

**Agenda Item 5.4.1: Bycatch Issues/EU Council Regulation on
Incidental Catches of Cetaceans**

- a) **WWF Response to Council Decision of 22 March 2004**
- b) **WWF Briefing on Commission Proposal COM(2003)451 Final
released prior to the Council Meeting**

Submitted by: WWF



**NOTE:
IN THE INTERESTS OF ECONOMY, DELEGATES ARE KINDLY REMINDED TO BRING
THEIR OWN COPIES OF THESE DOCUMENTS TO THE MEETING**

Fisheries Ministers fail to protect dolphins and porpoises

Brussels, Belgium – WWF warns that a proposal agreed yesterday evening by the EU Fisheries Council to reduce the accidental catch of dolphins and porpoises in fishing nets will fail to protect these marine species in Europe. The global conservation organization is deeply concerned by the fact that the final text is a significantly weakened version of a Regulation submitted by the EU Commission.

“WWF is appalled by the Ministers’ decision. What was agreed last night will do little to protect thousand of dolphins and porpoises that are caught and killed in EU waters each year”, said Charlotte Mogensen, WWF European Fisheries Officer. “We seriously question whether Member States have fulfilled their obligations under the Habitats Directive”, added Mogensen.

The following key issues were amended or missing from the final proposal:

- i) Acoustic deterrents (“pingers”) were only agreed for vessels over 12 meters: this avoids the deployment for a very important sector of the fleet which is responsible for the death of thousands of porpoises each year;**
- ii) Effective monitoring and the use of observers will only be applicable for vessels over 15 meters: once again this will fail to have an impact on a large sector of the fleet.**
- iii) The scheme for onboard observers was significantly reduced from the original Commission’s proposal: this will fail to provide the much needed information from the fisheries activities;**
- iv) No agreements were made on developing alternative fishing gear: this means that there are no alternative solutions to reduce dolphin and porpoise bycatch.**
- v) The commitment to ban drift nets in the Baltic Sea was delayed by one year until 2008: this could mean extinction for the harbour porpoise population.**

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Immediate action vital to reduce small cetacean bycatch - Baltic harbour porpoise on verge of extinction.

WWF welcomed the publication by the European Commission of proposals to minimise the unsustainable impact fisheries have on small cetaceans through incidental catches. This much needed initiative to tackle the greatest threat facing many populations of small cetacean is long overdue but could if implemented effectively

- i) allow Member States to meet important commitments under the Habitats and Species Directive, specifically Article 12.4,
- ii) bring the Baltic into line with the rest of the EU in relation to the use of drift nets, possibly one of the most non selective fishing gears, and iii) demonstrate the EU's commitment to addressing the wider impacts of fisheries on the marine environment.

However since the introduction of the proposal in August 2003 certain Member States have displayed a reluctance to accept either the need for the regulation of fisheries to address the incidental capture of small cetaceans or have questioned the means of achieving this.

WWF would remind Member States that under article 12.4 of the Habitats & Species Directive, agreed in 1992, they are committed to "ensure that incidental capture and killing does not have a significant negative impact on the species concerned". What constitutes 'significant negative impact' has been agreed by ASCOBANS, an international convention to which many Member States are party, as "a total anthropogenic removal above 1.7% of the population". However, it also notes that in certain circumstances unacceptable interaction may involve an anthropogenic removal much less than 1.7%. In the case of the Baltic, where the harbour porpoise population is critically endangered, removing as few as two animals in any year is deemed unsustainable.

Commission proposal COM(2003)451 final is a much welcome first step towards minimising cetacean bycatch in European fisheries but there are some key issues which must be addressed if it is to achieve its objectives:

- i) **There is a need to establish a long term strategy for cetacean bycatch reduction which will guide and facilitate monitoring and evaluation of efforts to reduce bycatch**
- ii) Acoustic deterrents (pingers) are a short-term solution that require onboard observers as a condition of use to ensure that they are deployed and maintained effectively. Experience in the USA has shown that without observers there is a strong chance that their effectiveness will be undermined**
- iii) **In parallel with the proposed measures there needs to be research into alternative non acoustic gear development and deployment**
- iv) **The pattern of fishing effort post implementation of measures must be monitored for any redeployment**
- v) **Effective monitoring and enforcement of the measures must be a priority**

Phase out of use of drift-nets in the Baltic Sea vital

As the Commission document notes the Baltic porpoise is the most critically endangered population of small cetacean in Europe and **it is essential that steps are taken immediately to avoid the extinction of this population.** A new survey of the Baltic population of harbour porpoise estimates that there could be as few as 93 (confidence intervals: 10 – 460) animals left. This is down from an estimate of 599 (confidence intervals: 200-3300) in 1995. Both bottom set gill nets and driftnets have been identified as a major threat to the population. It is within this context that WWF welcome both the measures identified in the Baltic to address these fisheries.

While there are potentially a number of factors which may have contributed to the decline in the population of porpoises in the Baltic, such as freezing winters and pollutant levels, at the present time **it is widely accepted that the bycatch of porpoises in fishing gear is the most important threat to the population.** As such it is this threat that must be addressed without delay if the population is to stand a chance of recovery in the Baltic.

