





## Draft Submission of ASCOBANS Advice on the Requirements of Legislation to Address Monitoring and Mitigation of Small Cetacean Bycatch

1. The 21<sup>st</sup> Meeting of the ASCOBANS Advisory Committee agreed terms of reference for a workshop on the Requirements of Legislation to Address Monitoring and Mitigation of Small Cetacean Bycatch (Annex 7 of the [AC21 Report](#)). Noting that “the Commission shall no later than 31 December 2015 review the effectiveness of the measures laid down in this Regulation and accompany this review with an overarching legislative proposal for ensuring the effective protection of cetaceans”, AC21 concluded that an expert workshop should be held, involving the relevant stakeholders (EU, fisheries organizations, scientists, etc.) in order to develop the position of ASCOBANS on the legislation required to address small cetacean bycatch and monitoring.
2. The main aim of the workshop was to produce a report with clear and detailed recommendations of requirements for revised/new legislation. The final report was to be circulated through the ASCOBANS Secretariat to the National Coordinators for the Agreement for their consideration and further use. The agreed position of ASCOBANS was then to be communicated to the European Commission.
3. The two-day workshop was held in Bonn, Germany, from 21-23 January 2015. The report of the meeting, including its recommendations, is available as [AC22/Inf.4.1.a](#). Upon request of the Jastarnia Group (JG11, Stralsund, Germany, 10-11 March 2015), the relevant ASCOBANS working groups (Baltic Sea, North Sea, Atlantic and Bycatch) were then given opportunity to provide their views on the recommendations of this workshop (Annexes 3-7 of the report). A statement combining the views of three of the working groups is available as [AC22/Inf.4.1.b](#).
4. Using this additional input, along with some comments requesting clarification, the consultant hired for the workshop preparation and follow up, Geneviève Desportes, together with the Chair of the North Sea, Atlantic and Bycatch Working Groups, Peter Evans, and the Secretariat, developed a document “Consolidated Bycatch Recommendations”, which was circulated to Parties on 10 June 2015 for their comments and approval by 31 July 2015.
5. In view of the recommendations of the workshop on “Further Development of Management Procedures for Defining the Thresholds of Unacceptable Interactions”, held in London, UK, on 10 July 2015, adjusted terminology was used in a revised version of the “Consolidated Bycatch Recommendations” circulated to Parties on 31 July 2015. This version is attached as Annex 1 to this document.
6. Parties had until 24 August 2015 to respond, in the understanding that no response meant a Party’s consent to sending this document as the ASCOBANS contribution to the bycatch legislation review process of the Commission.
7. The only response was from Denmark, who informed the Secretariat on 18 August 2015 that they were not ready to endorse a submission of the recommendations until the Advisory Committee had had a chance to discuss them. Denmark provided the following information to explain their decision:

*Denmark generally supports a review of Council Regulation (EC) 812/2004. Since 2011 Denmark has, as part of the annual report on the implementation of Council Regulation (EC) 812/2004, suggested amendments to the regulation. The suggestions concern a change from solely focusing on vessel size to also include gear type as a measure determining whether vessels are obliged to use acoustic deterrents (pingers). Furthermore, the Danish suggestions include a call to secure a harmonized protection of harbour porpoises, whereby national measures are implemented through regional procedures.*

*Denmark finds that a coordinated process involving all the ASCOBANS parties could be an important input to a review process of the Council Regulation (EC) 812/2004.*

*However, Denmark must highlight the following issues being vital for our support of the further process:*

- 1) *First of all, the conclusion on a possible review of 812/2004 in the report from the 49th STECF plenary meeting 6-10 July 2015 (page 118-119) should be the primarily basis for the ASCOBANS input.*
  - 2) *Secondly, it must be defined what exactly ASCOBANS can provide that differs from what STECF and ICES have contributed. In this regard, the mandate must be defined. We find it questionable whether ASCOBANS can give more than scientific based advice in this regard, bearing in mind the full EU competence on fisheries issues.*
  - 3) *If a political signal is possible, we then find that the recommendations should be formulated on a general level, making it possible for member states to design and implement specific national management actions in order to fulfil the agreed recommendations. This approach is needed to make it realistic to actually follow the recommendations on both a national level as well as a regional level involving other commitments such as HELCOM and OSPAR.*
  - 4) *In a formulation of common recommendation/position paper ALL relevant authorities (including both fisheries and environmental authorities) need to be involved. All positions need to be represented to secure a holistic and realistic approach.*
  - 5) *We find that the proposed ASCOBANS position deviate much from earlier agreed positions. Therefore any new ASCOBANS position must be discussed at least at the upcoming Advisory Committee meeting. In this regard, it should also be considered how a final outcome of the workshops of unacceptable interactions can support a possible revision of the EU regulation on bycatch.*
8. An extract of the relevant pages of the report of the 49<sup>th</sup> STECF plenary meeting referred to above has been made available as Annex 2 of this document.
  9. The Advisory Committee is therefore requested to consider the comments received and agree on the recommendations to be sent to the European Commission.
  10. After transmission of the final document to the Commission through the Secretariat, ASCOBANS Parties are encouraged to do the same, as well as to use these ASCOBANS recommendations in developing their own national positions as EU Member States.

