

RESOLUTION 4.19
MODEL MEASURES ON CONSERVATION OF CETACEANS

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

Recalling that compliance with the obligations arising from ACCOBAMS requires the adoption and enforcement of relevant national legislation, as provided for in Annex 2, paragraph 1, to ACCOBAMS,

Considering that it is appropriate that, in drafting and adopting national legislation, the Parties follow, wherever appropriate, a uniform model based on the achievement of a favourable conservation status for cetaceans,

1. *Takes note* of the Model Measures on Conservation of Cetaceans that is annexed to the present Resolution;
2. *Mandates* the Agreement Secretariat:
 - to transmit the Model Legislation on Conservation of Cetaceans to the Parties for their consideration and comments; and
 - to report on this subject at the next Meeting of the Parties.

ANNEX

Model Measures on Conservation of Cetaceans

Considering that:

- Cetaceans are an integral part of the marine ecosystem which must be conserved for the benefit of present and future generations and that conservation of cetaceans is a common concern,
- for hundreds of years cetaceans were taken or killed for commercial purposes, with some cetaceans stocks hunted to near extinction,
- cetaceans are particularly vulnerable to the long-lasting effects arising from over-exploitation and many cetaceans stocks have not recovered,
- today cetaceans face an uncertain future due to a variety of threats, including degradation and disturbance of their habitats, ozone depletion, chemical and noise pollution, marine debris, vessel strikes, entanglements with fishing gear, prey depletion, reduction of food resources, increasing offshore industrial development and escalating threats from climate change, including ocean acidification,
- because cetaceans migrate throughout the world's oceans, international cooperation is required to successfully conserve and protect them,
- where there are threats of serious or irreversible damage to cetaceans, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent the damage,
- [State] is a party to a number of international relevant instruments, such as the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, the Convention for the Protection of the Black Sea against Pollution and its Protocols, International Convention for the Regulation of Whaling, the Convention on the Conservation of European Wildlife and Natural Habitats, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora [check if the State is a party to all of them];
- the following Law is adopted [or equivalent formula in national use].

SECTION I

GENERAL PROVISIONS

Art. 1

Definitions

For the purposes of this law:

1. "Cetaceans" means animals, including individuals, of species, subspecies or populations of *Odontoceti* or *Mysticeti*.
2. "Habitat" means any area in the range of cetaceans where they are temporarily or permanently resident, in particular, feeding areas, calving or breeding grounds and migration routes.
3. "Conservation status" means the sum of the influences acting on cetaceans that may affect their long-term distribution and abundance.

Conservation status is taken as favourable when:

- population dynamics data indicate that the cetaceans are maintaining themselves on a long-term basis as a viable component of their ecosystems;
 - the range of the cetaceans is neither currently being reduced, nor is likely to be reduced, on a long-term basis;
 - there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the cetaceans on a long-term basis;
 - the distribution and abundance of the cetaceans approach historic coverage and levels to the extent that potentially suitable ecosystems exist and to the extent consistent with wise wildlife management.
4. "Endangered" in relation to a particular cetacean species, subspecies or populations means that it is in danger of extinction throughout all or a significant portion of its range.
 5. "Taking" means to hunt, capture or harass a cetacean.
 6. "Harassing" means the disruption of a cetacean's normal behaviour or prior activity by deliberate or negligent acts of pursuit, dispersal, herding, interference, torment, tagging, marking, branding or other acts that annoy or trouble cetaceans, as well as attempts and repeated approaches for such purposes.
 7. "Cetaceans watching" means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

8. [“Drift net” means any gillnet held on the sea surface or at a certain distance below it by floating devices, drifting with the current, either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilise the net or to limit its drift;]
9. “Competent national authority” means [indicate it, on the basis of national legislation].

