areas of special importance to their survival, and (c) identify present and potential threats to the different species. Studies under (a) should particularly include improvement of existing and development of new methods to establish stock identity and to estimate abundance, trends, population structure and dynamics, and migrations. Studies under (b) should focus on locating areas of special importance to breeding and feeding. Studies under (c) should include research on habitat requirements, feeding ecology, trophic relationships, dispersal, and sensory biology with special regard to effects of pollution, disturbance and interactions with fisheries, including work on methods to reduce such interactions. The studies should exclude the killing of animals and include the release in good health of animals captured for research.

3. Use of by-catches and strandings

Each Party shall endeavour to establish an efficient system for reporting and retrieving by-catches and stranded specimens and to carry out, in the framework of the studies mentioned above, full autopsies in order to collect tissues for further studies and to reveal possible causes of death and to document food composition. The information collected shall be made available in an international database.

4. Legislation

Without prejudice to the provisions of paragraph 2 above, the Parties shall endeavour to establish (a) the prohibition under national law, of the intentional taking and killing of small cetaceans where such regulations are not already in force, and (b) the obligation to release immediately any animals caught alive and in good health. Measures to enforce these regulations shall be worked out at the national level.

5. Information and education

Information shall be provided to the general public in order to ensure support for the aims of the agreement in general and to facilitate the reporting of sightings and strandings in particular; and to fishermen in order to facilitate and promote the reporting of by-catches and the delivery of dead specimens to the extent required for research under the agreement.

Appendix II: The Agreement on the Conservation of Small Cetaceans in the Baltic, North-east Atlantic, Irish and North Seas: Progress and Prospects. Document submitted to the 5th Meeting of Parties, 18-22 September 2006 (Document MOP5/Doc. 24 (O)).

The Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas: Progress and Prospects

A Report to WWF-Germany

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Overview

This report seeks to provide a concise summary of the progress advanced to date under ASCOBANS in the pursuit of its primary conservation and management objectives from a legal perspective, with particular emphasis on the key measures prescribed in relation to habitats. To this end, the policies advanced in respect of the release of harmful substances, by-catches and disturbances within the Agreement area are discussed, together with an analysis of the potential impediments to the continued effectiveness of ASCOBANS in the form of regulatory competitors. In addition, the views of a number of well-placed experts in the field were sought, before a series of recommendations to improve the operation of the Agreement are suggested.

Introduction

The Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas (“ASCOBANS”) is a regional instrument developed under the aegis of Article IV(4) of the Convention on the Conservation of Migratory Species of Wild Animals 1979 (“CMS” or “Bonn Convention”). The Bonn Convention was adopted in the light of Recommendation 32 of the Stockholm Conference on the Human Environment 1972, which observed the particular vulnerability of migratory species to anthropogenic threats and called for the conclusion of a distinct multilateral treaty to address these issues. The CMS has been in force since November 1983 and there are currently some 98 parties to the Convention.

As part of the remit of the Bonn Convention, the parties are to endeavour to conclude a series of subsidiary agreements under Articles IV(3) and IV(4), which aim to generate specific policies to mitigate threats to migratory species.

The elaboration of such an instrument in respect of small cetaceans of the North and Baltic Seas was first instigated at the first Conference of the Parties (CoP) of the Bonn Convention in 1985, at which juncture a Working Group was established to begin work on drafting a suitable agreement. A particular catalyst for the development of such an Agreement was the widespread concern over the significantly diminished stocks of harbour porpoises in the Baltic Sea region. However, an inability to arrive at a workable consensus in terms of content and scope led to the Working Group being disbanded in 1988. The process was retrieved following the adoption of a Memorandum of Understanding on Small Cetaceans of the North Sea at the Third Ministerial Conference of the North Sea in 1990, which provided a fresh opportunity elaborate a regional programme of action, with the parties observing a close link between the populations of small cetaceans of the North and the Baltic Seas. This led to a further series of negotiations, culminating in the conclusion of the ASCOBANS agreement at the third CoP of the CMS in 1991. ASCOBANS opened for signature in 1992 and formally entered into force on 29 March 1994.

ASCOBANS itself extends to “the marine environment of the Baltic and North Seas”¹ and participation in the agreement is open to any of the Range States of these areas – formal membership of the CMS is

¹ Article 1(2)(b). The original area envisaged by the Agreement was defined as being “delimited to the north-east by the shores of the Gulfs of Bothnia and Finland; to the south-west by latitude 48°30' N and

not a prerequisite. There are currently ten parties to the Agreement, namely Belgium, Denmark, Finland, France, Germany, Lithuania, the Netherlands, Poland, Sweden and the UK. In addition, the European Community is also eligible to participate by virtue of Article 1(2)(d) of the Agreement, which permits Regional Economic Integration Organisations to join. To date, the EC has signed the Agreement, but has yet to formally ratify it.

The ASCOBANS Agreement currently applies to *small* cetaceans, which are defined in the Agreement text as “any species, subspecies or population of toothed whales Odontoceti, except the sperm whale *Physeter macrocephalus*”². In line with the recent geographical expansion of ASCOBANS, it appears highly likely that the scope of the Agreement may ultimately be extended to include all species of cetaceans resident in these waters, so as to link more effectively with ACCOBAMS, which applies to a more extensive list of species.

As with most contemporary multilateral environmental agreements, ASCOBANS has elaborated a distinct institutional structure consisting of an Advisory Committee – charged with providing advice and information to the Secretariat and the parties – as well as a Secretariat, which discharges the administrative responsibilities of the Agreement. The decision-making organ of ASCOBANS is the Meeting of the Parties (MoP), held on a triennial basis.

Conservation and Management Obligations

Under Article 2(1) of the Agreement, ASCOBANS aims to facilitate co-operation to achieve and maintain a “favourable conservation status” for all cetaceans in the Agreement area. The concept of a “favourable conservation status” is not defined within the Agreement text, and is widely interpreted as carrying the same meaning as that advanced in Article 1(1)(c) of the CMS, which seeks to maintain the species in question on a long-term basis as a viable component of its ecosystem, to ensure that its range is not reduced, to ensure sufficient habitat to maintain the species on a long-term basis and to facilitate population numbers at historic coverage levels.

Annexed to the ASCOBANS text is a concise conservation and management plan, which essentially requires the parties to apply “in conjunction with other competent international bodies” five broad conservation, research and management measures, with a particular emphasis on habitat conservation and management.

Habitat conservation and management – progress to date

The ASCOBANS conservation and management plan identifies four key areas of work in relation to habitat conservation and management, namely:

- Prevention of the release of substances which are a potential threat to the health of the animals.
- Development, in the light of available data indicating unacceptable interaction of modifications of fishing gear and fishing practices in order to reduce by-catches and prevent fishing gear from getting adrift or being discarded at sea.
- Effective regulation to reduce the impact on the animals of activities which seriously affect their food resources.
- Prevention of other significant disturbance, especially of an acoustic nature.

(i) Release of harmful substances

longitude 5°W; to the north-west by longitude 5°W and a line drawn through the following points: latitude 60°N/longitude 5°W, latitude 61°N/longitude 4°W, and latitude 62°N/longitude 3°W; to the north by latitude 62°N; and including the Kattegat and the Sound and Belt passages but excluding the waters between Cape Wrath and St Anthony Head”: *ibid*. The Agreement area was extended in 2003 to include the waters of Ireland, Spain, Portugal and Morocco. Having only applied previously to the Baltic and North Seas, ASCOBANS was also renamed at this juncture.

² Article 1(2)(a).

Pollution reduction was first addressed at the First MoP in 1994, with the adoption of a Resolution on the Implementation of the Conservation and Management Plan. At this juncture the parties established pollution reduction as a “priority action” for the initial operational period of the Agreement and charged the Advisory Committee with undertaking an assessment of pollutants likely to adversely affect small cetaceans and to provide advice to the parties on management measures and future research needs. In addition, the parties were “encouraged” to implement existing commitments, such as those advanced under the Baltic Marine Environment Protection Commission (HELCOM) and the Commission for the Protection of the Environment of the North-East Atlantic (OSPAR), with the Advisory Committee responsible for standardising analytical and reporting procedures in the short-term.

At the first meeting of the Advisory Committee, it was noted that consideration of this issue was pending under the auspices of the International Whaling Commission (IWC), the North Atlantic Marine Mammal Commission (NAMMCO) and the International Council for the Exploration of the Sea (ICES), and the possibility of establishing a working group on pollutants was mooted. However, concerns over budgetary implications meant that a decision on this was deferred until later that year. At the second Meeting of the Advisory Committee an Inter-sessional Working Group was duly established, with the remit of assessing the pollutants likely to adversely affect small cetaceans; conclude an inventory of on-going and planned research activities on this issue and suggest steps to be taken to meet research needs; provide the scientific basis for advice to the parties on this matter; explore the possibilities of promoting IWC recommendations in the Agreement area; assess needs of standardisation in the sampling, storage, analysis and reporting of pollution issues and the co-ordination of such studies.

The Inter-sessional Working Group had a rather inauspicious start, since all its members aside from the Chairman had withdrawn by the time of the third meeting of the Advisory Committee. At this juncture it was noted that the IWC had conducted a significant workshop on the issue and that OSPAR and ICES had also been considering the effects of pollutants on marine mammals. Closer co-operation between ICES and ASCOBANS was established at this point.

At the fourth Meeting of the Advisory Committee, Dr Reijnders presented a report on pollutants and cetaceans, which discussed progress within the IWC on this issue. The IWC had identified harbour porpoises, white whales and bottlenose dolphins as species requiring particular research, and ASCOBANS was well-placed to examine pollution issues with regard to harbour porpoises. A draft Resolution was produced and at the Second MoP a Resolution on management and further research needs to address the effects of pollutants on cetacean health was adopted, noting the role of other IGOs in this field and agreeing to consider ways of facilitating the development of research in the cause-effect of chemical pollutants on the health of harbour porpoises, as well as striving within OSPAR and HELCOM for a “significant reduction of pollutant emissions and sources in the ASCOBANS area”, particularly those where levels in small cetaceans exceeded those associated with adverse effects.

At the fifth meeting of the Advisory Committee, four areas for further action were identified – pollutant review, liaison with other bodies, research and flags of concern. In terms of review, the Secretariat was requested to co-ordinate the collection of relevant papers and reports on contaminant levels and biomarkers in small cetaceans, following which the Working Group would produce an annual report complete with pertinent recommendations. Likewise, the competence of other bodies – particularly OSPAR – in relation to pollutant control was observed, and the Advisory Committee resolved to build a strong working relationship with other multilateral bodies in this respect. In relation to research, the Advisory Committee pledged to support the work of the IWC by providing material from both parties and non-parties to ASCOBANS in the Agreement area. Finally, the identification of “flags of concern” was mooted, whereby if pollutant levels passed a certain level in cetacean populations, suitable action could be initiated – as is the case in by-catch mitigation policy. The potential complexity of this initiative meant that it was to be kept “under review” as a possible course of action – although it has not been revisited since by the parties to date.

