UN environment programme

ASCOBANS

AGREEMENT ON THE CONSERVATION OF SMALL CETACEANS OF THE BALTIC, NORTH EAST ATLANTIC, IRISH AND NORTH SEAS

ASCOBANS/MOP10/Doc.6.2.2a

6 June 2024

10th MEETING OF THE PARTIES
Odense, Denmark, 10-12 September 2024
Agenda Item 6.2.2

MARITIME SPATIAL PLANNING

(Prepared by the Working Group on Marine Spatial Planning)

1. Area-based and temporal management are effective conservation tools, including to safeguard existing Marine Protected Areas and other sensitive zones or times, to reduce disturbance, to improve prey availability, to help avoid collisions with vessels and to improve noise mitigation. In terms of cetacean conservation, maritime spatial planning (MSP) can address multiple anthropogenic pressures, and improve the environmental status of entire marine ecosystems, including connectivity. MSP involves large-scale management, which may be international and transboundary, which is particularly relevant for highly mobile cetaceans.

2. The 26th Meeting of the ASCOBANS Advisory Committee (AC26) discussed MSP and requested the Secretariat to establish an Intersessional Working Group to elaborate on how to best develop guidelines for cetacean-friendly MSP. The draft guidelines were produced with the help of a consultant, and underwent a peer-review process, a Technical Workshop (June 2023), and AC28 (September 2023). The final version is available in ASCOBANS/MOP10/Doc.6.2.2b. *Guidelines for Cetacean-sensitive Maritime Spatial Planning for the ASCOBANS Area* and would be annexed to the Resolution presented in Annex 1 of this document.

Action requested:

3. The Meeting of the Parties is requested to review and adopt the draft Resolution contained in Annex 1.

Annex 1

DRAFT RESOLUTION:

MARITIME SPATIAL PLANNING

Reaffirming the importance of cooperating with and complementing the work of other international bodies and the desirability of drawing upon their expertise,

Concerned that the current rise in anthropogenic activity at sea translates into increasing cumulative disturbance, deteriorating environmental condition, reduced productivity, lower life expectancy and declining population trends for cetaceans across the ASCOBANS region,

Recognizing that the large-scale development of offshore wind energy in marine areas, including the associated increase in shipping traffic, will lead to a profound change in the functionality of marine ecosystems and further increasing noise emissions, which in turn will adversely affect the conservation status of cetaceans,

Noting that the conservation status of most cetacean species across the ASCOBANS region is still unfavourable despite the high level of legal protection, for example within the European Union under the Habitats Directive and the Marine Strategy Framework Directive,

Emphasizing the fundamental importance of refuge areas both within and outside marine protected areas with minimal disturbance and high ecological connectivity in order to improve the condition, survival, reproductive success and ultimately the conservation status of cetaceans, as recognized by CMS Resolution 14.16 *Ecological Connectivity* and UN General Assembly Resolution 75/271,

Recalling the available guidance on applying the ecosystem-approach in Maritime Spatial Planning (MSP) within the ASCOBANS region, including the HELCOM VASAB Guideline for the implementation of ecosystem-based approach in Maritime Spatial Planning (MSP) in the Baltic Sea area from 2016, which is currently being updated,

Noting previous related ASCOBANS resolutions, in particular Resolution 8.5 (Rev.MOP9) on *Monitoring and Mitigation of Small Cetacean Bycatch*, Resolution 8.11 (Rev.MOP9) *CMS Family Guidelines on Environmental Impact Assessment for Marine Noise-generating Activities*, Resolution 8.6 [Rev.MOP10] *Ocean Energy*, which *inter alia* urges Parties to make full use of MSP in order to choose the most appropriate siting for ocean energy production, paying particular regard to protecting critical habitat, as well as Resolution 8.9 on *Managing cumulative anthropogenic impacts in the marine environment*, which calls upon Parties to identify, minimize and mitigate potential impacts on cetaceans during an early stage during MSP, Resolution 6.2 [Rev.MOP10] *Adverse Effects of Underwater Noise on Marine Mammals during Offshore Construction Activities for Renewable Energy Production* and Resolution 5.4 *Adverse Effects of Sound, Vessels and Other Forms of Disturbance on Small Cetaceans*