Art. 2

Purposes of the Law

The purposes of this law are the following:

- a) to reduce, and where possible, eliminate sources of human-caused death, injury, harassment and disturbance of the cetaceans;
- b) to strengthen cetaceans conservation and protection efforts of relevant international organizations;
- c) to initiate, expand and fund research to improve the understanding of cetaceans, cetacean health and reproduction, cetacean habitats, as well as the impacts of human activities and other threats to cetaceans.

Art. 3

Geographical Scope of the Law

1. The geographical scope of this Law, hereinafter referred to as the “area covered by this Law”, is constituted by territory of [State], as well as the maritime internal waters, the territorial sea and the exclusive economic zone [or fishing zone or ecological protection zone] of [State],
2. Beyond the area covered by this Law, the provisions of this Law apply to acts or omissions which, as the case may be, are attributed to:
 - a) nationals of [State];
 - b) persons of whatever nationality who for whatever reason are on board a vessel flying the flag of [State] or an aircraft registered in [State];
 - c) corporations incorporated in [State];
 - d) owners or persons in charge of the operation of a vessel flying the flag of [State] or an aircraft registered in [State].

SECTION II

PROHIBITED OR REGULATED ACTIVITIES

Art. 4

Possession or Use of Drift Nets

It is unlawful to keep on board or to use any drift nets.

Art. 5

Fishing Gears

It is unlawful to discard or leave adrift at sea fishing gears.

Cetaceans that are caught incidentally in fishing gear shall be immediately released in conditions that assure their survival.

Art. 6

Killing or Injuring a Cetacean

It is unlawful to take any action that results in the death or injury of a cetacean.

Art. 7

Taking of Cetaceans

It is unlawful to take a cetacean or attempting to engage in such activity.

Art. 8

Possession of Cetaceans

It is unlawful to possess a cetacean, a part of a cetacean or a product derived from a cetacean killed or taken in violation of this Law.

Art. 9

Import of Cetaceans

1. It is unlawful to import into [State] any cetacean or part any cetacean which was killed or taken in violation of this Law or killed or taken in another State.
2. It is unlawful to import into [State] any product derived from a cetacean if the importation into the [State] of the cetacean from which such product is made is unlawful under para. 1 of this Article or if the sale in commerce of such product in the country of origin of the product is illegal.

Art. 10

Use of Ports

It is unlawful to use any port, harbour or other place under the jurisdiction of [State] to take, import or possess a cetacean, any part of a cetacean or any product derived from a cetacean in violation of Art.9.

Art. 11

Trade in Cetaceans

It is unlawful to transport, purchase, sell, barter, export or offer to purchase, sell or export any cetacean, any part of a cetacean or any product derived from a cetacean in violation of this Law.

Art. 12

Exceptions

The provisions of this Section do not apply:

- a) for the purpose of non-lethal in situ research aimed at maintaining a favourable conservation status for cetaceans, after having obtained the advice of the ACCOBAMS Scientific Committee and a permit by the [competent national authority] issued under Art. 13;
- b) in emergency situations for cetaceans, when exceptionally unfavourable or endangering conditions occur;
- c) to an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean;
- d) to an action that is reasonably necessary to prevent a risk to human life or health;
- e) to an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour;
- f) an unintentional action or omission which would be a contrary to Arts. from 5 to 11 above, provided that the author, within seven days after becoming aware of it, notifies the [competent national authority] in writing, by telephone or by use of any other electronic equipment that the action or omission occurred and provides other relevant particulars, including time and place.