**DRAFT**

**Recommendations of ASCOBANS on the Requirements of Legislation to Address Monitoring and Mitigation of Small Cetacean Bycatch**

These recommendations are based on those provided by the ASCOBANS Expert Workshop on the Requirements of Legislation to Address Monitoring and Mitigation of Small Cetacean Bycatch (Bonn, Germany, 21-23 January 2015, see Annex 1), combined with the comments provided jointly by the ASCOBANS Working Groups on the North Sea Harbour Porpoise Conservation Plan, the Atlantic part of the Agreement Area, and on Bycatch (compiled on behalf of respondents by Peter Evans, see Annex 2) as well as from members of the Advisory Committee involved in the workshop.

These recommendations therefore reflect the status of discussions within ASCOBANS to date and have been consulted on with the Parties to the Agreement. They are submitted to the European Commission now in order to serve as timely input to the review process required in Regulation (EC) 597/2014 (4). Discussions within ASCOBANS will continue and a final position will be agreed at the MOP8 (2016).

These recommendations include three parts, which **underpin each other and should not be viewed independently**:

- 1. Reflections on the Way Forward Proposed by the Commission**
- 2. Proposed Strategy for Assessing and Managing Cetacean Bycatch in European Waters**
- 3. Specific Recommendations by Geographical Area within the Scope of ASCOBANS**
  - i. Baltic Sea**
  - ii. Western Baltic, Belt Sea and Kattegat**
  - iii. North Sea**
  - iv. North East Atlantic**

## 1. Reflections on the Way Forward Proposed by the Commission

The Commission favours incorporation of the monitoring requirements and mitigation measures under the Data Collection Framework (DCF) and the technical measures framework respectively, instead of having specific legislation on cetacean bycatch. The existing Regulation (EC) 812/2004 would then be repealed.

Possible advantages of this approach are that implementation of measures is more likely since cetacean bycatch monitoring would become part of a larger programme with potentially more funding opportunities. Regional management is flexible and may be more effectively dedicated to the fisheries of concern, relating to both the monitoring and mitigating of cetacean bycatch. Measures would therefore also be included in ecosystem-based management.

However, regarding monitoring, for this approach to have a chance of success for species such as cetaceans protected at the European level, the DCF requirements would need to be significantly revised in order to take full account of cetacean bycatch assessment needs in terms of target fleets and monitoring methods (e.g. the present DCF has less focus on set nets since they generate little discard, but this is the gear type posing the greatest risk to porpoises). Furthermore, a comprehensive annual report on the implementation of both the DCF and technical measures requirements, similar to the current Regulation (EC) 812/2004 annual reports, would still be necessary in order to provide an instrument facilitating synthesis and risk assessments.

The risk of an approach that uses only the DCF and the technical measures framework for cetacean bycatch monitoring and mitigation regulation is that these are frameworks historically focused on commercial fisheries and not on the conservation of protected species. Cetacean conservation needs might not receive the attention and funding required for effective assessment and appropriate management. There is therefore a risk of losing the focus on cetacean bycatch that the current regulation provides.

An alternative to the Commission's favoured way forward would be to develop a proposal for overarching legislation for the protection of cetaceans, more in line with the stated aim of the review required in Regulation (EC) 597/2014 (4). It would define conservation objectives, but would leave the detail on monitoring and mitigation requirements to be incorporated under the DCF and the technical measures respectively. In its position EP-PE\_TC1-COD(2012)0216, the European Parliament stated that

***In view of the requirement for Member States to take the necessary measures to establish a system of strict protection for cetaceans, in view of the shortcomings of Regulation (EC) No 812/2004 and its implementation, pointed out by the Commission in its Communication on cetacean incidental catches in fisheries<sup>1</sup> and by ICES in its related 2010 scientific advice, and in view of the lack of integration of Council Directive 92/43/EEC ("the Habitats Directive"), the Commission should, before the end of 2015, submit a legislative proposal for a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats.***

Similar to the role of Regulation (EC) 812/2004, an improved new or amended regulation focusing specifically on cetacean conservation objectives, coupled with the incorporation of the monitoring requirements and mitigation measures under the DCF and the technical measures framework, would send a stronger political signal, while at the same time allowing for more effective and flexible regional management. It would also avoid the risks outlined

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<sup>1</sup> COM(2009)0368

above of losing the necessary focus required for effective assessment and appropriate management of cetacean bycatch.

A regulation specific to cetacean conservation would be most effective in combination with incorporation of the mitigation and monitoring requirements under the DCF and the technical measures framework. In this option, the new/amended regulation would define the conservation objectives. This in turn would allow reference limits (which would depend and vary upon specific circumstances) to be set, and for general recommendations on how the obligations could be best addressed. The technical details of how to achieve these objectives would be left to the more flexible regional technical frameworks.

An overarching, specific regulation would clearly state the importance of taking into account the conservation of cetaceans, while allowing for more tuned regional management, leaving regional bodies to decide on adequately targeted monitoring and mitigation measures.

