

Agenda Item 2.2.1

Implementation of the Harbour Porpoise Action Plans

Conservation Plan for Harbour Porpoises in the North Sea

Report and Action Points of the 4th Meeting of the North Sea Group

**Document 2.2.1.b
Rev.1**

Interim Report on the Implementation of the ASCOBANS North Sea Conservation Plan for Harbour Porpoises

Action Requested

- Take note
- Give guidance

Submitted by

North Sea Plan Coordinator



**NOTE:
DELEGATES ARE KINDLY REMINDED
TO BRING THEIR OWN COPIES OF DOCUMENTS TO THE MEETING**

INTERIM REPORT ON
THE IMPLEMENTATION OF THE ASCOBANS NORTH SEA
CONSERVATION PLAN FOR HARBOUR PORPOISES - 6
with focus on progress in implementation of Action 2 and 4

August 2014

Geneviève Desportes

Coordinator of the ASCOBANS North Sea Conservation Plan for Harbour Porpoises



Solve the bycatch problem: fish wireless!

EXTRACTS

Compliance to exiting regulation - CR (EC) No 812/2004

The implementation of the Reg. 812/2004 can be summarized as very patchy in all domains as member states have not fulfilled their obligations in term of monitoring nor mitigation, and many times reporting.

As regards the North Sea and the required monitoring in trawl fishery, MS do not comply with the monitoring requirement of Reg. 812/2004. This is understandable in the case of the trawl fisheries, as this is a quite clear case that the monitoring required did not target relevant fisheries. However, MS may not comply with Reg. 812/2004 regarding driftnet fisheries.

Most countries, therefore, do not comply with the requirement of Reg. 812/2004 in term of mitigation, although the implementation of mitigation measures is progressing in some countries.

So here as well, the compliance to Reg. 812/2004 with regards to reporting is not ideal.

Compliance to exiting regulation - Habitats Directive

Obligations under HD 12(4) are two-fold: monitoring and implementation of effective conservation measures. Its scope encompasses clearly all activities where incidental capture and killing of animal species listed in Annex IV (a) occurs, and therefore in the case of harbour porpoises all kinds of fisheries, both professional and recreational.

As long as the extent of bycatch will not be reliably known in the North Sea, it will be, by definition, impossible to MS to implement conservation measures “*as required to ensure that incidental capture and killing does not have a significant impact on the species concerned*”. Also “*take... conservation measures as required*” namely requires formulating explicit conservation and management objectives, which have not been agreed upon at present.

Only UK seems to monitor with dedicated observers, vessels over 12m that are required to and use pingers under Reg. 812/2004, for getting an on-site evaluation of the long-term effectiveness of pingers.

There is overall limited compliance to the Habitats Directive requirements amongst MS with regards to monitoring and assessment of the impact of bycatch on harbour porpoise populations, and consequently implementation of conservation measures as required.

Regular evaluation of all fisheries with respect to extent of harbour porpoise bycatch

As a result, Sweden and Belgium, but also Germany and the Netherlands, did not perform any marine mammal bycatch monitoring in net fisheries in the NS in 2012.

As a result, less than 0.7% of the total static and drift net effort *reported* for the North Sea is monitored for marine mammal bycatch, with less than 0.5% monitored by dedicated observers/REM. Indeed, these figures are overestimated, because an unknown but likely significant part of the fishing effort is not taken into consideration.

Except in a few sectors, the level of bycatch monitoring is very low and well below 1%, even when the DCF monitoring is included. Overall, the dedicated monitoring of bycatch is conducted at a level of 0.55% in the Channel, 0.22% in the North Sea proper and 0.28% in ICES area IIIa. In other words, well over 99% of net fishing in the North Sea is conducted without any marine mammal by catch monitoring.

Most countries do not have effort data for vessels below 10m, but this segment represents a non-negligible segment of the fleet.

A lack of data on bycatch issues within the fisheries does not indicate a lack of impact *per se*. It is more indicative of the difficulties associated with monitoring and researching this kind of fisheries. Difficulties include the absence of vessel position systems, log-books, designated ports and compulsory fishing authorization.

Sampling under the Data Collection Framework (DCF) can contribute to the assessment of bycatch of cetaceans and other species, but is not sufficient on its own as currently implemented by Member States.

The 2012 bycatch data also highlight clearly that the monitoring level is not adequate for assessing the extent of bycatch in the North Sea, although there is clearly a potential for unsustainable risk.