SECTION III

MEASURES FOR THE CONSERVATION OF CETACEANS

Art. 13

Scientific Research

1. The [competent national authority] shall promote a comprehensive programme of scientific research to improve knowledge about cetaceans in order to ensure their favourable conservation status.
2. The [competent national authority] shall ensure that scientific research activities on cetaceans:
 - are conducted to high scientific and animal welfare standards;
 - contribute to regional priorities for conservation and management;
 - are undertaken with appropriate regional co-ordination and oversight in order to maximise the benefit of the research and minimise negative effects on individuals, populations and ecosystems.
3. Scientific research initiatives on cetaceans include, but are not limited to:
 - a) the periodical monitoring of cetacean status and trends, especially in poorly known areas or as regards species for which little data are available;

- b) the determination of the migration routes, habitat use and the breeding and feeding areas, in order to define where human activities may need to be regulated as a consequence;
- c) the evaluation of the feeding requirements of cetaceans in order to adapt fishing regulations and techniques accordingly;
- d) the development of systematic research programmes on dead, stranded, wounded or sick cetaceans to determine the main interactions with human activities and to identify present and potential threats;
- e) the collection of information on cetaceans causes of deaths obtainable through cetaceans necropsies, particularly of endangered cetaceans species;
- f) the development of passive acoustic techniques to monitor cetacean population;
- g) an assessment of the direct and indirect effects of anthropogenic noise on cetaceans distribution, behaviour, and reproduction;
- h) information on the impacts on reproduction and immune systems from chemical pollutants;
- i) information on ecosystem changes due to climate warming;
- j) the development of more cetacean-friendly fishing gear and methods, including effective fishing gear marking systems;
- k) the use of passive acoustic sonar and other technologies, including vessel design, to reduce mortality of cetaceans from vessel strikes.

In designing and carrying out this scientific research programme, the [competent national authority] shall cooperate with institutions and experts that are knowledgeable about regional issues relating to cetaceans conservation and management.

Art. 14 **Permits for Research**

1. Only non-lethal in situ research aimed at maintaining a favourable conservation status for cetaceans is allowed on the basis of a permit granted under an application.
2. Applications for non-lethal in situ research activities that involve the taking of cetaceans shall be reviewed and determined by the [competent national authority] on the basis of the relevant Guidelines adopted under the ACCOBAMS and after having obtained the advice of the ACCOBAMS Scientific Committee.
3. As soon as practicable after receiving the application, the [competent national authority] must cause to be published on the internet the details of the application and an invitation for anyone to give the [competent national authority] comments within twenty days on whether the permit should be issued.
4. In making a decision on the application, the [competent national authority] must consider the comments made under para. 2 above, if any.
5. The [competent national authority] must not issue the permit unless satisfied that the holder of the permit will take all reasonable steps to minimise the interference with cetaceans.
6. No permit shall be issued by the [competent national authority] if there are threats of serious or irreversible damage for cetaceans and their habitats and if measures to prevent such damage are not adopted.
7. The [competent national authority] shall not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.
8. Any permit issued under this Article shall specify:
 - a) the number and kind of cetaceans which are authorized to be taken,
 - b) the location and manner in which they may be taken, and
 - c) any other terms or conditions which the [competent national authority] deems appropriate.
9. Researchers holding permit shall submit to the [competent national authority] an annual report of their activities.
10. The [competent national authority] may modify, suspend, impose further conditions to, or revoke in whole or part any permit issued under this Article in order to make such permit consistent with any change made after the date of issuance with respect to any applicable regulation or in any case in which a violation of the terms and conditions of the permit is found.

Art. 15

Impact Assessment for Activities that May Affect Cetaceans or their Habitat

1. The [competent national authority] shall conduct on a regular basis an impact assessment on the conservation status of cetaceans for either allowing or prohibiting the continuation or the future development of activities that may affect cetaceans or their habitat in the area covered by this Law, including fisheries, offshore exploration and exploitation, nautical sports, as well as establishing the conditions under which such activities may be conducted.

2. The results of the impact assessment shall guide in the establishment of the conditions to issue a permit for the relevant activities under Art. 16.