ASCOBANS Parties strongly believe that this combination of multiple instruments at different levels offers the best way of keeping a focus on cetacean conservation, while allowing a greater effectiveness by strengthening focus and flexibility in the response. It is therefore recommended as the best way forward.

## 2. Proposed Strategy for Assessing and Managing Cetacean Bycatch in European Waters

Member States should be required to demonstrate that their fisheries are not exceeding an agreed environmental limit for cetacean bycatch<sup>2</sup>. In order to achieve this, a management framework procedure needs to be developed to define thresholds of 'Unacceptable Interactions' or 'bycatch limits' to help safeguard the favourable conservation status of European cetaceans in the long term. A management framework procedure based on robust environmental limits/triggers should enable specified conservation objectives to be met by allowing the impact of cetacean bycatch within and across Member States to be more fully assessed and effectively managed.

Initial development of a management framework for small cetaceans has been undertaken as part of EU LIFE and government-funded projects. Within these projects, a Bycatch Limit Algorithm (BLA) approach was identified as a potentially suitable method to set limits on the bycatch of harbour porpoises and common dolphins in western European waters (SCANS-II 2008, CODA 2009), an approach that ICES also recommended to the European Commission in 2009.

In order to further develop the BLA approach, three key issues need to be resolved:

- 1) the need for policy-makers to define the conservation objectives for cetaceans to be used in the procedure;
- 2) the timeframe over which the procedure should be modelled to achieve the specified conservation objectives needs to be set; and
- 3) the delineation of the spatial areas to which the procedure is to be applied (i.e. appropriate management units) (ASCOBANS 2013).

Based on existing data on bycatch from observers, the main species of concern are the harbour porpoise, common dolphin, striped dolphin and bottlenose dolphin (EC-COM 2011). However, other species are also known to be bycaught; these include species within the remit of ASCOBANS (white-beaked dolphin, Atlantic white-sided dolphin and Risso's dolphin) and large cetaceans (notably minke whale and humpback whale). A time-series of bycatch estimates and population abundance estimates, with their associated uncertainties, are incorporated into the Bycatch Limit Algorithm approach. However, there are currently a number of issues with bycatch monitoring in EU waters, mainly related to the consistency and quality of data arising from national monitoring programmes which has resulted in significant data gaps due to uneven and/or insufficient sampling in many fisheries. For example, monitoring of bycatch, if carried out at all, is often undertaken using different methodologies and to variable standards by different Member States. Bycatch monitoring is also not necessarily coordinated at the scale of cetacean population/management units, which makes assessing the impact of bycatch difficult at a population level. This would be improved by better coordination and cooperation between Member States. Furthermore, many fisheries thought to have significant bycatch levels also fall outside the scope of Regulation (EC) 812/2004, although some Member States already monitor these fisheries under the requirements of the Habitats Directive.

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<sup>2</sup> The term 'environmental limit' is used to indicate a 'critical' or 'unacceptable' point in the environment that should not be exceeded. The term 'trigger' is used to signal the need for different types of management action that may need to be taken before an 'environmental limit' is reached i.e. 'triggering' urgent action when approaching an 'environmental limit', or 'triggering' the re-allocation of some resources to more urgent areas once bycatch drops below a certain point. Environmental limits/triggers should be considered as intermediate steps to help drive progress towards achieving the ASCOBANS aim of zero bycatch.

A time series of abundance estimates is not currently available for the common dolphin or striped dolphin or for some harbour porpoise and bottlenose dolphin management units (as defined by (ICES 2014). If the SCANS-III survey takes place in 2016, new abundance estimates should be available by 2017. Although it is not the lack of new abundance estimates that is holding up the implementation of the BLA, it seems at this point reasonable to wait for these new abundance estimates and to implement the BLA approach for setting bycatch limits in 2017.

*Plan for implementation of a Management Framework Procedure for small cetaceans, with harbour porpoise, common dolphin, striped dolphin and bottlenose dolphin as priorities*

<b>Delivery date</b>	<b>Action required</b>
2017	Parties to define conservation objectives for cetaceans and the time frame over which the procedure should be modelled to achieve the specified conservation objectives
2017	Agreement on the delineation of the spatial areas to which the procedure is to be applied (i.e. appropriate management units). This process could be supported by using the BLA approach
2017	Collation of bycatch data and production of bycatch estimates at the level of a cetacean species management unit
2017	Initial assessment/identification of “medium-to-high risk” fisheries where bycatch monitoring should be focused
2017	Environmental limits/triggers for cetacean species to be produced as per management unit
To be determined	Annual environmental limits/triggers for cetacean species per management unit to be split between relevant Member States using an agreed protocol within Regional Agreements.
	<p>If Member States’ annual estimates for cetacean species bycatch exceed the allocated national environmental limits/triggers then they should be required to introduce appropriate mitigation measures<sup>3</sup> to bring bycatch below the national environmental limits/triggers (<b>Approach 1</b>).</p> <p>If Member States comply with Approach 1, until the point of its full implementation, mitigation measures (adapted from those described under Regulation (EC) 812/2004) should remain in place with trammel nets included; except in those fisheries with bycatch already demonstrated to be negligible (see under the regional recommendations, for the list).</p> <p>Other fisheries could be added to this list once sufficient monitoring (with adequate statistical power) has been undertaken over an appropriate time period. Background monitoring in the framework of the DCF should be</p>