Clearly, the increased UK bycatch estimates, encompassing more fisheries than in previous years, reinforce the statement that a lack of data on bycatch issues within the fisheries does not indicate a lack of impact *per se* and reinforce the necessity to increase the monitoring level in the North Sea.

The situation in the North Sea remains unclear as only limited monitoring has been carried out since the last 1990s. These results suggest that current bycatch levels might exceed the conservation limits, but all of the caveats listed above should be borne in mind.

It also needs to be borne in mind that the effort reported and used for this Bycatch Risk Assessment is likely to be significantly under-estimated.

The present results certainly point to the necessity for further action being taken by MS in terms of monitoring and fishing effort reporting, in order to clarify the conservation status of the harbour porpoise in the North Sea.

Revision of CR (EC) No 812/2004

It should also be stressed that it is crucial to engage the fishing community in the revision process of Reg. 812/2004, if one wants to facilitate and speed up the implementation of any future regulation regarding marine mammal bycatch.

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1. INTRODUCTION

The ASCOBANS Conservation Plan for Harbour Porpoises in the North Sea (CPHPNS)¹ was adopted in 2009 at the 6th Meeting of the Parties (ASCOBANS 2009ab). It aims at restoring and/or maintaining North Sea harbour porpoises at a favourable conservation status, with in the shorter-term a pragmatic minimum objective to at least maintain the present situation and, if possible, improve it. The areas covered by the Plan are the Skagerrak (ICES areas IIIaN), the North Sea proper (ICES area IVabc) and the Channel (ICES area VIIed). A steering committee is in charge of ensuring the implementation of the Plan, supported by a coordinator.

The North Sea Steering Group (NSSG) has met three times, in May 2011, March 2012 and August 2013, since it was established in 2010 by AC17. Its task is “*Promote and coordinate the implementation of the Conservation Plan for Harbour Porpoises in the North Sea gather information on its implementation and the results obtained; inform the public; and evaluate the effectiveness of the Plan every three years to update it*”. At each meeting, it has given itself Action Points (AP), as listed along with completion status in Annex 1.1. It has given tasks to the Coordinator and the Secretariat (Annex 1.2) and has provided recommendation to the North Sea Member States (NSMS) (Annex 1.3). It has also made recommendations in view of a future revision of the Conservation Plan (Annex 1.4) and has flagged up areas which should be taken into consideration when amending the EC fisheries regulations regarding bycatch (Annex 1.5). The activities of the coordinator since the last meeting of the Steering Group are collated in Annex 2.

One of the tasks of the NSSG and the coordinator is to review progress in the implementation of the CPHPNS. As a contribution to the fourth meeting of the NSSG, this report reviews the progress accomplished in the implementation of the CPHPNS since the last meeting of the group and overall since the implementation of the Plan by the Parties in 2009. It supplements the three previous review reports produced by the coordinators of the Plan (Leaper and Papastavrou 2010, 2011, Desportes 2012ab, Desportes 2013), each of them focusing on different actions of the Plan. This report focuses upon

- *Action 2 - Implementation of existing regulations on bycatch of cetaceans*
- *Action 4 - Regular evaluation of all fisheries with respect to extent of harbour porpoise bycatch*

in response to recommendations/Action Points 4, 5 and 7 adopted at the last meeting of the NSSG (AC21/Doc.2.2.1.a²), and later on adopted by the Advisory Committee AC20 (ASCOBANS 2013³) in 2013.

NSSG AP2013-04

In order to obtain a reliable picture of bycatch, monitoring programmes should include all set net fisheries, particularly for vessels <15m. These should cover commercial full- and part-time fisheries and recreational fisheries, as called for in Actions 3 and 4 of the Conservation Plan. Parties are encouraged to implement such programmes, considering also the latest methodologies that have been developed.

NSSG AP2013-07

The NSSG will dedicate attention in the next 1.5 years to collecting information that can be of use for the revision of the EU cetacean bycatch regulation. The AC should transmit this information to the relevant EU fora.

NSSG AP2013-07

In order to assess the total bycatch of small cetaceans in the North Sea and the effectiveness of bycatch mitigation measures, monitoring programmes or scientific studies are needed in the fisheries where mitigation measures are applied, as is also required in Article 2(4) of CR (EC) No 812/2004.