The sixth meeting of the Advisory Committee noted with concern that polybrominated compounds and organotin compounds were being detected in cetaceans in the Agreement area. It was also observed that the IWC was to institute a programme of research on harbour porpoises in the Baltic and North Seas, with particular emphasis on measuring levels of organochlorines, and that ASCOBANS Range States were well placed to assist in this initiative. The Advisory Committee resolved to inform other

bodies – especially OSPAR and HELCOM – of its identification of new chemical compounds affecting cetaceans, so that this may also be taken into consideration in these fora.

At the seventh meeting of the Advisory Committee a report was presented detailing relevant publications on pollutants and small cetaceans, noting that heavy metals and organochlorines continued to be present in tissue samples. Research also concluded that contaminant levels in the Baltic Sea were a “serious cause for concern”, while a Resolution on the Further Implementation of ASCOBANS adopted at the Third MoP in 2000 called for the parties to continue research into protected areas and to develop research on novel contaminants of particular concern. Similar reports were presented at the eighth meeting and also at the ninth meeting, where acoustic pollution was given particular attention. Significant literature reviews were also presented at the tenth, eleventh (at which it was observed with some alarm that “more exotic chemical compounds were being discovered in cetacean tissues”), twelfth and thirteenth meetings of the Advisory Committee. Since the ninth meeting, the consideration of pollutants has become amalgamated with consideration of noise pollution and disturbance.

At the Fourth MoP convened in 2003, a Resolution on the Further Implementation of ASCOBANS noted developments within HELCOM, OSPAR and the EC addressing chemical pollutants and resolved to support research efforts in this respect, especially in relation to the presence of flame retardants and endocrine-disrupting chemicals in the Agreement area.

(ii) By-catch mitigation

There appears to be little doubt that incidental mortality is the most significant causal factor in the depletion of stocks of small cetaceans in the Baltic and North Seas. In the North Sea, considerable by-catch problems are raised by the widespread use of bottom-set gillnets, which poses a particular risk to porpoises as shown by high rates of incidental capture in Norwegian, Swedish, Danish and UK waters.³ Elsewhere, pelagic trawl fisheries in the North Sea, English Channel, Celtic Shelf and Bay of Biscay have caused substantial cetacean mortality, with pilot whales, white-sided, white-beaked and common dolphins considered to be most vulnerable to incidental capture.⁴ The continued use of driftnets in salmon fisheries also poses a considerable threat to cetaceans located in the North Sea and surrounding waters.⁵

The situation in the Baltic Sea is also bleak. Only one species of cetacean is commonly resident in these waters, namely the harbour porpoise. Population levels of harbour porpoises in this region are a cause for serious concern, with scientists having observed a steady decline in numbers since the 1960s.⁶ Incidental mortality in fishing gear is universally believed to pose the most pressing threat to this species, while the depleted numbers of harbour porpoises in the Baltic Sea at present has been largely attributed to the historically high levels of by-catches of non-target species in this area.⁷ Estimates suggest that in Swedish and Polish waters the use of driftnets accounts for a significant proportion of the total by-catch of porpoises,⁸ with trawl fishing and the use of bottom-set gillnets also posing a significant risk of entanglement throughout the Baltic Sea.

To date, the ASCOBANS parties have examined the by-catch issue in considerable detail, and have adopted a number of Resolutions aimed at facilitating the development of a co-ordinated policy towards mitigating incidental cetacean mortality in the Agreement area. Indeed, by-catch mitigation can objectively be considered to be the policy area that has attracted the greatest amount of attention under ASCOBANS to date. At the First MoP held in 1994, a Resolution on the Implementation of the Conservation and Management Plan was adopted in which a number of priority actions were

³ Thomas A. Jefferson and Barbara E. Curry, “A Global Review of Porpoise (*Cetacea: Phocoenidae*) Mortality in Gillnets” (1994) 67 *Biological Conservation* 167, at 168. Porpoises are considered to be especially susceptible to by-catches in this equipment due to their feeding and foraging habits.

⁴ Kristin Kaschner, *Review of Small Cetacean Bycatch in the ASCOBANS Agreement Area and Adjacent Waters – Current Status and Suggested Future Actions* (ASCOBANS, 2003) at 30.

⁵ *Ibid.*

⁶ See P. Berggren, P. R. Wade, J. Carlström and A. J. Reid, “Potential Limits to Anthropogenic Mortality of Harbour Porpoises in the Baltic Region” (2002) 103 *Biological Conservation* 313, at 313.

⁷ See Richard Caddell, “By-Catch Mitigation and the Protection of Cetaceans: Recent Developments in EC Law” (2005) 8 *Journal of International Wildlife Law and Policy* 241, at 251.

⁸ Berggren *et al.*, note 6 *supra*, at 320.

established for the years 1995-7, including the “reduction of direct interactions with fisheries”. To this end, the parties agreed to establish independent observer schemes to assess the most significant by-catches, co-operate to support research into mitigating the by-catch problem and were “encouraged” to introduce regulations and other management measures to reduce the levels of incidental catches of small cetaceans. In addition, the ASCOBANS Advisory Committee was to gather and assess information on by-catch reporting schemes from all areas and provide guidelines on best practice, determine an acceptable threshold for cetacean by-catches in fisheries and report these findings at the next MoP.

As far as the mitigation of incidental mortality was concerned, the most pressing task assigned to ASCOBANS in the early years of the Agreement was to establish viable by-catch limits for fisheries in the Baltic and North Seas. Following the First MoP, the ASCOBANS Advisory Committee held its inaugural meeting in March 1995, with the by-catch issue occupying a prominent position on the agenda. Pursuant to the Resolution adopted at the MoP, the Advisory Committee began to examine the issue of “unacceptable interactions” between fisheries and small cetaceans,⁹ and a designated Working Group was established to consider possible safe limits and options for by-catch. At this Meeting it was observed that a joint Canadian-US project in the Bay of Fundy had calculated that a by-catch limit of 2% of the overall population represented the upper limits of acceptability, and a further consideration of this issue was placed on the agenda for the Second Meeting of the Advisory Committee, scheduled later in the year.

At the Second Meeting of the Advisory Committee, it was observed that in May 1995 the IWC had stated at its Annual Meeting that incidental catches of 1% of the estimated abundance of a cetacean population is the precautionary level beyond which concerns about the sustainability of anthropogenic removals should be raised, and that by-catch rates should not exceed 2% of the population. This was considered to be “highly relevant” to the discussions of by-catches in the ASCOBANS area, especially since the SCANS project had finalised a figure of 357,000 porpoises as being resident in the areas covered by the survey. As such, the Advisory Committee considered that the long-term aspirational goal of ASCOBANS should be to ensure that no anthropogenic removals of small cetaceans occur within the Agreement area at all, but that in the short- to medium-term a target of 1% should be seen as being more realistic. At the Third Meeting in November 1996, the Advisory Committee reiterated the policy of the IWC in relation to acceptable anthropogenic removals of cetaceans, and noted that current research estimated by-catches in the North Sea to represent approximately 1.7% of the population, while in certain individual areas under the auspices of ASCOBANS, rates of incidental capture were as high as 2.5% or more. Due to a lack of definitive knowledge about the stocks of small cetaceans resident in the North Sea, despite falling below the upper 2% limit recognised by the IWC, it was impossible in practice to ascertain whether the rate of by-catch in this particular area was sustainable or otherwise.

By 1997, the Working Group on By-catch had started to develop a series of distinct management objectives, which were ultimately endorsed by the ASCOBANS parties at the Second MoP. The elaboration of mitigation targets and strategies was deemed to be of particular importance, especially since investigations conducted under the auspices of ASCOBANS had discovered that the estimated annual rate of by-catches of harbour porpoises on the Celtic Shelf was approximately 6% of the population, and thereby substantially exceeded the parameters recommended by the IWC and the scientific community.¹⁰ As such, in a specific Resolution on Incidental Take of Small Cetaceans, the parties agreed that the aim of ASCOBANS should be “to restore and/or maintain biological or management stocks of small cetaceans at the level they would reach when there is the lowest possible anthropogenic influence”, with an immediate short-term objective being to restore and/or maintain stocks at 80% or more of the carrying capacity. The mid- to long-term objective, in terms of by-catch mitigation, was stated as being to eradicate all anthropogenic removals of small cetaceans “within some

⁹ The ASCOBANS conservation and management plan requires the parties to work towards mitigating incidental catches “in the light of available data indicating unacceptable interaction”. The Advisory Committee was therefore tasked with ultimately defining a mutually acceptable numerical limit on by-catches of small cetaceans in the Agreement waters.

¹⁰ In November 1997 the Working Group on By-catch presented a report entitled “Cetacean By-Catch Issues in the ASCOBANS Area”, in which aside from emphasising the high levels of incidental mortality on the Celtic Shelf, also estimated that some 4450 harbour porpoises were taken annually as by-catches in and around the southern and central North Sea.

yet-to-be-specified time frame”, with the Advisory Committee tasked with developing a long-term policy to achieve this aim.

Furthermore, the concept of an “unacceptable interaction” for the purposes of the ASCOBANS conservation and management plan was established “for the present” as being, “in the short term, a total anthropogenic removal above 2% of the best available estimate of abundance within an appropriate management region”, although it was recognised that the 2% limit was not a static target and could be revised downwards if available evidence suggested that a particular population of small cetaceans had been severely depleted. Distinct courses of action were recommended for both the North and Baltic Seas, with the competent authorities requested to take measures to ensure that by-catches of harbour porpoises in the central and southern North Sea were reduced “as soon as possible” to levels below 2% of the current population estimate.¹¹ In relation to the Baltic Sea, parties and Range States were invited to work in unison with the Advisory Committee to develop a recovery plan for the harbour porpoise by 2000, with the aim of identifying human interactions that constitute a potential threat to this species.

A further Resolution adopted at the Second MoP on the Activities of the ASCOBANS Advisory Committee 1997-2000 requested the Committee to “develop, by 1999, precise conservation objectives for Parties for small cetacean populations in the ASCOBANS area that will enable decisions on unacceptable levels of by-catch and on monitoring programmes to be refined”, as well as addressing, *inter alia*, incidental catches of small cetaceans in these waters. To this end, the Advisory Committee was assisted by the creation of a joint working group between ASCOBANS and the IWC in 1998 to monitor stocks of harbour porpoises in the North Sea and adjacent waters. Between the Second MoP and the Third MoP, held in 2000, the Advisory Committee continued to discuss the by-catch issue, with a particular emphasis on the development of potential mitigation measures.¹²

Nevertheless, while the Advisory Committee continued to examine the 2% by-catch limit endorsed at the Second MoP, by 1999 it was becoming increasingly apparent within the IWC/ASCOBANS Working Group on Harbour Porpoises that even if annual by-catches of this species were reduced to 2% of the estimated population, this would still be insufficient to fulfil the interim ASCOBANS objective of monitoring or restoring populations to 80% of their carrying capacity, and the threshold of “unacceptable interaction” had therefore been set at an unsustainable level. As a result of these concerns, the by-catch mitigation policies established at the Second MoP were substantively revised at the Third MoP, when a further Resolution addressing incidental catches of cetaceans was adopted by the parties.