<sup>3</sup> An appropriate mitigation measure is understood as a measure with a proven ability to reduce bycatch of the relevant species in the setting of a commercial fishery, i.e., the device *significantly reduces* (>80%) bycatch with a *high level of confidence* (>95%), and only if the experiment has been conducted with a *rigorous design*, as defined by the ICES Report of the Workshop on Bycatch of Cetaceans and other Protected Species (ICES 2013, page 19)

	continued in all “low-risk” fisheries to provide data to assess any possible future changes in bycatch rates.
	<p>If Approach 1 is not acceptable</p> <p>or</p> <p>if environmental limits/triggers are not set and/or an agreed way to split environmental limits/triggers between Member States is not found within a defined time frame:</p> <p>ASCOBANS recommends a Precautionary Approach whereby appropriate mitigation measures should be applied in <b>all</b> set-net fisheries irrespective of gear type, as well as pelagic trawl fisheries targeting tuna, bass and hake and fisheries using very high vertical opening (VHVO) trawls, this irrespective of vessel size or geographic area; but exemptions should be made for those fisheries with demonstrated negligible (rate and/or cumulative) bycatch (see under regional recommendations for required mitigation and monitoring measures, as well as exempted fisheries) <b>(Approach 2)</b>.</p>

## References

ASCOBANS. 2013. Societal decisions required for the determination of safe bycatch limits for harbour porpoise, common dolphin and bottlenose dolphin. AC20/Doc.3.1.2 (P).

CODA. 2009. Cetacean Offshore Distribution and Abundance in the European Atlantic (CODA). 43pp without appendices; 164pp with appendices.

EC-COM. 2011. Communication from the Commission to the European Parliament and the Council on the implementation of certain provisions of Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98. Brussels, 21.9.2011 COM(2011) 578 final. 10pp.

ICES. 2013. Report of the Workshop on Bycatch of Cetaceans and other Protected Species (WKBYC), ICES CM 2013/ACOM:36. 55pp.

ICES. 2014. OSPAR requests on implementation of MSFD for marine mammals. 1.6.6.1 Special request, May 2014. ICES Advice 2014, Book 1, 19pp.

SCANS-II. 2008. Small cetaceans in the European Atlantic and North Sea (SCANS II). Final report to the European Commission under contract LIFE04NAT/GB/000245.

### 3. Specific Recommendations by Geographical Area within the Scope of ASCOBANS

#### i. Baltic Sea (ICES areas 24-32)

##### 1 – Summary of main concerns, based on present knowledge

- **Species:** A single one - harbour porpoise, the population of which is depleted (with currently 447 individuals in the Baltic Proper).
- **Gear types:** Only net fisheries are of concern with regard to harbour porpoises.
- **Reliability of fishing effort data:** Fishing effort data are incomplete as smaller vessels are not required to report, and there are many small boats, especially in area 24.
- **Data on bycatch rate:** Some bycatch information, but no reliable bycatch rates.
- **Mitigation in place:** The degree of compliance to using pingers in area 24 for gillnetters >12 metres is unknown, but likely to be very low.

##### 2 – Conservation objective and strategy

From a conservation perspective, one needs to focus on the smallest population; i.e. even in the mixed area (roughly around Bornholm, where both Western Baltic and Baltic harbour porpoise populations may mix), the bycatch mortality should be close to zero.

The conservation objective in the Baltic remains bycatch as close to zero as possible.

Monitoring should continue to establish the trend in abundance. CPODs should continue to be used for national abundance monitoring for an estimate of the relative level of bycatch.

Measures have to be set regionally, in some cases nationally, and have to be fishery specific.

Gillnet effort has decreased in several countries since Regulation (EC) 812/2004 came into effect; driftnets were also banned by this regulation. Alternative gear is under development for cod fisheries. For other target species, such as herring, it is already being implemented in the northern Baltic.

##### **a - Mitigation strategy**

Pingers, alternative fishing gear and time-area closures<sup>4</sup> should be used, as appropriate, and any mitigation measure should be independent of vessel size. Focus should be placed on high-risk areas. The prioritization should be updated/revised as more information becomes available.

Permission to fish with high risk gear in areas of high harbour porpoise density and high fishing effort should be made dependent on applying mitigation methods.

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<sup>4</sup> Time area closures will only be useful/efficient if it is demonstrated that the bycatch is higher inside the target areas than outside. Otherwise the fishing effort will simply be displaced from the target area and this will not reduce bycatch.

Incentives for using mitigation measures and alternative gear should be introduced, with financial support for implementing them. Eco-labelling should also focus on bycatch risk and mitigation.

Efficient enforcement of any regulation needs to be ensured.