¹ <http://www.ascobans.org/en/documents/action%20plans/North-Sea-Conservation-Plan>

² http://www.ascobans.org/pdf/ac20/AC20_2.2.1.b_Report_NorthSeaCoordinator.pdf

³ http://www.ascobans.org/sites/default/files/document/AC20_Report_inclAnnexes.pdf

2. PROGRESS IN IMPLEMENTION - ACTION 2

Implementation of existing regulations on bycatch of cetaceans

Description of Action 2 - (Extracts)

- **specific objective:** implementing existing regulations appropriately (e.g. Habitats Directive, EU Regulation 812/2004)
- **rationale:** while legislation exists (EU Fisheries Regulations) the overall level of implementation and effectiveness is unclear
- **target:** to ensure that existing regulations with respect to bycatch reduction measures are being effectively implemented and to collect data on their efficacy in reducing bycatch
- **method:** 1) through a scientifically designed and flexible observer scheme and review of existing schemes, and development and testing of reliable mitigation devices/methods; 2) consider how certification schemes could enhance the commercial value of fish caught with techniques that avoid harbour porpoise bycatch.
- **implementation-timeline:** immediate

Priority

- importance: high
- feasibility: high

2.1 Legal framework

2.1.1 CR (EC) No 812/2004

Regarding its application within the North Sea, Reg. 812/2004 has three components:

- Requirement of using pingers with specific technical characteristics
- Requirement of monitoring specific fisheries, not required to use pingers, with a specific effort level
- Annual reporting to the Commission (by June 1, for the preceding year).

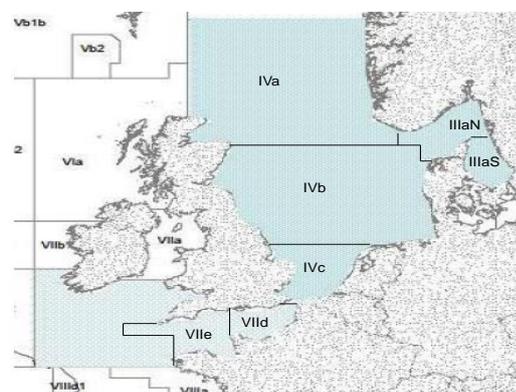
Under Reg. 812/2004, the use of pingers is only required for vessels with an overall length of 12 m or more and only in specific fisheries, geographic areas and period of the year (Table 2.1 and Figure 2.1).

In the North Sea, Skagerrak and Kattegat, bottom-set gillnet and entangling nets with meshes of 220 mm or more must be equipped with pingers year round, as well as any only bottom-set gillnet and entangling net set in strings of less than 400 m (wreck-net fishery) in the period August-October.

In the Channel (ICES VIIde), any bottom-set gillnet and entangling net are required to have pingers year round.

Table 2.1. Requirement for pinger use under CR (EC) No 812/2004 in the North Sea Figure 2.1. The areas concerned by Reg. 812/2004 are shown in the figure.

| Area | Gear | Period |
|------------------------------------|--|-----------------------|
| ICES sub area IV and division IIIa | Any bottom-set gillnet or entangling net, or combination of these nets, the total length of which does not exceed 400 meters | 1 August – 31 October |
| ICES sub area IV and division IIIa | Any bottom-set gillnet or entangling net with mesh sizes \geq 220 mm | All year |
| ICES divisions VIId and VIIe | Any bottom-set gillnet or entangling net | All year |



Mandatory monitoring schemes are only required for vessels with an overall length of 15 m, and only for some areas and under specific conditions. Table 2.2 gives the requirement for the North Sea. There is also specification for the level of monitoring which must be achieved, according to fleet size.

For vessels under 15 m Reg. 812/2004 stipulates that “*MS shall take the necessary steps to collect scientific data on incidental catches of cetaceans ... by means of appropriate scientific studies or pilot projects*”. This applies to the same fisheries as for the mandatory monitoring schemes; for the North Sea these are given in Table 2.2.

Table 2.2. List of North Sea fisheries requiring monitoring under CR (EC) No 812/2004.
Only vessels with an overall length of 15 m or over are concerned.

| Area | Gear (Vessel > 15m) |
|--|-----------------------------------|
| ICES sub area IV and divisions IIIa, and VIIed | Pelagic trawls (single and pairs) |
| ICES divisions VIIed | High-opening trawls |
| ICES sub area IV and divisions VIIed | Driftnets |

Several recommendations amending Reg. 812/2004 have been tabled, both in the framework of the new DCF and for bringing the Regulation in line with the provisions established under the Treaty of Lisbon. The Commission’s intention is to move away from a central regulation and incorporate the main elements of the Regulation (i.e. monitoring and mitigation) into other regulatory frameworks and incorporated under the new technical measures framework that will be developed as part of the reform of the CFP. Once this has been achieved, the Regulation could be repealed.