Recalling CMS Resolution 14.9 *Conservation Priorities for Cetaceans*, which calls on all sectors to mitigate negative impacts on cetaceans, notably to reduce underwater noise through adequate MSP procedures, as well as CMS Resolution 14.5 *Reducing the Risk of Vessel Strikes for Marine Megafauna*, which urges Parties to adopt measures to reduce the risk of vessel strikes on marine megafauna, including cetaceans,

The Meeting of the Parties to ASCOBANS

1. *Adopts* the ASCOBANS Guidelines for Cetacean-sensitive Maritime Spatial Planning (MSP) for the ASCOBANS Area, contained in Annex 1, including the high-level recommendations reproduced in Annex 2 of this Resolution*;*

2. *Requests* Parties to implement these guidelines when reviewing and/or updating their national MSP, such as within the European Union by 2031 in line with EU Directive 2014/89/EU on Maritime Spatial Planning;

3. *Urges* Parties to apply Best Available Technology (BAT) and Best Environmental Practice (BEP) in their national MSPs in order to avoid, reduce and mitigate underwater noise, in line with the CMS Technical Series on *Best Available Technology (BAT) and Best Environmental Practice (BEP) for Three Noise Sources: Shipping, Seismic Airgun Surveys, and Pile Driving*;

4. *Urges* Parties to conduct MSP in accordance with a strategic direction, a spatial and temporal coordination, a dynamic adaptation, taking into account climate change predictions and national adaptation strategies, and an incremental planning aligned with cetacean conservation objectives to ensure that a Favourable Conservation status can be reached for cetacean populations in the ASCOBANS area;

5. *Encourages* Parties to base MSP designations on distribution and sensitivity maps of environmental factors and a functional understanding of the marine ecosystems including connectivity of seasonal or permanent cetacean habitats within and across national borders;

6. *Calls* on Parties to designate marine protected areas as well as areas of designated ecological importance for cetaceans, including Important Marine Mammal Areas (IMMAs), Ecologically or Biologically Significant Areas (EBSAs), Key Biodiversity Areas (KBAs), as priority areas for cetacean conservation within their national MSPs, including precautionary species-specific buffer zones;

7. *Urges* Parties to fully implement the ecosystem-based approach including the precautionary principle informing MSP decisions, a limitation of anthropogenic activities based on the carrying capacity of the marine ecosystem, an assessment of alternative scenarios and an adaptive planning enabling to react to updated knowledge or changes in distribution, for example;

8. *Recommends* that Parties develop and apply bycatch reduction measures in their national MSPs through, for example the designation of no-take-zones, seasonal restrictions of fisheries and other MSP-regulation, in recognition that national MSP regulation can be applied in synergy with the Common Fisheries Policy in the European Union;

9. *Welcomes* projects that contribute to cetacean-friendly MSP in line with the ASCOBANS Guidelines and *encourages* Parties to provide support;

10. *Requests* national Focal Points to disseminate this Resolution and the associated Guidelines to their national authorities leading on MSP nationally and internationally, and to subsequently inform the Secretariat of these respective contact details for future follow-up on international MSP matters; and

11. *Welcomes* the opportunity presented by the Guidelines for deepening interaction between ASCOBANS and the European Commission MSP Assistance Mechanism, HELCOM, ICES, OSPAR and VASAB on cetacean conservation issues.

Annex 1 [to Resolution 10.X]:

Guidelines for Cetacean-sensitive Maritime Spatial Planning for the ASCOBANS Area

NB: The guidelines are presented in a separate file here.

Annex 2 [to Resolution 10.X]:

High-level Recommendations from the ASCOBANS Guidelines for Cetacean-Sensitive Maritime Spatial Planning for the ASCOBANS Area

General Principles for Cetacean-Sensitive MSP

1. Maritime spatial plans should include measures to ensure a **Favourable Conservation Status** (ASCOBANS 1992) for cetaceans is maintained or achieved and ensure adverse impacts are mitigated following **Best Available Techniques** (BAT) and **Best Environmental Practices** (BEP) in order to minimise the overall impact. There should be an evaluation process to ensure that BATs and BEPs effectively achieve minimal impacts.