### **b – Monitoring strategy**

The objective of the monitoring should be to estimate the total bycatch from a specific population.

The focus should be on set-net fisheries, not on pelagic trawling. All vessel sizes should be monitored and the highest priority should be given to high-risk gear and high-risk areas. High-risk areas are those combining high fishing effort, high-risk gear and the presence of porpoises.

The monitoring level should be sufficient to show no negative impact.

Monitoring methods should be chosen dependent on situation, and must be proven to be effective and reliable.

### **c – Strategy for collecting data on fishing effort**

Fishing effort data should be collected for all vessel sizes.

The parameters to be collected are net length, soak time (where these parameters are not available, days at sea should be collected at the very minimum), thickness of twine, mesh size, target species and position of net.

Fishing effort data should be used for targeting monitoring, by overlaying them with the results of the SAMBAH project and other available harbour porpoise distribution data, thus facilitating the identification of the areas with the highest bycatch risk.

### ***Overarching Recommendation***

ASCOBANS recommends that one of the targets of EU financial support aiming at the reduction of bycatch (e.g., through the European Maritime and Fisheries Fund) should be the Baltic Sea harbour porpoise population. Development and use of mitigation measures, such as alternative fishing methods that are ecologically sustainable, interactive pingers, pingers not audible to seals, alerting devices or gear-exchange schemes (switch-outs) aiming at reducing bycatch, should be the centre of particular financial efforts to guarantee the survival of harbour porpoises.

## ii. Western Baltic, Belt Sea and Kattegat (ICES areas IIIaS, 22-23)

### 1 – Summary of main concerns, based on present knowledge

- **Species:** A single one - harbour porpoise, with no significant decrease in abundance between SCANS (1994) and Mini SCANS (2012).
- **Gear types:** Net fisheries are of concern with regard to harbour porpoise bycatch
- **Reliability of fishing effort data:** Fishing effort data are incomplete as vessels <10 metres (8 metres for Germany) do not have to report effort, although they constitute the bulk of the fleet.
- **Data on bycatch rate:** Very little monitoring is carried out and reliable estimates of bycatch rates are unavailable for most fisheries.
- **Mitigation in place:** The degree of compliance regarding the use of pingers for gillnetters >12 metres is unknown, but likely to be very low.

### 2 – Conservation strategy

With regard to bycatch and in the light of the present knowledge, a management framework is necessary for harbour porpoises in the Western Baltic, Belt Sea and Kattegat for ensuring a long-term favourable conservation status of the species.

Since this is a shared population, its conservation needs should be addressed at a regional level. Both monitoring and mitigation measures should be developed regionally with cooperation between the countries concerned, as appropriate.

Gillnet effort has decreased in several countries since Regulation (EC) 812/2004 came into effect; whilst driftnets were also banned by this regulation. Alternative gear is under development for cod fisheries.

#### **a - Mitigation strategy**

The same rules on mitigation should apply for recreational and commercial fisheries, especially in Special Areas of Conservation for which harbour porpoises form part of the selection criteria (hpSACs), where they should be included in the management plans.

The areas of most concern should be identified by means of bycatch risk analyses. Here mitigation measures such as pingers or alternative gear should be implemented as a priority.

In areas where the risk of bycatch is significant, appropriate mitigation measures<sup>5</sup> should be put in place regardless of vessel size.

The efficient enforcement of any regulations should be ensured.

There should be incentives for using mitigation measures and ecologically sustainable alternative gear, as well as financial support for implementing these in the fisheries concerned. Eco-labelling schemes should be based on bycatch risk and mitigation.

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<sup>5</sup> An appropriate mitigation measure is understood as a measure with a proven ability to reduce bycatch of the relevant species in the setting of a commercial fishery, i.e., the device *significantly reduces* (>80%) bycatch with a *high level of confidence* (>95%), and only if the experiment has been conducted with a *rigorous design*, as defined by the ICES Report of the Workshop on Bycatch of Cetaceans and other Protected Species (ICES 2013, page 19)

**b - Monitoring strategy**

Reporting any cetacean bycatch should become mandatory in all fisheries, including recreational fisheries.

National programmes under the DCF, established to gather data from recreational fisheries, should also include data on porpoise bycatch.

Scientifically recognized, effective, monitoring methods should be chosen dependent on the situation (fleet size, fishing effort, bycatch rate etc.) with regional coordination as appropriate.

Monitoring efforts should focus on set-net fisheries, especially those known to have bycatch and those suspected to be a problem. Monitoring schemes should be adapted in the light of the results obtained and new developments in the fisheries.

The effectiveness of mitigation measures should also be monitored.

**c – Strategy for collecting data on fishing effort**

Fishing effort should be collected for all vessel sizes.

The parameters to be collected are net length, soak time (where these parameters are not available, days at sea should be collected at the very minimum), thickness of twine, mesh size, target species and position of net.