The European Parliament tabled a proposal COM (2012) 447 ([AC20/Doc.3.1.d](#)) to align the regulation with the treaty of the Functioning of the European Union (TFEU).the following wording: “*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.*” One of the provisions is to allow for a revision of the technical specifications and condition of use of acoustic deterrent devices as defined in Annex II, thus making possible to take account of technical and scientific development. This proposal has now been agreed upon by the European Parliament and the Council and should enter into legislation in mid-2014.

A regulation laying down a prohibition on driftnet fisheries in all EU waters was tabled in May 2014 (COM(2014) 265 final)⁴. The summary of the proposed action reads as following “*Introduce a full prohibition to take on board or use any kind of driftnets as of 1 January 2015, in all EU waters and by all EU vessels. Introduce a revised and more comprehensive definition of driftnets, to close any possible loophole in existing legislation.*”

2.1.2 Habitats Directive (1992)

The Habitats Directive under HD Article 12(4) stipulates that “*MS shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall 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*”.

Harbour porpoises are listed in Annex IV(a), as are all other cetaceans species. The conservation measures are not further specified.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014PC0265&from=EN>

Obligations under HD 12(4) are two-fold: monitoring and implementation of effective conservation measures. Its scope encompasses clearly all activities where incidental capture and killing of animal species listed in Annex IV (a) occurs, and therefore in the case of harbour porpoises all kinds of fisheries, both professional and recreational.

The interpretation that recreational fisheries also have to be taken into consideration, is supported by the fact that Belgium received a request from the European Union (DG ENV; EU Pilot 3801/12/ENVI) for more information about bycatch of porpoises in recreational fisheries. It was asked if the results of the assessments in the framework of the Marine Strategy Framework Directive had led to the conclusion that there was no need to take further measures to reduce bycatch (Belgium Annual Report to ASCOBANS AC21/Inf.12.1.a).

2.2 Implementation of regulations under CR (EC) 812/2004

A review of the implementation of Reg. 812/2004 is conducted annually by ICES (ICES SGBYC 2008, 2009, 2010; ICES WGBYC 2011, 2012, 2013, 2014). ICES has also provided specific advice (2010a Item1).

The European Commission twice reviewed the implementation of EC Reg. 812/2004 (EC COM (2009) 368⁵ and EC COM (2011) 578⁶). Progress and problems in the implementation also summarised comprehensively by Northridge (2011).

The implementation of the Reg. 812/2004 can be summarized as very patchy in all domains as member states have not fulfilled their obligations in term of monitoring nor mitigation, and many times reporting.

2.2.1 Monitoring

Monitoring in trawl fisheries has been implemented at a *relatively* high level by several MS in earlier years (e.g., in 2008 3-11% coverage in DK, 1.4 % coverage in SE, also high coverage in UK larger trawl fisheries). This monitoring has shown that these fisheries do not constitute, especially in the North Sea, a high risk for porpoises (See under 3.1.3), and cetaceans in general, except for the bass pair trawl fishery. Therefore, this monitoring has been reduced or stopped and sometimes redirected towards other more relevant fleet segments.

ICES (2010a) indeed noted in its advice: “There is no indication that pelagic fisheries in the North Sea currently pose a major risk to cetaceans, so the current requirement for monitoring these fisheries under Regulation 812/2004 could be relaxed, noting that some monitoring will still be undertaken under other legislation.”

Only UK report driftnet fishing effort in its annual Reg. 812/2004 report, but only for vessels under 15m. Drift-net fishing is allowed for nets <= 2,5km, although a ban in European waters is under discussion (COM(2014) 265 final)⁷. Very little driftnetting is registered, although it is known to occur. One problem could be that fishermen do not report driftnets under their specific category drift gillnets, GND, but under a wider category gillnets and entangling nets, GEN, which seems to be the case in France (Y. Morizur, pers. comm.).

As regards the North Sea and the required monitoring in trawl fishery, MS do not comply with the monitoring requirement of Reg. 812/2004. This is understandable in the case of the trawl fisheries, as this is a quite clear case that the monitoring required did not target relevant fisheries. However, MS may not comply with Reg. 812/2004 regarding driftnet fisheries.