2. Maritime spatial plans should be **aligned with the achievement of conservation objectives in accordance with existing commitments**, including the ASCOBANS Agreement, Sea Basin cetacean conservation plans (e.g. ASCOBANS 2009, 2016a) and, where applicable, EU legislation and/or Regional Seas Conventions. The EU Marine Strategy Framework Directive calls for the achievement and maintenance of Good Environmental Status for marine ecosystems to be accorded priority over other interests. Similarly, cetacean-sensitive MSP should prioritise the achievement and maintenance of Favourable Conservation Status for cetaceans.

3. Cetacean-sensitive MSPs have the following characteristics:

    a) **Strategic direction**: MSP processes should be guided by an overall strategy or vision that outlines how to work towards long-term goals aligned with conservation objectives.
    b) **Spatial and temporal coordination**: Spatial planning is traditionally concerned with the spatial coordination of human activities. The dynamic nature of the marine environment requires that greater attention is paid to temporal coordination - both seasonally and in the longer term. Both spatial and temporal coordination are essential components of MSP.
    c) **Dynamic adaptation:** Maritime spatial plans should have the capacity to adapt to changes in the marine ecosystem as well as changes in our knowledge of such systems (e.g., in relation to changes in the distribution and mobility patterns of cetacean populations). They should be accompanied by thorough, independent monitoring, which, where feasible, is aligned with the MSFD and other relevant monitoring cycles. The policies and zoning provisions contained within maritime spatial plans should be subject to continuous and regular monitoring and revision at least every six years.
    d) **Incremental planning:** Planning of human activities at sea should occur in increments to allow for assessment and evaluation, based on the latest monitoring data, on a step-by-step basis. The duration of increments is largely dependent on the activity and the knowledge status of the impact of such an activity. Where there are knowledge gaps and/or significant uncertainties, increments should be shorter.
    e) **Mitigation of adverse impacts:** The mitigation hierarchy (avoid, minimise, remediate, offset) should be rigorously applied with respect to the projected impacts of all human activities occurring within the plan area. Offsetting should be used as a last resort and be nature-positive, resulting in an overall benefit to the cetacean population affected - which again should be established by thorough monitoring and evaluation.
    f) **Rigorous assessment of environmental impacts:** Maritime spatial planning should be accompanied by a rigorous and thorough assessment of environmental impact at both plan (SEA) and project (EIA) levels prior to activities. Moreover, communication and coordination are required so that EIAs are not conducted in isolation, and the cumulative impacts of multiple projects can be considered by managers. Rigorous monitoring and evaluation after projects have been initiated are required to assess the efficacy of

mitigation and management methods, with feedback processes to ensure that future SEAs, EIAs and MSP cycles are better informed.

4. Maritime spatial plans should be informed by a **functional understanding of marine ecosystems,** including a recognition that all human activities should be planned and carried out in such a way that does not lead to adverse impacts on the marine environment and is compatible with achieving and maintaining healthy and biodiverse marine ecosystems. A functional understanding of marine ecosystems requires:

   a) Identifying **core ecosystem components and their interlinkages** (species, habitats, processes).

   b) Assessing the **current conservation status of cetaceans** and other taxa.

   c) Identifying **recent and long-term trends** in population change.

   d) Assessing the **likely impacts of both existing and planned human activities** on the marine ecosystem.

   e) Identifying and assessing the **risks posed by low-probability, high-magnitude events** (e.g. major pollution incidents).

   f) Identifying **critical knowledge gaps and degrees of uncertainty** in relation to both cetacean distributions and the impacts of pressures arising from human activities.

   g) Estimating the **carrying capacity of the marine ecosystem** with respect to both individual activities and the cumulative impact of all current and planned human activities.

   h) Assessing the **compatibility of existing and planned human activities** with the conservation and restoration measures required to achieve **Favourable Conservation Status** for cetaceans and **Good Environmental Status** for the marine ecosystem.

5. Maritime spatial plans should be informed by the **precautionary principle**. This implies that where adverse impacts are considered possible or likely (e.g. within the SEA report or equivalent), **zoning should be conditional only** and subject to an assessment at project level, determining that significant adverse impacts are not likely to occur in this instance. Where scientific information is incomplete but adverse impacts are considered likely (based on available information), the activities in question should **not be granted consent unless effective mitigation can be guaranteed**.