To this end, the Resolution redefined “unacceptable interactions” in accordance with the most recent scientific evidence as constituting 1.7% of the best available estimate of abundance, while remaining mindful that the 2% limit set three years previously had been considered to be a viable target at the time. As such, the parties observed that this new threshold was ultimately subject to the results of future research and may itself require downwards revision in subsequent MoPs.¹³ Indeed, the parties also noted that if a specific population were to become severely depleted, or if there was significant

¹¹ It was also recommended that the relevant parties and Range States were to make estimates of by-catches in set-net and pelagic trawl fisheries in the North Sea – especially in the most northerly areas, where a dearth of scientific knowledge was most acute – and to provide an estimate of incidental catches of harbour porpoises in the Skagerrak and Kattegat Seas and Baltic Belt.

¹² Prior to the Seventh Meeting of the Advisory Committee it was suggested that a workshop should be held on the by-catch issue, and that Dr. Andrew Reid of Duke University be commissioned to write a paper reviewing mitigation measures that could be employed in the ASCOBANS area. However, this proposal was tabled too late for effective action to be taken in this regard.

¹³ In fact, the tone of the Resolution suggests that the 1.7% would indeed be adjusted in the future, referring to this interpretation of an “unacceptable interaction” as being an “interim definition in respect of findings of current and future research in the ASCOBANS area and in adjacent waters where there may be conservation implications for cetacean populations within the ASCOBANS area”. The 1.7% limit was also, according to the Resolution, predicated on the basis that there was no uncertainty in any of the parameters of the IWC/ASCOBANS Working Group’s calculations (which had been adopted by the IWC in 1999 at its Fifty-first Meeting) and that if a degree of uncertainty is factored into this evaluation, then the “maximum annual by-catch must be less than 1.7% to ensure a high probability of meeting the ASCOBANS objective”.

uncertainty as to the effects of by catches on a particular species, then an anthropogenic removal of “much less than 1.7%” may be considered unacceptable. Expressing regret that the 2% limit recommended at the previous MoP had not been universally adhered to, the Resolution emphasised that the “immediate precautionary objective” of the ASCOBANS parties should be to reduce by-catches to less than 1% of the best available population estimates and recommended that the competent authorities “take precautionary measures” to ensure that total anthropogenic removals of marine mammals in the Agreement area were reduced as soon as possible to acceptable levels.¹⁴ In addition, with regard to harbour porpoises in the central and southern North Sea, it was recommended that total anthropogenic removals were “reduced without delay by competent authorities, regardless of the time needed to establish better population data and to calculate an acceptable removal level”. In relation to the Baltic Sea, parties and Range States were requested to collect data on fishing efforts and to continue to work in conjunction with the Advisory Committee to develop a recovery plan for the Baltic harbour porpoise, with a particular emphasis on by-catch mitigation. A further Resolution adopted at the Third MoP on the Activities of the ASCOBANS Advisory Committee called upon the Committee to continue to examine the by-catch issue on an annual basis, to review in 2002 the state of knowledge on incidental catches in the Agreement area and formulate advice to parties, Range States and other relevant authorities on appropriate mitigation measures.

Between the Third MoP and the Fourth MoP, held in 2003, the by-catch issue continued to occupy a prominent position on the ASCOBANS agenda, with considerable attention given to an initiative that had been on-going since the Second MOP, namely the conclusion of a recovery plan for the Baltic harbour porpoise. In February 1998, the ASCOBANS Baltic Discussion Group (ABDG) was established to facilitate the drafting of a recovery plan, but due to problems of funding, timing and venue little progress had been made on this project. In January 2001, the ABDG met in Denmark to examine the various data available on incidental catches in the Baltic Sea area, concluding that the relevant scientific evidence clearly showed that this species is in “serious danger” and that “as a matter of urgency every effort should be made to reduce by-catches towards zero as quickly as possible”.

In January 2002, a workshop was convened in Jastarnia, Poland, with the aim of developing a substantive recovery plan for the Baltic harbour porpoise.¹⁵ Following the workshop, a draft instrument was produced and subsequently submitted to the Ninth Meeting of the Advisory Committee, which ultimately revised and finalised the recovery plan. Scientific analysis of the by-catch issue revealed that in order for ASCOBANS to achieve its interim objective of restoring the population of Baltic harbour porpoises to at least 80% of its carrying capacity level, incidental mortality would have to be reduced to a maximum of two individuals per year.¹⁶ As such, the objectives of the Jastarnia Plan were stated as being to implement precautionary management measures immediately in order to reduce by-catches to this minimal rate, to improve knowledge of key issues as quickly as possible and to develop more refined recovery targets as new information becomes available on population status, by-catches and other threats.

In essence, the Jastarnia Plan consists of a series of recommendations aimed at regenerating the heavily depleted stocks of harbour porpoises in the Baltic Sea area, based on reducing incidental mortality, in conjunction with effective research and monitoring of anthropogenic factors affecting this species, the establishment of marine protected areas and raising public awareness of the conservation needs of

¹⁴ The use of the term “marine mammals”, as opposed to referring to “small cetaceans” or a distinct species such as the harbour porpoise, is rather striking. This is certainly a curious phrase for the ASCOBANS parties to employ in this particular instance, especially since the Agreement text is very precise as to the species that are covered by this instrument. It must be considered highly unlikely that the parties intended these by-catch provisions to apply to non-Agreement species such as pinnipeds and larger whales and is probably a drafting oversight, especially since no reference to a wider class of “marine mammals” appears to have been made in any other substantive Resolution adopted by ASCOBANS to date. Indeed, while such measures may also have a vicariously beneficial effect upon the conservation of other species resident in these waters, there is no explicit statement in the ASCOBANS text as to its potential to improve the environment for non-Agreement species as is found in certain other instruments concluded under the CMS umbrella, such as AEW and EUROBATS.

¹⁵ This was originally intended to have been held in September 2001, but a lack of progress on this initiative meant that the workshop was ultimately deferred until 2002.

¹⁶ *ASCOBANS Recovery Plan for Baltic Harbour Porpoises* (ASCOBANS, 2002; hereinafter the “Jastarnia Plan”), at 5

Baltic harbour porpoises.¹⁷ Endorsing the findings of the ABDG, the Jastarnia workshop concluded that “by-catch reduction was the highest priority for Baltic harbour porpoise recovery, and that measures to achieve such reduction should begin immediately”,¹⁸ with particular importance placed on the need to work closely with the fishing industry throughout the implementation process. To this end, the Jastarnia Plan recommended that the most effective course of action would be to reduce the use of fishing gear known to cause high levels of cetacean by-catches in the Baltic Sea area, namely driftnets and bottom-set gillnets. Allied to this policy, the recovery plan seeks to encourage the use of alternative fishing gear, requiring trials of fish traps, pots and longlines to be initiated “immediately”, with the long-term objective being to replace gillnets with more selective equipment. In addition, the compilation of a standard database was also necessary in order to determine the full extent of the fishing effort in the Baltic Sea. Finally, it was recommended that a short-term programme of acoustic deterrent devices or “pingers” should be implemented in the Baltic Sea for an initial period of two to three years, under which the use of such appliances should be mandatory in specific areas and fisheries identified as presenting the greatest by-catch threat to small cetaceans.

In June 2002, the Advisory Committee formally endorsed an amended version of the recovery plan, and “strongly commended” it to the parties. As such, the recommendations advanced by Jastarnia Plan were to be “implemented without delay” and subsequently re-evaluated on a regular basis. The Advisory Committee then considered how to implement the recovery plan and, to this end, suggested a series of outline steps. Firstly, a series of activities were identified as constituting “top priority” which would require immediate implementation, namely to establish an Advisory Group to identify high risk areas for by-catch mitigation; to initiate a modelling exercise to measure prospective pinger activity under the conditions prevalent in the Baltic Sea; to distribute the recovery plan to any relevant bodies exercising competence over the marine environment in the Baltic Sea area; and to conduct a review of experiments conducted to date with alternative fishing gear and practices that may constitute viable replacements for driftnets and gillnets. In addition, a separate set of measures was identified as a “high priority” which should be implemented without delay, namely liaising with competent fishing authorities to ensure consistent practice in the application of the recovery plan and developing and implementing a strategy to persuade the fishing industry to support these initiatives. Further measures were identified as requiring a longer-term approach, namely improving the collection of data on by-catches and evaluating the effect of acoustic deterrent devices on the marine environment of the Baltic Sea, which were to be implemented “as soon as feasible”. By April 2003, some progress had been made on a number of these implementation priorities, pending the submission of the recovery plan to the ASCOBANS parties for adoption at the Fourth MoP, scheduled later that year.¹⁹

At the Fourth MoP the Jastarnia Plan was formally endorsed by the parties, and parties and Range States in the Baltic Sea region were invited to continue the implementation of the recovery plan.²⁰ As a result of the positive developments achieved in relation to the Baltic Sea, attention began to focus on stocks of harbour porpoises in the North Sea, where there was a growing appreciation of the need to introduce a similar initiative in order to mitigate the significant levels of incidental cetacean mortality. In March 2002 at the Fifth International Conference on the Protection of the North Sea, the Bergen Declaration was issued in which the need for enhanced selectivity in fishing activities was emphasised.²¹ In particular, the Bergen Declaration stated that the agreed aim of the Ministerial representatives was to reduce by-catches of harbour porpoises to levels below 1.7% of the best population estimate and set a “precautionary objective to reduce by-catches of marine mammals to less than 1% of the best population estimate”,²² with the development and adoption of a recovery plan for

¹⁷ Nevertheless, the by-catch mitigation measures are explicitly stated to be the primary feature of the Jastarnia Plan, and “none of the recommendations . . . should be viewed as a higher priority than the bycatch reduction initiatives”: Jastarnia Plan, at 13.

¹⁸ *Ibid.* at 8.

¹⁹ However, progress on this rather ambitious set of implementation targets had been somewhat mixed, and a number of the most important priority actions had not been achieved. In particular, the Advisory Group had yet to be established and it was proving difficult to secure funding for the collation of data on the Baltic fishing effort.

²⁰ Resolution No. 6, Incidental Take of Small Cetaceans.

²¹ Ministerial Declaration of the Fifth International Conference on the Protection of the North Sea, at para. 28. The Bergen Declaration is reproduced at www.odin.dep.no/filarkiv/156076/Engelsk.pdf.

²² Para. 29.

North Sea harbour porpoises to be conducted “as soon as possible”.²³ As such the Resolution on Incidental Take of Small Cetaceans recommended that parties and Range States, together with the Advisory Committee, were to work in conjunction with other relevant bodies, including the EC, to develop a similar instrument to the Jastarnia Plan in relation to stocks of harbour porpoises in the North Sea.

The need to concentrate by-catch mitigation efforts in regions within the ASCOBANS area other than the Baltic Sea was considered to be especially pressing, since the recommendations adopted at the Third MoP “have probably not been fulfilled”. As such, the parties adopted a specific Resolution, in which the development of a recovery plan for harbour porpoises of the North Sea was endorsed,²⁴ taking “a holistic and inclusive approach to the development of such a plan”. Some initial preparations for a distinct recovery plan for harbour porpoises in the North Sea had already been developed by the Advisory Committee at its Ninth and Tenth Meetings, and an outline timetable was established for this initiative, annexed to the Resolution. To this end, in 2003 a preparatory scientific group was to be convened, along with a steering group that was tasked with guiding the development of the recovery plan and providing a forum for the interests of all parties in question to be considered. The recovery plan itself was to be formulated throughout 2004, and a draft version would be considered by the Advisory Committee in 2005, with a provisional deadline for June 2005 set for finalising this instrument.