Art. 16

Permits for Activities that May Affect Cetaceans or their Habitat

1. In issuing permits for activities covered by Art. 15 of this Law and in prescribing related regulations, the competent national authorities shall give full consideration to all factors related to the conservation status of cetaceans, including but not limited to the effect of such permits and regulations on:
 - a) existing and future levels of cetaceans species and population stocks;
 - b) existing international treaty obligations;
 - c) the marine ecosystem and related environmental considerations;
 - d) the conservation, development, and utilization of fishery resources; and
 - e) the economic and technological feasibility of implementation.
2. The [competent national authority] shall undertake periodical scientific reviews of the impact of permits issued under this Article on the cetaceans, providing an opportunity for public comments during the course of such review, and shall include a response to public comments in the final report on such reviews.
3. The competent authorities may modify, suspend, impose further conditions to, or revoke in whole or part any permit issued under this Article in order to make such permit consistent with any change made after the date of issuance with respect to any applicable regulation or in any case in which a violation of the terms and conditions of the permit is found.

Art. 17

Cetacean By-Catch

The [competent national authority] shall:

- a) adopt regulations to reduce cetacean by-catch in fishing activities through the use of appropriate devices, such as pingers and acoustic mitigation devices;
- b) regularly monitor the effectiveness and efficiency of such devices;
- c) estimate cetacean by-catch for different types of fisheries;
- d) raise awareness of fishermen about the need to mitigate the impact of fishing on cetacean populations.

Art. 18

Noise Restrictions

The [competent national authority] shall:

- a) take into account the relevant instruments adopted at the international level, adopt regulations for minimizing the introduction of incidental noise from commercial shipping operations and other activities into the marine environment for purposes of reducing the potential adverse effects on cetaceans and other marine life;
- b) study and reduce the adverse effects of anthropogenic noise, including when produced by military activities, on cetaceans and other marine life;
- c) identify and promote the use of areas to be avoided by commercial vessels and other navigational measures, such as speed reduction areas in important cetaceans habitats, in order to minimize the threat of serious injury to cetaceans resulting from collisions with commercial vessels.

Art. 19

Discharges at Sea

The [competent national authority] shall establish and maintain a regularly updated list of pollutants believed to have adverse effects on cetaceans and shall adopt regulations on the discharge at sea of such pollutants.

Art. 20

Specially Protected Areas

1. Within the framework of the national legislation on protected areas and the relevant international treaties, the [competent national authority] shall establish and manage one or more specially protected areas for cetacean conservation, corresponding to the areas which serve as habitats of cetaceans or which provide important food resources for them.

2. The areas referred to in para. 1 shall be established under specific regulations and shall be managed under a management plan and according to criteria agreed upon at international level.
3. If other States are involved, the areas referred to in para. 1 shall be established under an international treaty.
4. The [competent national authority] shall, if appropriate, propose the areas referred to in para. 1 for inscription in lists established under international treaties.

Art. 21

Capacity Building, Training and Education

1. The [competent national authority] shall give priority to capacity building in order to develop the necessary expertise to ensure a favourable conservation status for cetaceans, in particular as regards:
 - a) the development of systems for collecting data on observations, incidental catches, strandings, epizootics and other phenomena related to cetaceans;
 - b) the keeping of lists of national authorities, research and rescue centres, scientists and non-governmental organizations concerned with cetaceans;
 - c) the preparation of a directory of protected or managed areas which could benefit the conservation of cetaceans and of marine areas of potential importance for the conservation of cetaceans;
 - d) the preparation of a directory of national and international legislation concerning cetaceans;
 - e) the establishment of data banks for the storage of information collected under paragraphs a) to d) above;
 - f) the preparation of an information bulletin on cetacean conservation activities;
 - g) the preparation of information, awareness and identification guides for distribution to users of the sea;
 - h) the preparation of a synthesis of veterinary recommendations for the rescue of cetaceans; and
 - i) the development and implementation of training programmes on conservation techniques, in particular, on observation, release, transport and first aid techniques, and responses to emergency situations.
2. In collaboration with competent international institutions and the corresponding authorities of other States, the [competent national authority] shall develop common tools for the collection and dissemination of information about cetaceans and shall organize training courses and education programmes.