### iii. North Sea and iv. North East Atlantic

#### 1 – Summary of main concerns, based on present knowledge

##### 1.1 North Sea (ICES areas IIIaN, IVabc, VIId)

- **Species:** A single one within the remit of ASCOBANS - harbour porpoise (two large cetaceans, minke whale and humpback whale are sometimes also bycaught in this region but as a result of entanglement in creel lines or ghost netting).
- **Gear types:** Only set-net fisheries are of concern with regard to harbour porpoise bycatch, in particular trammel nets (GTR) and set gillnets (GNS). As an example, in France, trammel nets targeting sole and monkfish account for 80% of reported bycatch.  
Bycatch from coastal fisheries is more complicated to mitigate effectively, because these fisheries involve more boats, often using a wide variety of gear within one season.
- **Reliability of fishing effort data:** Fishing effort data are incomplete as vessels <10 metres do not have to report to the European Commission, even though they constitute over 70% of the fleet in most North Sea countries (the exceptions being the Netherlands and Belgium).
- **Data on bycatch rate:** There are no reliable estimates of current bycatch rates for any net fisheries.
- **Mitigation in place:** The degree of compliance regarding the use of pingers for gillnetters >12 metres is unknown and the long-term mitigating effect of the pingers has not been investigated.

##### 1.2 North East Atlantic (ICES areas VI, VII excl. d, VIII, IX)

- **Species:** Four species - harbour porpoise, common dolphin, striped dolphin and bottlenose dolphin  
Two 'populations' are singled out because of their specificity, which renders them more vulnerable. The Iberian (area VIIIc + IXa) harbour porpoise population is small and isolated. The distribution of bottlenose dolphins in waters of the continental shelf encompasses small resident groups that are isolated or genetically distinct, and coastal groups showing strong site fidelity.<sup>6</sup>  
Five other species are known to be bycaught, with incidents likely to be underreported at present: three within the scope of ASCOBANS - white-beaked dolphin, Atlantic white-sided dolphin and Risso's dolphin; and two large cetaceans - minke whale and humpback whale.
- **Gear types:** Net fisheries, pelagic trawl fisheries targeting tuna, bass and hake and fisheries using very high vertical opening (VHVO) trawls are of concern in the North East Atlantic. For example in France, trammel nets (GTR) targeting sole and monkfish account for 80% of the bycatch.  
Bycatch from coastal fisheries are is complicated to mitigate effectively, because these fisheries involve more boats, often using a wide variety of gear within one season.

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<sup>6</sup> ICES WGMME 2013

- **Reliability of fishing effort data:** Fishing effort data are incomplete as vessels <10 metres do not report in most countries, although they constitute over 70% of the fleet.
- **Data on bycatch rate:** Reliable estimates of bycatch rates are unavailable for most fisheries, apart from the pelagic trawl and set-net fisheries covered by Regulation (EC) 812/2004.
- **Mitigation in place:** The degree of compliance regarding the use of pingers for gillnetters >12 metres is unknown and the long-term mitigating effect of the pingers has not been extensively investigated.

## **2 – Conservation strategy**

With regard to bycatch and in the light of present knowledge, development of a management framework is a priority for harbour porpoises in the North Sea, and for harbour porpoises and common, striped and bottlenose dolphins in the North East Atlantic, for ensuring a favourable conservation status of these four species in the long term.

**ASCOBANS advises that the best way forward is to develop a management framework**, with Member States being required to show that they contribute to the commonly defined conservation objectives for cetaceans, and that their fisheries do not exceed agreed environmental limits/triggers relating to bycatch (see part 2 of the recommendations above).

This implies that - 1) common conservation objectives have been agreed by EU Member States, - 2) robust thresholds for environmental limits/triggers have been determined for the four species and for the different management units (see under point 5.2 for details on procedures), and - 3) the relevant Member States have agreed on a protocol within the relevant Regional Agreements on how these bycatch environmental limits/triggers would be allocated and reviewed.

Member States will then have to conduct bycatch monitoring that is reliable enough (reliability criteria being set at an EU level) to show whether the fisheries exceed the determined environmental limits/triggers. If they do, then Member States will be required to introduce mitigation measures to bring bycatch below their allocated environmental limits/triggers. The choice of mitigation measure will be left to the Member States. If they are below but close to the environmental limits/triggers, supplementary monitoring will be required to continue assessing the risk and determining appropriate management measures.<sup>7</sup> In fisheries with a low level of bycatch or where mitigation measures have been implemented and their efficiency demonstrated, a background level of monitoring should be carried out for assessing trends.

**ASCOBANS advises taking the Precautionary Approach** if within a defined time-frame, Member States cannot agree upon setting environmental limits/triggers and/or a way for allocating the environmental limits/triggers between them. The Precautionary Approach would entail implementing mandatory mitigation measures and monitoring obligations based on, but modified from, Regulation (EC) 812/2004 and would require that a robust enforcement strategy with penalties should be introduced.

The implementation of mitigation measures is being deferred by three years to give Member States the possibility of demonstrating a zero/negligible bycatch in some fleet segments, which will then be exempted from mandatory mitigation measures.