6. Maritime spatial plans should make explicit recommendations **not only on where activities should and should not occur but also on when they should occur**, taking account of seasonal variations in the spatial distributions and behaviours of cetaceans and the cumulative impact of the co-occurrence of multiple activities (or instances of the same activity) occurring within a short period of time. **Co-occurrence of impulsive noise events should be avoided** wherever possible. Application of bubble curtains and other mitigation measures to reduce the absolute impulsive noise levels in line with established best practices is critical where impulsive noise cannot be avoided.

Cetacean Conservation and Restoration

7. Maritime spatial plans should make provision for an ecologically coherent network of **extensive cetacean conservation areas**. Their locations should be informed by an assessment of the spatial distribution and abundance of individual cetacean species, encompassing both breeding and feeding grounds. The **critical sites for all cetacean populations that have an unfavourable population status** should be included in such zones. The conservation objectives should be designed in such a way as to improve the

conservation status of the population concerned. Cetacean conservation areas may vary along a spectrum from restriction zones with regulations specific to one maritime activity (e.g. speed limits for shipping) to strictly protected areas. **Close cross-sectoral coordination** with the relevant public authorities (e.g., ministries and/or environmental protection agencies) is necessary to ensure that **conservation areas are designated as marine protected areas (MPAs)**.

8. Maritime spatial plans should engage **not only in cetacean conservation but also in ecological restoration**. Restoration may be defined as: "assisting the recovery of a degraded, damaged or destroyed ecosystem to reflect values regarded as inherent in the ecosystem and to provide goods and services that people value". Restoration is necessary **where cetacean populations, habitats or prey populations have experienced long-term decline and/or acute short-term decline**. Restoration may take active (e.g. species reintroduction, planting of seagrass meadows, saltmarsh restoration) or passive (e.g. setting aside large areas for natural regeneration) forms. Restoration can occur both inside and outside of protected areas and is not necessarily more successful in areas of low human impact. The recently adopted Global Biodiversity Framework mandates "*that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity*" (CBD 2022). At the EU level, the EU Biodiversity Strategy (EC 2020) and Draft Nature Restoration Law (European Parliament 2023) require member states to restore at least 20% of their total marine (and terrestrial) territories, irrespective of the degradation status. All ASCOBANS Parties need to pay urgent attention to integrating these restoration goals into national MSPs.

9. **Protected areas** should be included in maritime spatial plans, encompassing a **differentiated zoning system, including strictly protected no-take zones with a minimum of human activity and complementary zones where a limited range of compatible activities** are permitted. The boundaries between the zones should not necessarily be fixed. They can be **dynamically managed** in response to shifts in the distribution and health of relevant cetacean populations. In order to enact such dynamic management, MPAs require **continuous independent monitoring** and **adaptive management** based on the scientific results of this monitoring.

10. MSP zones designated for economic activities that could have a negative impact on cetaceans should not overlap with cetacean conservation areas and cetacean-relevant MPAs. **Appropriate scientifically informed buffer zones** (informed by the spatial impact of the respective economic activity) should surround the cetacean conservation and protected areas. Several studies have shown that offshore wind turbine construction and seismic surveys can both have large-scale effects as underwater noise can carry across considerable distances and cause behavioural change as well as hearing damage.

11. Maritime spatial plans should ensure **connectivity between critical breeding, resting and feeding sites**, as well as the wider network of relevant MPAs. It is imperative that wind farms, aquaculture, shipping routes and other human activities **do not act as barriers or impediments to cetacean movement**.

12. Where **adverse impacts are found to occur or** (in exceptional circumstances) unavoidable adverse impacts are expected to occur due to planned activities at certain locations, **remediation (direct compensation)** with a demonstrable overall positive impact on affected cetacean populations should be implemented. Subsequent monitoring is required to determine if the remediation actions have had a sufficient beneficial impact on cetacean populations and that unavoidable adverse impacts are not only compensated for but there is a **net benefit to the population**.

13. Where the **abundance or health of a cetacean population has declined over at least six years**[1], the maritime spatial plan should detail how the actions within the plan will contribute to **reversing this trend** and **contribute to ecosystem restoration**. Such measures should be commenced within 12 months of plan adoption.

Environmental Assessment

14. **Strategic Environmental Assessments** (SEAs; EU 2001) used in MSP processes should explicitly include **cetacean species** and **map their habitats and connectivity corridors** in order to subsequently assess how the favourable conservation status is being impacted and ultimately to inform the maritime spatial plan. SEAs should further **demonstrate alignment** with internationally agreed conservation objectives.