Since the Fourth MOP, progress has been made in elaborating the North Sea recovery plan and in implementing the Jastarnia Plan in the Baltic Sea. With regard to the North Sea recovery plan, a draft version of this instrument has been produced and is currently being finalised by the Advisory Committee. At this juncture there is some disagreement between the parties as to how this initiative should proceed, especially in relation to scope.²⁵ As such, the completion of the project has since been postponed and a small drafting group established to consider anthropogenic threats to harbour porpoises in the North Sea, as well as potential by-catch mitigation measures, with the aim of producing a status report in time for the next MoP in September 2006. As far as the Jastarnia Plan is concerned, despite some initial inactivity a designated Jastarnia Group has been established in conjunction with UNEP to evaluate progress on this initiative. In March 2005 the Group held its inaugural meeting at which a number of recommendations were made, calling for the expansion of research on trials of pingers and alternative fishing gear, which were subsequently endorsed by the Advisory Committee at its Twelfth Meeting. A second meeting of the Jastarnia Group was held in February 2006, at which it was observed that financial constraints as well as the non-cooperation of fishermen (due primarily to a lack of knowledge of the aims of the new initiatives advanced by the both ASCOBANS and the EC and concerns over the implications for their livelihoods – with many elements of the fishing industry proving more cooperative once these issues were explained) had to some extent affected progress on these initiatives.

As by-catches represent the biggest threat to small cetaceans in the Agreement area it is vitally important that this issue is addressed as a matter of the very highest priority. To date, ASCOBANS has demonstrated a keen awareness of this issue and the elaboration of distinct recovery plans for the harbour porpoise in the Baltic and North Seas that prioritise by-catch mitigation is a positive development. However, the current status of stocks of harbour porpoises in the Baltic Sea area in particular is a serious cause for concern. At this point, the Jastarnia Plan is still at a very early stage in its development, hence any discussion of its potential ability to effectively address the conservation

²³ Para. 30

²⁴ Resolution No.10, Recovery Plan for Harbour Porpoise in the North Sea. Unlike the Jastarnia Plan – which was concluded prior to the recent round of EU enlargement – this initiative could not be advanced solely under the auspices of ASCOBANS and offers an indication of the potential difficulties that the Agreement Secretariat will face in advancing far-reaching policy objectives in waters under the direct jurisdiction of the EU. As such, in developing the recovery plan “full account should be taken of the requirements of the EU Treaty”, with ASCOBANS taking “a leading role” rather than exercising full responsibility over this initiative.

²⁵ In particular, some parties are concerned that the recovery plan should have a narrower remit and focus on individual stocks of small cetaceans, instead of addressing the North Sea as a whole, while others believe that this initiative should focus on areas in which populations of harbour porpoises are in need of recovery.

needs of the Baltic harbour porpoise must be preliminary in nature. Nevertheless, even at this initial stage, a series of problems have already been reported by the various stakeholders in the region.

To date, an effective evaluation of the by-catch issue in the region has proved difficult to implement in practice, primarily due to a lack of funding as well as problems in sourcing suitably experienced experts in gear technology to gauge this issue. Likewise, experience of the use of pingers has been somewhat variable. The Jastarnia Plan has recommended that the use of pingers could prove to be an effective measure to address cetacean by-catches; however this was not intended to constitute a permanent solution to the by-catch problem – not least since the effects of such devices on cetaceans was still the focus of significant on-going research. Nevertheless, recent EC legislation in the form of Regulation 812/2004 has pre-empted this approach and the new law requires a graduated mandatory phase-in of pingers in Community waters, extending to the Baltic Sea in the coming months. This has meant that research efforts on the effects of pingers in the marine environment has had to be accelerated in recent months, and there is also evidence to suggest that research and monitoring activities have also suffered since the adoption of this Regulation, with the elements from within the fishing industry having withdrawn their support for such projects due to the unpopularity of the new EC measures.

In addition to this, progress under the Jastarnia Plan has also suffered from a lack of data on the bottom-set gillnet fishing effort in this area, and the development of alternatives to driftnets and bottom-set gillnets has also yielded distinctly modest results. Also, to date the overwhelming majority of attention focussed under the Jastarnia Plan towards the conservation of Baltic harbour porpoises has been directed on by-catches (although as noted above, this is the stated priority of the recovery plan), while progress on other issues – most notably marine protected areas – has been slow, and the identification of potential protected areas has been rather variable among the various parties.

A particular impediment to the successful implementation of the Jastarnia Plan appears to be a chronic lack of funding, which has had a particular effect on the ability of the parties to advance initiatives aimed at raising public awareness of the conservation needs of the Baltic harbour porpoise and disseminating information about the various activities of ASCOBANS. In recent years the flagship promotion event under the auspices of the Agreement has been the International Day of the Baltic Harbour Porpoise – however this day is not yet marked by special events in *all* of the current parties and Range States of this species. Likewise, certain parts of the Baltic Sea region have encountered particular difficulties in promoting public awareness of issues in relation to this species. For instance, Polish initiatives have been stymied by a lack of official support – a considerable problem since Puck Bay has been identified as an area of high by-catch. There have also been problems in funding and facilitating the translation of promotional literature into the Baltic languages as well as Russian, which is very widely spoken (often as a first language) within the region.

Difficulties have also been encountered in relation to defining the exact scope of the various measures adopted to date. This has been particularly marked in relation to the current EC legislation (although the wording of the Jastarnia Plan is itself ambiguous in places) with the lack of a precise definition of terms such as “driftnet” creating the possibility of loopholes within the law that may be exploited to circumvent well-meaning by-catch mitigation measures. In particular, it is possible that “hybrid” nets may be produced which are effectively the same type of equipment as the gear proscribed under current norms, yet whose technical modifications render them distinct and therefore outside the current purview of the legal restrictions.

This latter point illustrates the fact that ASCOBANS does not exist in a vacuum and, as observed in the most recent Resolution on this issue adopted at the 2003 MoP, a co-operative approach is required. ASCOBANS has demonstrated its ability to facilitate the process of elaborating mitigation plans but it is directly reliant upon the parties and, more importantly, the EC to implement and support such measures. Since the EC has exclusive competence over fisheries issues for all of the current parties to ASCOBANS, the policies advanced under the Agreement must be endorsed by the EC in order for them to have any realistic practical effect. To date, the EC has shown a recent commitment towards addressing cetacean by-catches with the adoption of Regulation 812/2004 banning driftnets and implementing a mandatory system of pingers on fishing nets. A close working relationship with the EC must be seen as a pressing priority, in order to ensure that the aims and objectives of ASCOBANS are considered in the evolving EU-wide policy towards cetacean protection in general and by-catches in particular.

As part of the evolving cetacean policies advanced by the EC, it is important that bottom-set gillnets are also fully considered. Small cetaceans are considered to be especially vulnerable to by-catches in these nets, yet a clear and effective policy in relation to this equipment has yet to be advanced. If ASCOBANS could develop research initiatives, ultimately supported by a distinct Resolution on the issue, such endeavours could form the first step towards a particular policy on the use of this equipment on the part of the EC.

It is also important that the interests of other stakeholders are considered too – not least those of the fishing industry. While the 2003 Resolution on Incidental Take of Small Cetaceans calls for “close co-operation” with fishermen, this sector has been highly conspicuous by its absence in the affairs of ASCOBANS to date. It is important that ASCOBANS maintains harmonious relations with all sectors that could potentially affect by-catch strategies, as well as securing adequate funding and the support and co-operation of the national authorities, otherwise it is doubtful whether the Agreement’s by-catch ambitions will be realised in practice, to the severe detriment of the very species that ASCOBANS was specifically created to protect.

(iii) Impacts on food sources

This issue has yet to be substantively addressed under the auspices of ASCOBANS.

(iv) Disturbance

A Resolution on the Implementation of the Conservation and Management Plan adopted at the First MoP provided a rather vague series of implementation strategies on disturbance with the parties “encouraged” to introduce guidelines to reduce disturbances and to work with other organisations to establish criteria to define protected areas for small cetaceans. At the first meeting of the Advisory Committee, three broad categories of disturbance to small cetaceans were identified – seismic testing and shipping noise, seismic disturbance from military sources and whale-watching. At this juncture the regulation of these sources was very much in its infancy, aside from some on-going studies into ferry disturbance by Dutch researchers and low frequency sound by US scientists, as well as consideration of the whale-watching issue under the auspices of the IWC.

At the second meeting of the Advisory Committee the issue of military activities was again noted and the parties were requested to contact their various Ministries of Defence in respect of this potential source of disturbance. By the time of the third meeting of the Advisory Committee, sets of draft guidelines had been developed on seismic disturbance, whale-watching and general disturbances. Progress was observed in the UK, where a “high degree of co-operation” had been experienced. Information from the various Ministries of Defence had been barely forthcoming, however – only the Netherlands and Germany reported on this issue to the extent that there was no information available to report.

Little progress had been made on this front by the fourth meeting of the Advisory Committee, side from some additional surveys on fast-ferries, although the UK guidelines on seismic surveys “appeared to be working reasonably well”. At the Second MoP, held in 1997, a Resolution on the Further Implementation of ASCOBANS “invited” the submission to the Advisory Committee of available information on the location and extent of seismic surveys conducted in the ASCOBANS and surrounding areas during 1997 and 98, as well as details of relevant mitigation measures. The parties were also invited to introduce, where appropriate, “guidelines and other measures to reduce disturbance to small cetaceans”.

At the fifth meeting of the Advisory Committee it was observed that consideration of protected areas was not an immediate priority, since a review of this issue was scheduled for 2000. In relation to seismic testing, a small ad hoc working group was established to review papers arising from a workshop due to be held in London on the issue later that year. It was also observed that the UK guidelines appeared to be the only mitigation measures in effect within the ASCOBANS area. A limited study of high-speed ferries was also commissioned, and the Secretariat was instructed to correspond with all parties and Range States to request information on mitigation measures used in operations deploying explosives at sea and to forward copies of the UK guidelines, recommending their use where appropriate.

At the next meeting of the Advisory Committee the UK guidelines were discussed, where it was noted that these were the only such guidelines available – which was significant since approximately half of all seismic exploration activities conducted in the ASCOBANS area occurred in regions under UK responsibility. Recommendations were made for abundance, distribution and behaviour of small cetaceans to be further investigated, that the other ASCOBANS parties should apply guidelines similar to those adopted by the UK authorities and that details of the workshop on seismic surveys and marine mammals should be made available to the parties. Nevertheless, a lack of information prevented the Advisory Committee from commenting fully on acoustic disturbances, which was deferred until the next meeting with information requested about high-speed ferries. At the seventh meeting of the Advisory Committee there was substantial discussion about high-speed ferries, and the difficulties involved in gaining information since, there was collective confusion as to the exact meaning of a “high-speed ferry”. This was defined as “all types of vessels (including hovercraft) capable of travelling at speeds in excess of 30 knots”.