WWF therefore strongly support the Commission's proposal to phase out the use of driftnets in the Baltic. The current regulations governing their use in the Baltic Sea lag far behind those in the rest of world and allow for up to 21 kilometres of net to be used by one vessel at a time. These nets are capable of catching a range of non target species including the harbour porpoises, seals and sea birds. WWF welcome the immediate restriction of driftnets but would like to see an end to their use sooner than 2007 and would urge Member States to consider a phase out by January 2006 given the critical nature of the porpoise population in the Baltic. **The deadlines for restriction and phase out cannot be allowed to slip.**

Consideration of **a phase out in certain areas is not a realistic solution** as the intelligence on where bycatch occurs is not adequate enough to make such decisions. With a potential biological removal of less than two animals in the region there can be no chances taken.

Mandatory use of acoustic deterrent devices

Observer programme to accompany pinger use essential: WWF acknowledge the potential short term benefits of introducing the use of acoustic pingers as a bycatch mitigation measure but only if their deployment is accompanied by an observer programme. The current proposal does not explicitly identify onboard observers as a condition of use but we believe it should. There exist a range of concerns associated with pinger use including i) possible exclusion of animals from essential habitat, ii) possible habituation of animals to the devices, iii) operational problems including poor maintenance of devices leading to ineffective bycatch reduction, or devices not functioning. These problems are acknowledged by cetacean bycatch experts globally who have identified the need for observers to be a mandatory requirement of any pinger programme. This is to ensure that pingers are being deployed, and importantly, maintained properly, that they are functioning and also to monitor their impact on small cetacean populations. WWF does not accept the argument that it is usually impossible for small vessels to take observers - there are examples of observer schemes running on small vessels in a number of countries. **Member States cannot afford to get this wrong – onboard observers must be a condition of pinger deployment.**

Parallel gear development essential: Pingers are not a long term solution and while they will be deployed in the short term it is essential that in parallel research and development of alternative gear is undertaken by Member States. The regulation currently fails to recommend the development of technical alternatives (other than other acoustic devices) and WWF believe that the regulation should place a duty upon Member States to finance the development and implementation of alternatives in order to secure long term solutions to the incidental capture of small cetacean in fishing gear.

Undermining of pinger deployment: There must be close monitoring of those fisheries subject to mandatory pinger use to ensure that fishing effort is not redeployed to areas outside that identified in the regulation. Any redeployment of effort could mean that the intended benefits of mandatory pinger use - decreased bycatch - will be undermined as fishing effort moves to areas where pinger use is not mandatory.

Alternatives: As an alternative to pingers fishermen should be given the option to trade in their gillnets for gear which will not have a negative impact on harbour porpoises, such as the use of long lines, pots or traps depending on the fishery. Such gear replacement could be grant funded under FIFG.

No time to delay: Measures to reduce the incidental capture of small cetaceans are needed immediately, not mid 2005. There should be no more delays introducing effective measures.

Observers onboard vessels

There remains little information on the extent of incidental capture of cetaceans in the majority of European fisheries. Yet under article 12.4 of the Habitats and Species Directive Member States are obliged “**to establish a system to monitor the incidental capture and killing of all cetaceans** and, in light of the information gathered, to take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant impact on the species concerned”.

Only a tiny fraction of Member States have undertaken any sort of assessment of the incidental capture of cetaceans in their fisheries and action to reveal the true extent of the impact of a range of fisheries is long overdue. Member States cannot be allowed to avoid such action any longer. It is now twelve years since they committed to monitor fisheries for cetacean bycatch. There will be a need for higher levels of observer coverage in the Baltic given the lower number of animals left in the area.

Follow up and review of measures and enforcement

Long term framework needed: WWF believe that it is vital that a long term strategic framework is set in place that will allow ongoing evaluation and monitoring of bycatch mitigation efforts and developments. We do not agree with the Commission’s assertion that only when we have more information will a long term comprehensive and reliable strategy for the conservation of these species be possible.

A strategic framework will require that unequivocal, quantifiable management objectives are defined, which subsequently form the reference point for risk assessments. Objectives should reflect the general aims identified by ASCOBANS - to restore and/or maintain populations to 80% or more of the carrying capacity (in a period of 50 years with a 95 percent certainty) and

to minimise (i.e. to ultimately reduce to zero) anthropogenic removals and the intermediate precautionary objective agreed by ASCOBANS - to reduce bycatches to less than 1% of the best available population estimate.

Such a framework should be agreed and endorsed as a matter of priority as this would provide a structure within which to identify gaps in knowledge, where priorities for monitoring or mitigation measures exist and also to evaluate the practical implementation (and associated problems) of current efforts. It would also be within such a framework that the reduction of fishing effort could be reviewed with respect to its real impact on bycatch reduction. The assumption that current effort reduction will automatically reduce levels of bycatch needs to be investigated.

Enforcement: Enforcement of the proposed measures will be critical. Experience in the Mediterranean has demonstrated that many vessels do not adhere to the current driftnet ban (Regulation 1239/98). The result of this is that many cetaceans and other non target species continue to be caught indiscriminately in driftnets throughout the Mediterranean, potentially threatening certain species. Member States and the Commission must address this critical issue if the proposed measures are to stand a chance of achieving the much needed reduction in cetacean bycatch.

Geographical implementation of Regulation: WWF believe that the proposed regulation should take into account the impact that Community fishing vessels have on cetaceans in distant waters. The Commission should ensure that the measures advocated apply not only to EU waters but also to EU vessels in distant water fisheries as these remain largely unmonitored and unregulated in relation to their impact on cetaceans and other non target species.

There is no evidence to suggest that exemptions to mitigation measures can be justified for particular areas. In the case of gill net use, where gill nets are used in areas where harbour porpoise exist there is a simple fact - there will be a bycatch of harbour porpoise. Action is needed now to address this critical problem European wide.

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