15. **Project-level environmental impact assessments** should be conducted in a thorough and rigorous manner according to harmonised, scientifically informed methodologies. Planning authorities should provide for **safeguards and oversight mechanisms** that effectively ensure that environmental impact assessments are conducted on an **objective basis, independent of commercial interests**.

16. Maritime spatial plans should be accompanied by a **detailed spatially explicit assessment of the cumulative effects** of human activities (both existing and planned) on cetaceans. This assessment, to be published within the SEA report (or equivalent), should include the following:

    a) **Sensitivity matrix** of likely anthropogenic pressures on individual cetacean species (e.g. windfarm noise impact during the construction period on harbour porpoises)
    b) **Identification of the degree and character of key threats** at the species level
    c) **Computation/extrapolation of cumulative effect scores** for each pressure for each grid square within a **high-resolution spatial grid** (e.g. 1 x 1km or 500m x 500m).

17. Cumulative effects assessments should be conducted for **multiple distinct planning scenarios** with **differing intensities and spatial distributions** of human activities. These scenarios should be **plausible** and, where possible and relevant, **consider shifting policy priorities**. The differences in the impacts of alternative planning scenarios should be made clearly visible. The preferred planning scenario should be selected to **ensure minimal adverse impact**.

Information Sharing and Transboundary Cooperation

18. In order to ensure that maritime spatial plans and consenting procedures are informed by accurate and up-to-date information, it is imperative that **data and knowledge pertaining to the marine ecosystem and potential threats** are shared **among all stakeholders.** It is imperative that the data gathered in the course of project-level environmental impact assessments is **shared with MSP decision-making bodies**. Protocols and oversight mechanisms should be developed and implemented to **prevent the withholding of relevant information** that might influence the capacity of planners to make informed decisions. The **public interest in ensuring healthy and diverse ecosystems** should be placed above private concerns regarding commercially sensitive data.

19. Maritime spatial plans have a **responsibility to educate users of marine space and other stakeholders** so as to improve the **capacity for evidence-informed decision-making**. This means that information on the spatio-temporal distribution, abundance and population health status of cetaceans within the plan area should be provided within the plan itself (on maps and in text form). Maritime spatial plans should **provide clearly accessible information** on long-term trends in species abundance. Formal plans should be **accompanied by online maps with up-to-date information**.

[1] This six-year time period is aligned with EU MSFD monitoring cycles

20. Maritime spatial plans should take **explicit account of transboundary impacts**. The current status of the **cetacean species and regional populations** (e.g. North Sea, Belt Seas and Baltic Proper harbour porpoises) should be considered rather than solely the spatial distribution and abundance of cetacean species within the plan area (e.g., EEZ and/or coastal waters). In line with the Espoo Convention, maritime spatial plans should consider the **impact of current and planned activities in neighbouring jurisdictions.**

21. Maritime spatial plans should include **commitments to coordinated planning and monitoring efforts**. **Monitoring methodologies** should be harmonised across the ASCOBANS Area. A **regional seas approach**[2] is recommended to ensure transboundary coordination and coherence of planning, environmental assessment and monitoring efforts.

22. Where individual maritime spatial plans only cover parts of the national waters, such as the coastal zone or the Exclusive Economic Zone, a **consistent and coherent approach** should be adopted. The **same categories for cetacean conservation areas should be used at the various national and sub-national levels,** and the cetacean management approaches in each plan should be integrated and based on a **common evidence base**.

23. The terms of reference of the **ASCOBANS Working Group on MSP** should be extended to encompass a coordination role in the development of **common assessment and monitoring methodologies for cetacean-sensitive MSP** and the sharing of relevant cetacean conservation expertise. The Working Group should **liaise and collaborate**, where possible and practical, with the WGs of other relevant IGOs, such as the European Commission MSP Assistance Mechanism and MSP Platform[3], HELCOM, ICES, OSPAR and VASAB.

[2] https://www.unep.org/explore-topics/oceans-seas/what-we-do/regional-seas-programme
[3] The European MSP Platform is an information and communication gateway designed to offer support to all EU Member States in their efforts to implement MSP. It is a product of the MSP Assistance Mechanism implemented by CINEA on behalf of DG MARE.