At the Third MoP, held in 2000, a specific Resolution on Disturbance was adopted, in which the parties were invited to introduce measures and procedures for seismic surveys; to work with military authorities to develop codes of conduct and associated measures to reduce disturbance of small cetaceans; to conduct research on the effects of acoustic by-catch mitigation devices, high-speed ferries and the effects of disturbance on cetacean behaviour; and to introduce guidelines and other measures to mitigate disturbance. At the eighth meeting of the Advisory Committee progress on seismic surveys was observed to be somewhat patchy, and there was continued difficulty in obtain information on disturbance from high-speed ferries. Military activities formed a substantial part of the disturbance agenda for the first time, with the WDCS noting threats to cetaceans posed by low-frequency active sonar. Noise pollution and disturbance was formally added to the Advisory Committee’s annual review of pollution.

The ninth meeting of the Advisory Committee was the first meeting at which the consideration of disturbance followed the restructured format. Here there was a review of data on seismic disturbance, noting new Belgian legislation on the issue which largely followed the UK example. Also at this meeting there was some debate that reporting on high-speed ferries was being hindered by questions over the purpose of collecting such information. Growing concerns over the use of military sonar were also noted and it was resolved that ASCOBANS should establish dialogue with the relevant military authorities planning to use this equipment in and around the Agreement area. At the next meeting a number of concerns over noise were raised by the WDCS. Military sonar occupied a significant position on the agenda, with a representative from NATO SACLANCT present, with the ACCOBAMS observer also noting that this issue had been considered in that forum too. A Resolution on the Effects of Noise and of Vessels was adopted at the Fourth MoP in 2003, reaffirming the commitment of ASCOBANS to this issue and inviting parties and Range States to develop mitigation measures and environmental impact assessments with military authorities and report by 2005 on mitigation measures in relation to sonar; conduct further research on a variety of noise sources in the cetacean environment and introduce guidelines and procedures on seismic surveys.

Since the 2003 MoP, the Advisory Committee has expressed concern at the dearth of information on high-speed ferries in the Agreement area and has asked the European Cetacean Society to examine this issue in greater depth.

The ability of ASCOBANS to deliver tangible progress in the conservation status of small cetaceans in the Agreement area

At present, ASCOBANS is charged with maintaining a favourable conservation status for species of cetaceans in the Baltic and North Seas, a remit that has recently been extended to the Irish Sea and the North East Atlantic Ocean, since the Agreement area was expanded to link with that of ACCOBAMS. To date, as Spain, Portugal, Morocco and Ireland have yet to formalise an arrangement with ASCOBANS, progress towards these initiatives is embryonic at best in the recent area of ASCOBANS expansion. For the purposes of this report, given that there has been very little development in the “new” ASCOBANS area, attention will be focussed on the ability of the Agreement to deliver tangible progress in the Baltic and North Seas.

Legal issues

At present, ASCOBANS faces regulatory competition from a variety of sources, given that at the time of the inception of the Agreement a number of multilateral environmental agreements had been concluded in respect of the Baltic and North Seas. On a positive note, the existence of a number of similar organisations – many of which were established specifically to mitigate degradation of the marine environment in these areas – does at least display evidence of political will within these regions to address environmental issues. However, this may also leave ASCOBANS in a difficult position since other organisations may duplicate its initiatives or even advance projects that directly contradict or conflict with the aims of ASCOBANS. Given the regulatory bottleneck, it is clear that in order to effectively advance its conservation and management objectives ASCOBANS must develop a strong relationship with the other leading organisations in these regions – with particular reference to the EC, which holds the ultimate legal competence in fisheries issues in the Baltic and North Seas.

The European Community

The European Community is undoubtedly the most significant regulatory organisation present in the Agreement area, and it is no exaggeration to state that the ability of ASCOBANS to make an effective contribution to cetacean conservation is inextricably linked to the support (or otherwise) of the EC. Since the most recent round of enlargement of the EU, all the current parties to ASCOBANS in the Baltic and North Seas (as well as two Range States – Estonia and Latvia) are subject to EC law, which supersedes national law in a number of key areas. As the ASCOBANS parties have noted in past Resolutions adopted at the various MoPs, the EC has exclusive competence over fisheries issues, and the Member States party to ASCOBANS must follow Community policy – irrespective of whether it clashes with the policies of ASCOBANS.

Cetaceans have not been ignored by the EC. Indeed, “all species” of cetaceans are protected under the Habitats Directive. In addition, in recent years the EC has paid considerable attention to “greening” the Common Fisheries Policy (CFP) in order to address concerns about the Community fishing effort on the marine environment – an issue that had been neglected since the inception of the CFP. In 2002, the CFP underwent a root-and-branch reform, designed to give effect to the “integration principle” in EC law, whereby environmental concerns must be integrated into key areas of Community policy. This process is on-going, but a significant component was established in 2004, with the adoption of Regulation 812/2004, which seeks to mitigate by-catches of cetaceans by extending the current EC ban on driftnet fishing to the Baltic Sea, as well as phasing in the mandatory use of pingers on fishing gear and requiring the presence of observers on board fishing vessels.

The EC has a curious relationship with ASCOBANS. The EC has signed the Agreement itself, but has not ratified it, despite a number of communications from ASCOBANS urging it to do so. This leaves the EC outside the circle of ASCOBANS itself, yet endowed with the power to adopt measures that may undermine or, conversely, strongly support initiatives advanced by ASCOBANS.

In the early years of the Agreement, relations between ASCOBANS and the EC were relatively poor. At the second meeting of the Advisory Committee it was observed that while the EC had signed the Agreement, it had not attended any meetings aside from the first MoP and had displayed little inclination to be involved in the working of ASCOBANS. At the third meeting of the Advisory Committee it was reported that the EC would not ratify ASCOBANS until ACCOBAMS had entered into force and, in any event, did not have the time to attend meetings of ASCOBANS – a position that the Advisory Committee declared to be “disappointing and unsatisfactory”. After a particularly fractious exchange with EC officials in 1997, the Advisory Committee declared at its fourth meeting that the EC attitude was “not helpful”.

Attempts at a détente were made in 1998 when ASCOBANS approached the Directorates-General of Fisheries and the Environment, but were somewhat stymied by a flawed understanding of EC legislation. Nevertheless, this was a highly positive step and, although the EC reiterated its workload difficulties due to the immense task of implementing the Habitats Directive, it was noted that a mutually supportive relationship was important given Community competence over fisheries. It was also observed that ASCOBANS could play a valuable advisory role, especially since two species of small cetaceans required the designation of Special Areas of Conservation under the Habitats Directive, namely the harbour porpoise and bottlenose dolphin. This was followed by a useful meeting between

representatives of ASCOBANS and the European Commission, conducted in a spirit of mutual co-operation in which the Commission requested information about ASCOBANS' activities and invited a report on by-catch issues, whereby the Commission could incorporate the Advisory Committee's concerns into the revised version of the CFP.

By the time of the eighth meeting of the Advisory Committee in 2001, the Directorates-General of Fisheries and the Environment were interested in developing a strategic research programme with ASCOBANS, in which the Agreement's interests could be identified and promoted, with ASCOBANS' views also sought on the marine conservation strategy advanced in the EC's Sixth Environmental Action Programme. At the tenth meeting of the Advisory Committee, a representative from the European Commission attended the meeting for the first time, at which it was observed that a number of members of ASCOBANS had contributed to the Commission's sub-group on by-catches, which had played a strong role in the formulation of by-catch initiatives on the part of the EC. The Commission's representative also stated that he was attending with the particular aim of obtaining information to develop the EC's by-catch policies.

Since then, the EC has been represented at the various meetings of the Advisory Committee of ASCOBANS. Nevertheless, the relationship is still extremely one-sided and, at the twelfth meeting, the Advisory Committee "regretted that ASCOBANS had not formally been engaged by the European Commission in the preparation of the European Marine Strategy".

The importance of a close and co-operative relationship with the EC to the success of ASCOBANS cannot be over-stated. Indeed, the ability of ASCOBANS to prescribe effective conservation and management initiatives within the Agreement area will stand or fall on the basis of EC support, or the lack thereof. The most favourable scenario for ASCOBANS would be for the EC to ultimately ratify the Agreement and become a full party to it, from which the initiatives advanced could become incorporated into EC fisheries and environmental policies which would subsequently become binding on all Range States in the Agreement area that are Member States of the EU. This would not only reinforce the ASCOBANS agenda in national law, but would also provide an external means of enforcement of any such initiatives adopted and endorsed by the EC, by means of the distinct non-compliance procedures prescribed under European law (although the operation of these legal enforcement mechanisms is a rather protracted process in practice). However, given the somewhat lukewarm response to the prospect of ratification expressed by the EC to date it seems rather unlikely this is going to happen in the long-term. Instead, the present relationship of "cohabitation" in the Agreement area looks set to continue for the foreseeable future. In this respect, it is important that ASCOBANS has an influence on the EC environmental and fisheries agenda, especially in the current climate of a near-unprecedented reform of the Community's marine policies. At present, in the absence of full EC participation in the Agreement, the best-case scenario is for ASCOBANS to foster a close working relationship with the EC so that the aims, objectives and policies of the Agreement can be incorporated into current EC policy in relation to the marine environment.

Other multilateral environmental agreements

There are a number of multilateral conservation initiatives in place in the Baltic and North Seas that may overlap with or affect the activities of ASCOBANS. In this respect, two such bodies are of particular importance, namely HELCOM and OSPAR. Both the OSPAR and HELCOM agreements have been in existence since the 1970s, and each underwent significant revision in the early 1990s. Both agreements therefore predate ASCOBANS significantly. Unlike the EC, OSPAR and HELCOM do not exert a strong legislative influence over parties and non-party Range States to ASCOBANS; however it is still important for ASCOBANS to develop strong links with these institutions in order to avoid the duplication of existing commitments or the development of conflicting policies.

In the case of HELCOM, a good working relationship has been developed over recent years. A number of ASCOBANS Range States are parties to HELCOM, including three non-parties to ASCOBANS: Estonia, Latvia and Russia. Small cetaceans form part of HELCOM's regulatory remit, and are addressed under the auspices of its Nature Protection and Biodiversity Working Group (HELCOM HABITAT). To date HELCOM has adopted one substantive Recommendation on the Baltic Harbour Porpoise (Recommendation 17/2 in 1996), under which by-catches, disturbance and habitat deterioration were identified as cause for concern. The relationship between ASCOBANS and HELCOM was largely cemented at the third meeting of the Advisory Committee at which it was

resolved that good lines of communication should be maintained between the two organisations. To date this has largely been achieved, and HELCOM regularly sends observers to ASCOBANS meetings, with ASCOBANS providing information about its initiatives. There have been moves within HELCOM to streamline reporting procedures on wildlife/cetacean issues to coincide with the ASCOBANS system so as to facilitate the transfer and collection of information. There is also a close working relationship between individual members of the two organisations. It is unlikely that HELCOM will directly impede the work of ASCOBANS in relation to conservation and management efforts for the Baltic harbour porpoise and should indeed have a key role to play in assisting in the implementation of the Jastarnia Plan.