Art. 22

Emergency Plans

1. The [competent national authority] shall develop and implement emergency measures for cetaceans when exceptionally unfavourable or endangering conditions occur. In particular, it shall:
 - a) prepare, in collaboration with competent bodies, emergency plans to be implemented in case of threats to cetaceans, such as major pollution events, important strandings or epizootics;
 - b) evaluate capacities necessary for rescue operations for wounded or sick cetaceans; and
 - c) prepare a code of conduct governing the function of centres or laboratories involved in this work.
2. In collaboration with competent international institutions and the corresponding authorities of other States, the [competent national authority] shall develop common tools for the preparation and implementation of emergency plans.

SECTION IV CETACEAN WATCHING

Art. 23

Scope of this Section

This Section addresses cetacean-watching activities carried out for commercial purposes by vessels or aircraft.

Art. 24

Impact assessment

1. Before allowing cetacean-watching activities, the [competent national authority] shall require an assessment on their impact on the favourable conservation status for cetaceans.
2. The impact assessment shall be based on the best available scientific information.

3. No cetacean-watching activities are authorized if there are threats of significant adverse impact on the behavioural patterns or physiological well-being of cetaceans, having regard to the number and effect of existing cetacean-watching operations.
4. Based on the results of the impact assessment, the [competent national authority] shall establish special conditions to carry out cetacean-watching activities.
5. The impact assessment shall be repeated at periodic intervals.

Art. 25

Permit

1. Any commercial cetacean-watching activity shall be carried out under a permit granted by the [competent national authority].
2. Every applicant for a permit for a vessel or aircraft cetacean-watching operations should submit to the [competent national authority] an application in writing setting out:
 - a) the type, number and speed of vessels or aircraft intended for use and the maximum number of vessels or aircraft the operator proposes to operate at any time;
 - b) information relating to the noise level of each vessel or aircraft both above and below the sea;
 - c) the area of operation;
 - d) the base of operation;
 - e) the duration and frequency of trips;
 - f) the species of cetaceans with which the operation will have contact and the kind of contact;
 - g) the method of location of cetaceans;
 - h) the maximum number of passengers to be taken on board;
 - i) the experience with cetaceans demonstrated by the persons in command of the vessel or aircraft;
 - j) the educational materials provided to the passengers;
 - k) the altitude of the aircraft.
3. No permit shall be granted if the competent national authority is not satisfied that:
 - a) the operator and the staff who come into contact with cetaceans have sufficient experience with cetaceans;
 - b) the operator and the staff have sufficient knowledge of the local area and of sea and weather conditions;
 - c) the operator and the staff who come into contact with cetaceans have no convictions for offences involving the mistreatment of animals;
 - d) the operation proposed has sufficient educational value to the public.
4. The competent national authority may at any time suspend or revoke a permit, or restrict the operation authorized by a permit, where:
 - a) the holder contravenes or fails to comply with any requirement relating to cetacean-watching or any condition specified in the permit;
 - b) to suspend, revoke or amend a permit is necessary, on reasonable grounds, for maintaining the favourable conservation status for cetaceans.

Art. 26

Behaviour around cetaceans

The following conditions shall apply where cetacean-watching activities are being carried out:

- a) vessels and aircraft shall be operated so as not to disrupt the normal movement or behaviour of cetaceans;
- b) contact with cetaceans shall be abandoned at any stage if they show signs of becoming disturbed or alarmed;
- c) no cetacean shall be separated from a group;
- d) no rubbish or food shall be thrown near or around the cetaceans;
- e) no sudden or repeated change in the speed or direction of vessels or aircraft shall be made except in the case of an emergency;
- f) where a vessel stops to enable the passengers to watch a cetacean, the engines shall be placed in neutral;
- g) no aircraft shall be flown below 183 metres (600 feet) above sea level;
- h) no vessel shall approach within 100 metres of a cetacean;
- i) no vessel shall cut off the path of a cetacean;