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<sup>7</sup> Environmental limits/triggers should be used to prioritize the targeting of effective management measures, ensuring the investment of effort/financial resources into reducing, or quantifying more precisely, bycatch levels is proportionate to the scale of the problem i.e. different management responses may be appropriate for fisheries with close to zero bycatch, with levels close to but below the environmental limit/trigger, and for those above.

Mitigation measures and monitoring requirements, as modified from Regulation 812/2004, are listed below.

**a - Mitigation strategy:**

- All set nets are candidates for mitigation, including trammel nets (GTR) and driftnets (GND)
- It applies to all vessels, i.e. also vessels <12 metres in length
- The same definitions of net fisheries as in Regulation (EC) 812/2004 apply
- Considering the present state of knowledge, acoustic deterrent devices (ADDs) should be used as a mitigation measure, although (long- and short-term) fishery closures are an alternative approach, especially in MPAs. If a fishery closure is used, it should be applied to all vessel sizes and should also cover trammel nets and driftnets
- For an ADD to be approved, it should have a proven ability to reduce bycatch of the relevant species in the setting of a commercial fishery, i.e., the device *significantly reduces (>80%)* bycatch with a *high level of confidence (>95%)*, and only if the experiment has been conducted with a *rigorous design*<sup>8</sup>
- Introduce in all areas and for all vessel lengths, mandatory mitigation measures for:
  - i) Mid water pair trawls (PTM), targeting hake, bass and tuna (but not those targeting anchovy)
  - ii) VHVO targeting hake
- Based on present knowledge, a derogation from mitigation measures is given to fleet segments with negligible cetacean bycatch, as listed below:
  - i) North Sea: all gear in the western part of area VIId (west of 1°E), all deep water net fisheries (i.e. fishing deeper than 200m), all trawls (pelagic, bottom and VHVO), all set nets with mesh < 90mm.
  - ii) North East Atlantic: all gear in the eastern part of area VIle (east of 4°W), all deep water net fisheries (i.e. fishing deeper than 200m), all set nets with mesh < 90mm, wreck fisheries in area VII (short net fleet / target species: pollock, ling), French spider crab fishery in area VIle
- Other fleet segments can be exempted, when/if a zero/negligible bycatch rate has been demonstrated by a reliable comprehensive test-monitoring programme to be complying to the following standards
  - i) Dedicated monitoring, using either dedicated observers or remote electronic monitoring
  - ii) Conducted over an appropriate time period, with at least two successive years/seasons for accounting for variability
  - iii) The level of coverage is high enough to produce a robust assessment (as determined by statisticians)
  - iv) For the exempted fisheries, new test-monitoring will be conducted every five years

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<sup>8</sup> as defined by the ICES Report of the Workshop on Bycatch of Cetaceans and other Protected Species (ICES 2013, page 19)

- Mitigation measures should be strictly enforced
- Incentives should be introduced for implementing mitigation measures
- Resources should be made available for investigating alternative mitigation methods and developing new fishing gear and methods.

**b - Monitoring strategy:**

- Fisheries for which no bycatch data/rates exist should be identified
- In net fisheries, the monitoring of potentially high-risk fisheries (high bycatch rate or/and high fishery effort) should be prioritised
- Bycatch monitoring is required for specific mid-water trawl fisheries and all VHVO-trawl fisheries. Background bycatch monitoring in the other trawl fisheries could be conducted under DCF
- Coastal and inshore fisheries should be prioritised
- The fleet segments exempt from mitigation measures should continue being monitored through the DCF or other existing programmes, as part of background monitoring
- If the bycatch rate appears to be increasing in these fisheries, a two-year test monitoring programme will again be required
- Incentives should be introduced for accepting dedicated observers and/or remote electronic monitoring (REM)
- The obligation of taking observers/REM on board should be inscribed in the fishing licence
- The level of monitoring should be sufficiently high to produce a robust assessment of protected species bycatch (as determined by statisticians)

**c – Strategy for collecting data on fishing effort:**

- Improved and standardised effort data are needed for all fisheries
- Effort data for vessels <10 metres, and for driftnets operating in coastal areas, should be collected and provided
- In polyvalent fisheries, in the absence of detailed effort data, gear usage could be inferred from the data provided by observers, as they can register the changes in gear
- Vessels >10 metres should report complete information on effort as defined under point 6.2 (position, length, height and soak time of the net used, target species, mesh size and precise gear type), while the level of detail asked of smaller vessels could be lower, aligned with the information reported by smaller vessels in Sweden<sup>9</sup>
- The collection of adequate effort data should be prioritised in the areas where the cetacean species of concern are present, and where a potential risk exists

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<sup>9</sup> In Sweden, smaller vessels report/summarise per month for every gear type and mesh size they use: position, effort\* soak time (e.g. fishing 5 days with 100 metres of net will be reported as 500 metres), fish species and quantity. The position reported is the average position for each separate fishing effort for the whole month.

such harmonisation would need to be achieved in a way that ensured there was effective bycatch monitoring for all fleet segments where bycatch rates or absolute bycatch numbers are likely to be high.