With regard to OSPAR, relations are also on a good footing. Again, a number of the parties to OSPAR are also Range States to ASCOBANS. OSPAR also has an interest in cetaceans within aspects of the ASCOBANS Agreement area, through its Biological Diversity and Ecosystems Strategy, under which the need to provide protection for bowhead whales, blue whales, Northern right whales and harbour porpoises with various regions of the OSPAR Agreement area has been recognised. To date there has been little substantive conflict in the pursuit of ASCOBANS' objectives and, as with HELCOM, a good working relationship has been established with OSPAR receiving regular reports on initiatives under ASCOBANS. Again, with effective communication it is unlikely that OSPAR will impede the work of ASCOBANS, and the Advisory Committee has identified OSPAR as a forum through which its agenda against contaminants may be effectively advanced.

Practical concerns

As noted above, the current operative structure of ASCOBANS consists of an Advisory Committee, which examines a plethora of issues ranging from scientific matters to the budget and staffing of ASCOBANS, supported by a small Secretariat, with Resolutions adopted at a regular Meeting of the Parties. This structure contrasts markedly with that of its sister organisation ACCOBAMS, which divides its workload between a Bureau (responsible for general policy guidance and financial issues), Sub-Regional Co-ordination Units (which implement policies through existing institutions) and a designated Scientific Committee (which discusses conservation issues). At present, in contrast, the ASCOBANS Advisory Committee is charged with essentially fulfilling the functions discharged by both the Bureau and the Scientific Committee under ACCOBAMS, with the net result that focussing on operative issues will necessarily diminish the time and resources available to the Advisory Committee to examine conservation and management issues relating to small cetaceans.

In this respect, it may be a useful exercise to examine the possibility of splitting the functions of the Advisory Committee (which could be considered by an ad hoc working group), either by creating a distinct scientific body unburdened by the need to debate issues not directly related to cetacean conservation and management, or by holding a preliminary meeting prior to the Advisory Committee's annual meeting at which such issues may be discussed, leaving the Advisory Committee free to examine conservation issues at the main meeting. The creation of a designated scientific body within ASCOBANS would also permit administrative issues to be addressed by those delegates most versed in such matters – such as civil servants and representatives of governmental agencies – permitting a greater degree of specialisation within the organisation. Indeed, as ASCOBANS moves to link up with ACCOBAMS and to amend the scope of the Agreement so as to address common concerns, there may be merit in examining ways of harmonising the structures of the two organisations in the medium- to long-term to standardise future working practices.

Reflections of interested parties on the progress of ASCOBANS to date

As part of the process of compiling this report, the views of a number of well-placed individuals were sought on the progress of the Agreement to date.

It was the opinion of the interviewees that ASCOBANS is generally moving in the right direction, and that it had made a positive contribution to the status of small cetaceans in the Agreement area. It was noted also that ASCOBANS has an important function in terms of providing a basis for national initiatives and keeping pressure on the authorities of the Range States to keep cetacean issues in mind, as well as to assist in funding conservatory initiatives. Generally, it was felt that ASCOBANS is an important cog in the machine and that it acted as a valuable forum for interaction, and that it generally

enjoyed a productive relationship with other conservation bodies in the Agreement area. ASCOBANS was also credited with having had a positive input to the recent EC measures on cetacean by-catches, although it was felt that on a national level there was little implementation of measures adopted under the Agreement. However, on a more pessimistic note, it was observed that the position of the EU makes it extremely difficult to advance tangible progress in relation to fisheries-related matters.

It also became apparent that the interviewees thought that there was some difficulty in reconciling “fisheries” issues on the one hand, with “conservation” matters on the other. One respondent voiced the opinion that fisheries interests were under-represented within the Agreement’s activities, which could act as a potential bar to progress; another believed that fisheries interests frequently outweighed those of conservation on a national level. Considerable doubts were also expressed over the political will of the parties to effect real progress in relation to the conservation and management of small cetaceans.

There were also concerns raised over the actual efficiency of ASCOBANS as a distinct organisation. It was universally apparent that financial concerns was the most pressing issue affecting the ability of ASCOBANS to function effectively, with the increased costs of moving into the UNEP system generally seen as an added burden on the Agreement. The Secretariat was generally considered to be doing a good job in difficult circumstances, although again budgetary and personnel constraints were considered an impediment to the future efficiency of this limb of the Agreement structure. Some respondents observed that the Secretariat was, in some respects, not sufficiently proactive, with some concerns expressed over the lack of regular and active communication from this institution – in marked contrast to ACCOBAMS, which has for instance developed its own newsletter to circulate information about its activities and initiatives to interested parties in an accessible and concise manner. Likewise, there was also some support for the idea that the Secretariat itself should rotate around the various parties to bolster interest in the Agreement and to better engage the individual parties. It was felt in some quarters that such a move might also improve the visibility of ASCOBANS within the Agreement area, and encourage individual parties to better implement the key initiatives advanced under the Agreement. Nevertheless, some respondents were not fully convinced by this approach and noted that a rotating Secretariat could cause practical and administrative difficulties, at least in the short-term.

In addition, the ASCOBANS structure itself also received a degree of criticism, with opinions voiced that it is trying to wear too many hats and that some attempt should be made to streamline the organisation in a similar manner to other like instruments adopted under the CMS. Likewise it was felt that an excessive amount of time was “wasted” in meetings of the Advisory Committee on issues such as personnel and budgetary considerations, which impinged upon the time and resources available to consider the Agreement’s conservation and management objectives.

Recommendations for the future of ASCOBANS

In the light of the findings of this report, a number of recommendations may be advanced in order to improve the operation of ASCOBANS and to improve its scope for delivering effective conservation and management policies in the Agreement area.

- ***Seek and secure closer ties with the EC***, a process that has been on-going since the inception of the Agreement with varying degrees of success. To this end, a Resolution on co-operation with the EC could be adopted, observing again that the EC has exclusive competence over fisheries issues for all of the current ASCOBANS parties – as well as a number of non-party Range States – and reiterating the strong desirability of close and mutually supportive relations between the two bodies. Such a document might also reiterate that the EC has signed the Agreement itself – an action not without consequence in international law. An ad hoc Working Group might also be established to explore ways in which ASCOBANS can facilitate closer ties with the EC, for instance identifying Community policies and projects for which ASCOBANS could provide significant expertise and assistance. In the longer-term, a specific EC Liaison Officer could also be appointed within the Advisory Committee itself, who is well-versed and briefed in relevant EC law and policy, as well as the aims, objectives and policies of ASCOBANS. It appears to be highly unlikely that the EC will ratify the ASCOBANS agreement in the short- to medium-term, if indeed it ever ratifies the agreement at all. However, given the power that the EC holds in respect of fisheries policies in these

regions, ASCOBANS must take the lead and develop ways of “bringing the mountain to Muhammad”.

- **Develop a strong and coherent policy on bottom-set gillnets** – an issue that has been largely overlooked by most international and regional fisheries management organisations. It would be beneficial to conduct investigations into the scale of such fishing activities and the threat that this poses to marine life in the Agreement area, with a view towards adopting a distinct Resolution on this issue. This may provide an impetus for other bodies to follow suit.
- In the longer-term, **a review should be conducted of the present structure of ASCOBANS** – especially since the Agreement is poised to expand in terms of geographical limits as well as species governed under its auspices. It may be prudent for ASCOBANS to follow the structure employed by its sister Agreement ACCOBAMS – and, indeed, a number of other subsidiary Agreements concluded under the CMS umbrella – in order to make the Agreement more efficient. Again, an ad hoc Working Group could be established to consider the merits of this initiative in greater detail.
- Likewise, if the current structure remains intact, **issues such as personnel and budgetary matters could be resolved in a special meeting** convened in advance of that of the Advisory Committee, so as to maximise the time available for discussion of conservation and management issues.
- ASCOBANS should **continue to foster mutually supportive relations with other conservation bodies in the Agreement area**. The relationship between ASCOBANS and a number of key multilateral environmental agreements in the Baltic and North Seas is currently positive and a good balance has been struck with organisations such as OSPAR and HELCOM which bodes well for the future.
- ASCOBANS should also **seek to foster a constructive and productive working relationship with the fishing industry**, especially since the success of by-catch mitigation measures will depend heavily – at least in the short-term – on the co-operation of fishermen. Past experiences of by-catch mitigation measures in other fisheries management organisations – and, indeed, in relation to the policies advanced by the EC – shows that without the co-operation of the fishing industry it is difficult to address the incidental capture of non-target species in a productive and effective manner. If fishermen feel alienated by the Agreement, this may have a considerable effect on the implementation of conservation and management initiatives as well as co-operation in research efforts which are vital to assess progress made under ASCOBANS. Again, ASCOBANS needs to be seen to be reaching out to the fishing industry and it is telling that representatives of the industry have had minimal participation with the Agreement to date. It may be worth exploring the possibility of inviting representatives from the fishing industry to ASCOBANS meetings and, in the longer-term, appointing a Liaison Officer to ensure the effective communication of ASCOBANS policies to the fishing industry.
- Finally, ASCOBANS should **continue to promote, as a matter of priority, the conservation of harbour porpoises – especially in the Baltic Sea region**. In particular, awareness must be raised of the plight of Baltic populations of harbour porpoises within the various parties and Range States of the region, since despite initiatives like the International Day of the Harbour Porpoise there is still a distinct lack of popular appreciation of this issue. In this respect, ASCOBANS must engage local NGOs within the region – many of which share the same interest in conserving the depleted stocks of these animals – in order to supplement and augment existing awareness campaigns advanced to date under the Agreement in relation to the Baltic harbour porpoise and to secure adequate funding in order to do so.

Appendix III: Resolutions adopted by the 5th Meeting of Parties, Egmond aan Zee, Netherlands, 18-22 September 2006.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, The Netherlands, 18 - 22 September 2006

Resolution No. 1

Conservation Plan for Harbour Porpoises in the North Sea

Recalling that the 5th International Conference on the Protection of the North Sea (Bergen, Norway, 20-21 March 2002) called for a recovery plan for harbour porpoises in the North Sea to be developed and adopted (Paragraph 30, Bergen Declaration);

Recalling that the declaration of the Joint Ministerial Meeting of the Helsinki and OSPAR Commissions (Bremen, Germany, 25-26 June 2003, 'Bremen Declaration') adopted the common statement "Towards an Ecosystem Approach to the Management of Human Activities" (Paragraph 13), which highlights the need to develop and promote the implementation of a recovery plan for harbour porpoises in the North Sea;

Recalling the considerable experience ASCOBANS has gained with the development of the recovery plan for harbour porpoises in the Baltic ('Jastarnia Plan');

Noting the results of the two abundance surveys SCANS-I and SCANS-II;

Noting the preparations ASCOBANS has already undertaken towards the development of a recovery plan for harbour porpoises in the North Sea at the 9th and 10th Meetings of the Advisory Committee in 2002 and 2003;

Recalling the deliberations on the Recovery Plan for Harbour Porpoises in the North Sea at the 11th, 12th and 13th Meetings of the ASCOBANS Advisory Committee;

Recalling Resolution No. 10 on a Recovery Plan for Harbour Porpoises in the North Sea adopted by the 4th Meeting of the Parties in 2003;

Commending Germany for its initiative and support for the development of a recovery plan for harbour porpoises in the North Sea;

Noting the decision of the Advisory Committee at its 13th Meeting to change the name "Recovery Plan" to "Conservation Plan";

Without prejudice to the exclusive competence of the European Community for the conservation, management and exploitation of living aquatic resources, and the Commodities Directives;