- j) no cetacean shall be prevented from leaving the vicinity of the vessel;
- k) a vessel less than 300 metres from cetaceans shall move at a constant speed no faster than 5 knots and no faster than the slowest cetacean in the vicinity, and shall stop when it approaches within 100 metres of a cetacean;
- l) a vessel departing from the vicinity of cetaceans shall proceed slowly until the vessel is at least 300 metres from the nearest cetacean;
- m) aircraft shall be operated in such a manner that, without compromising safety, the aircraft's shadow is not imposed directly on cetaceans;
- n) only one vessel or aircraft at any one time shall be allowed to stay in the watching area;
- o) the presence in the watching area shall be limited to around 15 minutes for vessels or 2 minutes for aircraft, especially if other vessels or aircraft are waiting for their turn;
- p) vessels shall approach a cetacean only diagonally from the side;
- q) activities such as swimming with cetaceans shall be forbidden or strictly regulated;
- r) cetaceans shall not in any other way be disturbed or harassed.

Art. 27

Training and special quality mark

1. The [competent national authority] shall organise training courses for cetacean-watching operators and staff and grant them a certificate
2. The [competent national authority] shall grant a special quality mark to the operators who have behaved in conformity with the applicable regulations or guidelines, have obtained a training certificate and have a qualified guide on board.

SECTION V

CRIMINAL PROVISIONS

Art. 28

Sanctions¹

1. The possession on board of drift nets is sanctioned.
2. The use of drift nets is sanctioned.
3. The act of discarding or leaving adrift at sea fishing gears is sanctioned.
4. The omission to immediately release cetaceans that are caught incidentally in fishing gear in conditions that assure their survival is sanctioned.
5. The killing or injuring a cetacean is sanctioned.
6. The taking of cetaceans is sanctioned.
7. Possession of a cetacean, a part of a cetacean or a product derived from a cetacean taken or killed in violation of this provision is sanctioned.
8. The import into [State] of any cetacean, part of a cetacean or product derived from a cetacean in violation of Art. 9 is sanctioned.
9. The use of any port, harbour or other place under the jurisdiction of [State] to take, import or possess a cetacean, any part of a cetacean or any product derived from a cetacean in violation of Art. 9 is sanctioned.
10. The transport, purchase, sale, barter, export or the offer to purchase, sell or export any cetacean, any part of a cetacean or any product derived from a cetacean in violation of this Law is sanctioned.
11. Failure to notify the information provided for in Art. 12 f) is sanctioned.
12. Failure to comply with the conditions for a permit under Art. 14, Art. 16 or Art. 25 is sanctioned.
13. Failure to comply with the conditions of behaviour around cetaceans set forth in Art. 26 is sanctioned.

Art. 29

Aggravating Circumstances

The sanctions provided for in Art. 28 may be aggravated if the cetacean:

- a) was pregnant at the time of killing or taking;
- b) was nursing at the time of killing or taking, or less than eight months old, whichever occurs later;

¹ The type and level of sanctions should be determined by the State concerned

- c) belonged to a species or population stock which the [competent national authority] has designated as endangered; or
- d) was killed or taken in a manner deemed inhumane by the [competent national authority].

Art. 30

Seizure and Forfeiture

1. Any vessel that is employed in any manner in the unlawful taking or killing of any cetacean shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture.
2. All cetaceans or products derived from cetaceans seized or forfeited under para. 1 shall be disposed by the [competent national authority] in such a manner that it deems appropriate.

Art. 31

Earmarking of Fines

Fines paid under Art. 28 shall be earmarked for activities devoted to scientific research, capacity building, training or education in the field of cetacean, as well as for the establishment of a fund to compensate fishermen having suffered damage to ensure the immediate release of cetaceans caught incidentally in fishing gears.