### Mitigation

STECF observes that in the period since the introduction of Regulation (EC) 812/2004 mitigation measures have been employed in some fisheries, but not all Member States are implementing the regulation as described (e.g. ICES, 2014a). During 2012, ADD were assumed to have been used by vessels in Denmark, Germany, Ireland, Latvia, Poland, and the United Kingdom (they may have been employed in Sweden as well, but as these were old ADD the batteries were assumed to have been exhausted before this time) (ICES 2013).

STECF agrees with the conclusion of ICES that the information provided in MS reports is not sufficient to allow the effectiveness of mitigation measures, when adopted, to be assessed (ICES 2014a). STECF notes that the effectiveness of acoustic deterrent devices (ADD aka "pingers") for all species of cetacean taken as bycatch has also not been assessed in targeted scientific studies of fisheries (ICES 2013).

STECF notes ICES comment that the specifications for ADD in the existing regulation could impede the development and adoption of more effective devices for reducing interaction between cetaceans and fishing gear, but STECF also notes that the flexibility afforded by article 3(1) of regulation (EC) 812/2004 can be used to further develop effective ADD specifications to account for technical and scientific progress in the development of ADD.

### STECF conclusions

STECF concludes that regulation EC 812/2004, as amended by EU 597/2014, although not followed by all MS, has been effective in improving monitoring of cetacean bycatches and in quantifying and understanding the distribution and rate of cetacean bycatch in many fisheries and regions.

STECF concludes that regulation EC 812/2004, as amended by EU 597/2014, has not been effective in (i) providing monitoring data on cetacean bycatch for some fisheries where there is a high risk of cetacean bycatch or (ii) consistently providing data on sampling methods, sampled effort and bycatch for fleet segments in a way that allows the sampled bycatch rates reported by Member States to derive total bycatch for the fleet segments.

STECF concludes that harmonisation of the fleet segments and effort measurements used for cetacean bycatch and fishing effort monitoring would greatly increase the probability that sampled bycatch rates reported by Member States could be raised to derive total bycatch for the fleet segments. To improve assessment of bycatch rates and identification of priorities for mitigation, STECF concludes that any such harmonisation would need (1) to be progressed in a way that encouraged accurate and timely reporting by Member States and (2) to include effective bycatch monitoring of all fleet segments where bycatch rates or absolute bycatch numbers are likely to be high.

STECF concludes that the effectiveness of future bycatch monitoring would be increased if monitoring effort were risk-based and monitoring effort were more strongly focused on fisheries where bycatch rates or absolute bycatch numbers are likely to be high. This would involve proportionately more monitoring of bycatches by smaller vessels (< 15 m and other fleet segments that pose high risk).

STECF concludes that the raising of bycatch rates from observations of static net fisheries would be improved if the reporting of effort as specified in the regulation was complied with. This would allow for a metric based on net length and immersion time. STECF notes that this will need to be defined and standardised across all MS and fleet segments.

STECF concludes that the data collected pursuant to (EC) 812/2004 did not allow ICES to evaluate the performance of ADD in the fisheries where they were deployed.

STECF concludes that the flexibility afforded by article 3(1) of regulation (EC) 812/2004 can be used to further develop effective ADD specifications based on outcome (reduction in bycatch rates achieved in tests within fisheries with high bycatch rates).

## References

- EC (2009) Cetacean incidental catches in Fisheries: Report on the implementation of certain provisions of Council Regulation (EC) No 812/2004 and on a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans in the Baltic Sea as requested through Council Regulation (EC) No 2187/2005. COM(2009) 368 final
- ICES (2010) ICES Advice section 1.5.1.3. Advice, May 2010. “Request on cetacean bycatch Regulation 812/2004, Item 1, Assessment of the national reports from 2007 and 2008, and specific scientific reports provided by Member States in the context of Reg. 812/2004”
- ICES (2011) Report of the Working Group on Bycatch of Protected Species (WGBYC 2011). ICES CM ACOM: 26
- ICES (2012) Report of the Working Group on Bycatch of Protected Species (WGBYC 2012). ICES CM ACOM: 28
- ICES (2013a) Report of the Working Group on Bycatch of Protected Species (WGBYC 2013). ICES CM ACOM: 27
- ICES (2013b) ICES Advice Section 1.5.1.1 Special request, April 2013 “Request from EU concerning monitoring of bycatch of cetaceans and other protected species”
- ICES (2014a) Report of the Working Group on Bycatch of Protected Species (WGBYC 2014). ICES CM ACOM: 28
- ICES (2014b) ICES Advice Section 1.5.1.1. Advice, April 2014 “Bycatch of small cetaceans and other marine animals - Review of national reports under Council Regulation (EC) No. 812/2004 and other published documents”
- ICES (2015a) Report of the Working Group on Bycatch of Protected Species (WGBYC 2015). ICES CM ACOM: 26
- ICES (2015b) ICES Advice Section 1.6.1.1. Advice, April 2015 “Bycatch of small cetaceans and other marine animals - Review of national reports under Council Regulation (EC) No. 812/2004 and other published documents”
- STECF (2008) Scientific, Technical and Economic Committee for Fisheries STECF - 28th plenary meeting report of the (PLEN-08-02) Section 10.6