The Meeting of the Parties to ASCOBANS Adopts, as a basis for a Conservation Plan, the paper "Towards a Conservation Plan for Harbour Porpoises in the North Sea" annexed to this Resolution;

Broadly supports the document as the basis for a conservation plan to be developed under the leadership of the Chair and Vice-chair of the Advisory Committee before the Committee's 14th Meeting.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, the Netherlands, 18 - 22 September 2006

**Resolution No. 2a
Management of Expenditures between 2003 and 2006**

Mindful of the report from the United Nations' Office of Internal Oversight Services (OIOS), Internal Audit Division, dated 24 August 2006, which found a lack of clarity in the roles and responsibility for the administration of budgetary preparations and management contributed to a sizeable overspend against provision in the triennium 2004 – 2006;

Noting that the level and quality of the financial and administrative support provided by UNEP/UNON does not live up to the standards previously agreed on;

Conscious of the need that in the future new administrative arrangements should improve the administrative performance;

Regretting that the draft budget for the years 2007 – 2009 was not received well in advance of the Meeting of the Parties;

The Meeting of the Parties:

Discharges and Approves the expenditures for the years 2003 and 2004 (Annexes ... and ... of Resolution 2c);

Agrees that the expenditures for the years 2005 and 2006 should be discharged and approved by the 6th Meeting of the Parties (MoP6);

Approves the utilization of the operational reserve to cover the shortfall incurred in 2004-2006;

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, Netherlands, 18 - 22 September 2006

Resolution No. 2b

Financial, budgetary and administrative matters – operating procedures of the Agreement 2007-2010

Reaffirming that the Advisory Committee, as a body tasked to provide advice on scientific, policy-related and administrative matters, needs a balance of scientists, policy-makers and administrators to adequately cover its role;

Stressing that the successful work of the Advisory Committee depends on the ability of its members to allocate sufficient time to the work of the Committee and its working groups;

Recalling that the Financial Regulations of the Agreement in relation to the Operating Reserve were not adhered to during the Triennium 2004-2006;

The Meeting of the Parties to ASCOBANS

Agrees that the meetings of the Advisory Committee will be split into a part dealing with administrative issues and a part dealing with scientific and policy issues;

Agrees that if the Chair of the Advisory Committee considers that decisions on budgetary or other matters are required between meetings of the Parties that these could be considered by extraordinary Meetings of the Parties either through electronic correspondence or face to face if required;

Instructs the Advisory Committee to work closely with the Secretariat on administrative and budgetary issues in order to ensure that the wishes of the Meeting of Parties are met;

Asks the Advisory Committee to consider reorganising management of its work to best cover the range of issues that it considers.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, The Netherlands, 18 - 22 September 2006

**Resolution No. 3
Extension of the ASCOBANS Agreement Area**

Recalling Resolution No. 4 adopted by the Fourth Meeting of the Parties;

Noting the unforeseen delays in ratification of the extended Agreement;

Noting, moreover, that these delays were beyond the control of ASCOBANS Parties and of the ASCOBANS Secretariat;

Recalling the obligation of States Parties to the United Nations Convention on the Law of the Sea (UNCLOS) to cooperate through the appropriate international organizations for the conservation and management of marine mammals (Articles 65 and 120);

Reiterating that the conservation of small cetaceans in the current ASCOBANS Agreement Area and in European waters as a whole will benefit from the extension of the ASCOBANS Agreement Area to the parts of the North Eastern Atlantic covered by the aforementioned Resolution and from the establishment of the direct geographical link between the Agreement Areas of ASCOBANS and ACCOBAMS implicit therein;

Guided by a common will to further strengthen the Agreement and the conservation of small cetaceans in European waters as a whole;

The Meeting of the Parties to ASCOBANS

Urges Parties to the Agreement that have not yet done so to ratify the amendment contained in MOP 4 Resolution No 4 as soon as possible;

Instructs the Executive Secretary to ASCOBANS, Parties to the Agreement and the Secretariat of the Convention of Migratory Species of Wild Animals to continue to encourage non-Party Range States to accede to the Agreement.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, The Netherlands, 18 - 22 September 2006

Resolution No. 4

Adverse Effects of Sound, Vessels and Other Forms of Disturbance on Small Cetaceans

Recalling that the Conservation and Management Plan Annexed to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas stipulates that ASCOBANS work towards "the prevention of other significant disturbance, especially of an acoustic nature";

Recalling Resolution No. 5 of the 4th Meeting of the Parties and previous related Resolutions and recommendations adopted within the framework of ASCOBANS and *welcoming* progress within Parties to implement that Resolution;

Recalling Resolution 8.22 adopted by the Eighth Conference of the Parties to the Convention on Migratory Species (CMS) on adverse human induced impacts on cetaceans; Resolution 7.5 of the Seventh Conference of the Parties to the Convention on the Conservation of Migratory Species on wind turbines and migratory species, and previous related Resolutions and Recommendations adopted within the framework of CMS;

Recalling the obligation of States Parties to the United Nations Convention on the Law of the Sea (UNCLOS) to cooperate through the appropriate international organizations for the conservation and management of marine mammals (Articles 65 and 120);

Recalling the results of the ASCOBANS study (MoP4/Doc.17) on the effects of sound and of vessels on cetaceans, which range from disturbance to potential lethal consequences from some military sonars and from ship strikes;

Noting the recommendations arising from the 58th meeting of the Scientific Committee of the IWC on the potential impacts of seismic surveys on cetaceans;

Noting the United Kingdom's regulatory guidelines on seismic surveys;

Reaffirming that the difficulty of proving detrimental effects of acoustic disturbance on cetaceans necessitates a precautionary approach in dealing with this issue;

Recognizing the commitment of Parties to a change to using renewable sources of energy;

Recognizing the potential disturbance caused by offshore extractive industries and other activities including those associated with renewable energy;

Recognizing the political sensitivities in relation to military activities;

The Meeting of the Parties to ASCOBANS

Requests Parties and Range States that have not yet done so to introduce guidelines on measures and procedures for seismic surveys in order to minimise risks to small cetaceans following current best practice;

Reiterates and extends its invitation to Parties and Range States to (1) develop, with military and other relevant authorities, effective mitigation measures including environmental impact assessments and relevant standing orders to reduce disturbance of, and potential physical damage to, small cetaceans;

(2) conduct further research into the effects on small cetaceans of:

- (a) vessels, particularly high speed ferries;
- (b) acoustic devices used by the fishing and fish-farming industries including deterrent (scarers) and warning (pingers) devices and fish-finding sonar;
- (c) extractive and other industrial activities, including windfarms;
- (d) other acoustic disturbances.

This should include research on physical and behavioural effects, and be at the individual and population level;

(3) conduct research and develop appropriate management measures, guidelines and technological adaptations to minimise any adverse effects on small cetaceans of the above sound sources;

(4) develop and implement procedures to assess the effectiveness of any guidelines or management measures introduced;

(5) report on high energy seismic surveys per one degree by one degree rectangle using shot point density.

Invites Parties and Range States to cooperate with the Secretariat in developing and implementing the measures recommended in the Annex to Resolution 8.22, adopted by the Eighth Meeting of the Parties to CMS, insofar as these are applicable and relevant to ASCOBANS;

Repeals Resolution No. 5 of the 4th Meeting of the Parties.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, The Netherlands, 18 - 22 September 2006

Resolution No. 5 Incidental Take of Small Cetaceans

Recalling the Annex to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, according to which "... management measures shall be applied ..." to develop, in the light of available data indicating unacceptable interaction, modifications of fishing gear and fishing practices in order to reduce by-catches;

Recalling the Resolutions on Incidental Take of Small Cetaceans adopted by the 2nd, 3rd and 4th Meetings of the Parties (ASCOBANS/MOP2/DOC. 4, MOP 3 Resolution 3, MOP 4 Resolution No. 6), and noting Resolution 3 from MOP 3 is still operational;

Recalling the relevant EU Articles and Regulations relevant to the Agreement and measures applicable in the waters of EU Member States, including most recently Council Regulation (EC) No. 812/2004 that lays down measures concerning incidental catches of cetaceans in fisheries, makes pingers mandatory in specified fisheries and requires observer monitoring in specified fisheries and phases out driftnets in the Baltic Sea;

Recalling relevant resolutions and recommendations adopted by the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) including most recently Resolution 8.14 at its Eighth Meeting on bycatch;

Welcoming the success of the recent SCANS II survey and noting the final abundance estimates (Doc. 26 MOP 5);

Appreciating the ongoing efforts made to reduce bycatch and noting the measures taken by the Parties which have led to a reduction in bycatch in certain fisheries in the North Sea while

Regretting that the recommendations set out in the relevant Resolutions of previous MOPs to reduce bycatch to below 'unacceptable interaction' levels have probably not been fulfilled;

In conjunction with Resolutions 1, 6 and 9 adopted at the present meeting;

Without prejudice to the exclusive competence of the European Community for the conservation, management and exploitation of living aquatic resources,

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Reiterates the recommendations of Resolution 3 of MOP 3 particularly that total anthropogenic removal is reduced by the Parties to below the threshold of "unacceptable interactions" with the precautionary objective to reduce bycatch to less than 1% of the best available abundance estimate and the general aim to minimise bycatch (i.e. to ultimately reduce to zero).

Urges that Parties and Range States:

- continue to develop and implement national plans of action or similar measures to reduce the bycatch of small cetaceans;
- consistent with EC Regulation 812/2004, collect and provide to the Advisory Committee further information on levels of bycatch, the measures undertaken to

reduce bycatch, their efficacy and their wider environmental impact, and where appropriate, undertake further research into bycatch mitigation measures;

- collect and provide to the Advisory Committee information on the extent, type and distribution of static gillnet and tanglenet effort in a format to be determined by the Advisory Committee.

Repeals Resolution No. 6 of the 4th Meeting of the Parties.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, Netherlands, 18 - 22 September 2006

Resolution No. 6 Activities of the ASCOBANS Advisory Committee 2007-2010

Reaffirming the importance of cooperating with, and not duplicating the work of, other international bodies and the desirability of drawing upon their expertise;

Recognising that much progress is achieved by the commissioning of work by specialists, whether members of the Advisory Committee or otherwise;

Reaffirming that the Advisory Committee, as a body tasked to provide advice on scientific, policy-related and administrative matters, needs a balance of scientists, policy-makers and administrators to adequately cover its role;

Stressing that the successful work of the Advisory Committee depends on the ability of its members to allocate sufficient time to the work of the Committee and its working groups;

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Instructs the Advisory Committee to:

Make Resolution 2b of MOP5 operational for ASCOBANS;

Continue to invite the intergovernmental bodies such as IWC, ICES, CMS, HELCOM, NAMMCO, OSPAR, ACCOBAMS and the European Commission and relevant international organisations such as ECS, to send representatives to Advisory Committee meetings;

Explore the possibilities of further developing positive relationships with other stakeholders, especially the fishing industry and Regional Advisory Councils;

Improve co-operation, exchange of information as well as expertise between the Advisory Committee of ASCOBANS and the Standing Committee and the Scientific Council of CMS;

Continue to review at each meeting a list of international meetings, compiled by the Secretariat, at which the aims of ASCOBANS might most usefully be promoted, and recommend which meetings should be attended, by whom and with what objective and to review the outcomes of meetings attended;

Continue to review, on an annual basis, new information on pollution (including the IWC programme POLLUTION 2000+) and its effects on small cetaceans which occur in the ASCOBANS area and, on the basis of this review, provide recommendations to Parties and other relevant authorities;

Continue to review the extent of negative effects upon small cetaceans of sound, vessels and other forms of disturbance on small cetaceans and to review relevant technological developments, with a view to providing recommendations to Parties, by the 6th Meeting of the Parties, on possible ways to mitigate those negative effects;

Review, on an annual basis, the implementation of the ASCOBANS Recovery Plan for Baltic Harbour Porpoises (Jastarnia Plan) (Document MoP4/Doc.23) and, when in operation, the Conservation Plan for Harbour Porpoises in the North Sea and to continue its efforts to further the implementation of those plans;

Provide a clear format for the information to be provided by Parties and Range States on static gillnet and tangle net effort;

Review, on an annual basis and as far as possible in conjunction with the EU, ICES and IWC, new information on bycatch and make recommendations to Parties and other relevant authorities for further action. This should include information provided by Parties and Range States on the implementation, efficacy and impacts of measures introduced to reduce bycatch, and on effort in relevant fisheries;

Review new information on cetacean population size, distribution, structure, and causes of mortality in the ASCOBANS area and based on implications for conservation make appropriate recommendations to Parties and other relevant authorities.

Review, before MoP6, the formal structures and processes of the Agreement to determine whether other mechanisms would be more effective in achieving the conservation objectives of ASCOBANS;

Consider how the work of ASCOBANS should be extended to take account of the new Agreement Area, which includes areas beyond national jurisdiction;

Consider, in 2009, the possible amendment of the ASCOBANS Agreement to include all cetacean species;

Explore ways in which ASCOBANS can better liaise and work with the EC on issues of mutual interest.

Repeal resolution 9 of MOP4

Reiterates its request that Parties

Ensure that all nominated Advisory Committee members and their advisors can allocate time to attend Advisory Committee meetings, to intersessional work, and to participate in the intersessional Advisory Committee working groups;

Continue to ensure where possible suitable expertise within delegations to the Advisory Committee.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, Netherlands, 18 - 22 September 2006

Resolution No. 7 Research on Habitat Quality, Health and Status of Small Cetaceans in the Agreement Area

Recalling that the conservation, research and management measures listed in the Conservation and Management Plan in the Annex to the Agreement require an action plan for the full implementation of the Agreement;

Recognizing the commitments by the Parties in other international bodies and fora to cetacean conservation and other commitments that will aid cetaceans;

Reaffirming the importance of the need for Parties to cooperate and not to duplicate the work of other international bodies and the desirability of drawing upon their expertise;

Recognizing the requirements under EU legislation;

Recalling that ASCOBANS endorsed (MoP3, Res. No.7) the IWC programme of research that investigates the causative link between levels of pollutants and physiological responses in cetaceans, known as POLLUTION 2000+;

Recalling that OSPAR, HELCOM and the European Commission through its Chemicals Strategy are working towards reduction of emissions and sources of chemical pollutants and will develop their objectives and strategy with regard to hazardous substances further; and RECOGNIZING previous ASCOBANS action in drawing the attention of OSPAR and HELCOM to substances hazardous to small cetaceans;

Recalling that OSPAR and HELCOM are working towards the conservation of marine biodiversity. OSPAR has in 2005 adopted an Ecological Quality Objective for harbour porpoise bycatch in the North Sea. A network of Baltic Sea protected areas for harbour porpoises have been established under HELCOM. HELCOM acknowledged the actions taken by ASCOBANS and gives political support to the adoption and implementation of the Recovery Plan for Baltic harbour porpoise, the Jastarnia Plan (HELCOM Bremen Declaration 2003).

Noting that knowledge of the harbour porpoise is better developed than that of most small cetacean species;

Noting the recommendations related to noise impacts on cetaceans that were developed at the 58th IWC Scientific Meeting in 2006 and endorsed by the IWC.

Recalling the commitment of ASCOBANS to non-lethal research;

Commending existing efforts to identify and protect specific areas for small cetaceans;

In conjunction with Resolutions 1, 4 and 9 adopted at this meeting;

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Recommends a one day workshop to establish criteria and guidelines for the identification of sites of importance for small cetaceans should be held as soon as possible;

Invites Parties and Range States to

Continue or Initiate research aimed at identifying the location of any further suitable sites for the establishment of protected areas, and to implement appropriate management actions in these areas on their own or in the context of other intergovernmental bodies to ensure the protection of small cetaceans;

Continue or Initiate support for schemes that ensure that the bodies stranded and/or bycaught small cetaceans are, where appropriate, subject to full and expert post-mortem analysis for cause of death and any other studies relevant to conservation, including pathological indications for acoustic trauma, and take appropriate measures to reduce those impacts on small cetacean populations, recognised to increase mortality rates;

Continue to support the POLLUTION 2000+ initiative and *to support* research into the occurrence and potential effects of priority chemicals identified by OSPAR and HELCOM (including brominated flame retardants, organotins and other endocrine disrupting chemicals) with the aim of collecting information on the distribution and accumulation of these compounds and their effects, and to ensure that this information is brought to the attention of authorities responsible for the reduction of such pollution;

Continue to support co-operative work with the IWC Scientific Committee and the SCANS II programme on the management procedure approach for limiting anthropogenic removals from small cetacean populations in the agreement area ;

Continue to support efforts to develop efficient long-term monitoring methods for small cetaceans of sufficient power to detect trends in status and distribution to be of use to management;

Continue to support non-lethal research, with the emphasis on the less well-known cetacean species of the ASCOBANS area, in particular as regards life-history parameters and population structure;

Encourage further research relevant to ASCOBANS objectives on abundance, life history parameters, distribution, migration patterns and population structure of small cetaceans as a basis for an improvement of conservation measures;

Repeals Resolution 8 of the 4th Meeting of the Parties.

5th MEETING OF THE PARTIES TO ASCOBANS

Egmond aan Zee, The Netherlands, 18 – 22 September 2006

Resolution No. 9 Implementation of the Jastarnia Plan

Noting that the ASCOBANS Recovery Plan for Baltic Harbour Porpoises (Jastarnia Plan) (MoP4/Doc.23) states that with respect to Baltic harbour porpoises the available evidence clearly points to a population that is in serious danger and that as a matter of urgency, every effort should be made to reduce bycatches towards zero as quickly as possible;

Noting the requirements of the EU treaty and its subsidiary legislation in particular in the framework of European Nature Protection and the Common Fisheries Policy;

Recalling the relevant EU Articles and Regulations relevant to the Agreement and measures applicable in the waters of EU Member States, including:

- Article 2 of Council Regulation (EC) No. 2371/2002 of 20 December 2002 regarding the common fisheries policy
- Article 12.4 of Council Directive 92/43/EEC that requires States to establish a system to monitor the incidental capture and killing of cetaceans, and in the light of the information gathered take further research or conservation measures to ensure that incidental capture and killing does not have a significant negative impact on the species concerned;
- EC Regulation 812/2004 that amends Council Regulation 88/98 and was subsequently repealed by Council Regulation 2187/2005, makes the use of pingers by vessels >12m mandatory for gillnet fisheries from June 2005 in certain areas of the Baltic and North Sea, and requires EU Member States to phase out driftnets in the Baltic Sea by 1 January 2008;

Recalling the recommendations of the 1st and 2nd Meetings of the ASCOBANS Jastarnia Group (Bonn, Germany, March 2005 and Stralsund, Germany, February 2006) as reviewed and endorsed by the 12th and 13th Meetings of the Advisory Committee (Brest, France, April 2005 and Tampere, Finland, April 2006);

Recalling the requirement under the Jastarnia Plan to undertake a formal process of re-evaluation and revision of the plan no less than every five years;

Recalling the Resolutions on Incidental Take of Small Cetaceans adopted by the 2nd, 3rd and 4th Meetings of the Parties (ASCOBANS/MOP2/DOC. 4, MOP 3 Resolution 3, MOP 4 Resolution No. 6);

Acknowledging with appreciation the efforts undertaken by Parties to date to implement the Plan;

Stressing that further action to implement the Plan will be needed

The Meeting of the Parties to ASCOBANS

Urges Parties in the Baltic Sea region, to continue and to step up implementation of the Jastarnia Plan and *invites* non-Party Range States to also implement the Plan;

Reiterates that the reduction of fishing effort in relevant fisheries called for in the Jastarnia Plan remains the highest priority for Parties;

Encourages Parties, non-Party Range States and other relevant authorities to prioritise funding to undertake a detailed study of the use of fixed gillnets in the Baltic Sea as a matter of urgency;

Encourages Parties and non-Party Range States to intensify research on pingers and to continue trials of alternative gear and methods, following the guidelines laid down in the Plan;

Encourages Parties and non-Party Range States to ensure the at-sea enforcement of pinger use and the monitoring of its efficiency;

Encourages Parties and non-Party Range States to re-evaluate pinger use at the latest by early 2008 in the light of current findings (noting Art. 7 of EC Regulation 812/2004);

Recommends that a three-day workshop on population structure of the harbour porpoise in the ASCOBANS area, including one-day dedicated to the Baltic Sea harbour porpoises, take place as soon as possible;

Recommends that the Secretariat cooperate with Parties and others to find funding for the continuation, beyond the year 2007, of the web-based, international database on opportunistic sightings, strandings and bycatch;

Encourages Parties to continue to provide additional funds for the production of information material in the languages of the Baltic Sea region;

Notes that clear definitions of fishing gear harmful to harbour porpoises used in the Baltic which are required for effective legal protection for harbour porpoises are not yet contained in the respective European legislation, and *encourages* the European Community to adopt such definitions.

Conclusions of the First Session of the 5th Meeting of the Parties to ASCOBANS

Concerning a request of the President of the MOP to the Executive Director of UNEP

Parties request the President of the 5th Meeting of the Parties to write a letter to the Executive Director of UNEP asking to draft with the next six weeks – or earlier if possible – a detailed proposal how to guarantee the maintenance of ASCOBANS for the next triennial or quadrennial.

The Executive Director of UNEP will be asked kindly to address in his detailed proposal the following items:

- At least two options for the future arrangements for the secretariat for the ASCOBANS agreement, that is:

1. a merger option, in which the CMS secretariat will serve as the secretariat for ASCOBANS, pursuant to provision no. 4 of the ASCOBANS agreement;

2. the least expensive viable independent secretariat option. UNEP will be invited to take other options into account if they feel that other options could serve as a better solution for a sustainable maintenance of ASCOBANS.

- Accompanying draft budgets (both triennial and quadrennial) for the two or more options for future arrangements UNEP will elaborate on.

- A request to UNEP for assistance as regards the necessary one-time payments (consisting of the transitional costs of a possible merger and the operating reserve) in a way that these payments can be delivered throughout the next triennial/quadrennial instead of in one year.

- An update of the annex to resolution 1 of the Meeting of Parties 3.

The Netherlands has agreed to draft the letter for the Executive Secretary of UNEP, based on the discussions in and results so far of working group 1. A first draft will be circulated by mail and hard copy to all Parties to be commented on. The letter will be sent out Friday 22nd September 2006.