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0368:FIN:EN:PDF>

⁶ http://www.ascobans.org/sites/default/files/document/AC19_4-07_EC_Communication_812_2004_1.pdf

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014PC0265&from=EN>

2.2.2 Mitigation measures

Implementation of bycatch mitigation measures were also found to be patchy, with still today few countries able to provide unequivocal confirmation that the obligations under Reg. 812/2004 for pinger deployment were being met. Few MS, actually, knows how many vessels are required to use /are using pingers. The elements relevant to the North Sea in terms of compliance to the regulation regarding mitigation and enforcement in 2012 are summarised in Table 2.3. The information provided in 2012 is similar to what has been reported for the last few years (ICES WGBYC 2012, 2013).

France and Belgian know with the most certainty how many vessels are using pingers, has they have not implemented (EC) Reg. No 812/2004 (2).

Table 2.3. Information regarding the compliance to Reg. 812/2004 (2): mitigation

Gear: gillnets (GN), set gillnets (GNS), driftnets (GND), trammel nets (GTR) and combined gillnets-trammel nets (GTN) na, not available. Vessels > 12m: ? no., number not known. Tool/strategy: ?, unknown; PDU, pinger detection units; Not rep., strategy not reported. Data in the table are extracted from ICES WGBYC 2014, Annex 4, Table 4b.

| MS | Area | Gear | Implementation of the use of Pinger (Art. 2) in 2012 (vessels >12m) | | | | |
|----|---------------|--------------------|---|--------------|--|---|-----------------------|
| | | | No. of vessels >12 | | Mandatory to report utilisation in LogBook | Enforcement | |
| | | | requiring pinger | using pinger | | Tool / Strategy | Reported Infringement |
| SE | na | na | Yes, ? no. | ? | No | ? / Low priority in inspection plan | none |
| DK | IIIa/IV | GN,GNS,GTR, m>220 | 18 | >0 | No | Hydrophones / Yes but Not rep. | |
| DE | 24, IIIa, IV | GN | Yes, ? no. | >3 | No | PDU / Not rep., 3 vessels checked in 2012 | none |
| NL | IVabc | GNS & Wreck nets | Yes, ? no. | 0 | | | |
| BE | IVc, VIId | GN | 1? | 0 | | | |
| FR | IIIa, IV, VII | GNS-GTR | 90 | 0 | | | |
| UK | VIIdefgh | GNS | 22 | >4 | no, information from "scientific studies" | PDU / NO (but from summer 2013) | ? |
| | Ivabc | GNS-demersal m>220 | 16 | >0 | | | |
| | IV | Wreck nets | ≤3 | ? | | | |

UK, which likely to date has or/and report the most efficient implementation of the regulation, both in terms of implementation and enforcement, reports the following: “*The UK continues to fully implement and enforce Council Regulation (EC) 812/2004 through the use of acoustic deterrent devices attached to fishing nets. Implementation of the regulation in the UK has involved close liaison with the industry and ongoing monitoring and support to aid compliance [e.g. guidance to the fishing industry⁸]. This has been led primarily by the MMO [UK Marine Management Organisation]. Enforcement of the regulation at sea (via pinger detection units) and at the quayside is carried out by MMO officers, the Marine Scotland Compliance and Enforcement Unit, and the Royal Navy, and has included inspections on vessels from other member states.*” (2014 AR to ASCOBANS, AC21/Inf.12.1.j).

However, also the UK is unclear on how many vessels are required to use pinger for different reasons. “*The UK industry has only recently adopted the routine use of pingers and it is too early to make a proper judgment about the effectiveness of the scheme. Logbook records make it difficult to ascertain which vessels should be using pingers according to the requirements of Annex I of the Regulation. Specifically, it is unclear whether ‘encircling gillnets’ are addressed by Annex I and it is not possible to determine from logbook records whether*

⁸ http://www.marinemanagement.org.uk/fisheries/monitoring/regulations_cetaceans.htm

vessels are using any “bottom-set gillnet or entangling net, or combination of these nets, the total length of which does not exceed 400 metres” (Northridge *et al.* 2014).

UK, in July 2013, followed by France in April 2014 have taken a derogation for using the DDD-03L. That pinger appears to be efficient in protecting 2 km of nets (so the maximum distance between pingers can be 4 km). However, France has no plan for making the use of pinger mandatory in the required fisheries (Y. Morizur, pers. comm.).

Most countries, therefore, do not comply with the requirement of Reg. 812/2004 in term of mitigation, although the implementation of mitigation measures is progressing in some countries.

2.2.3 Annual reporting to EC

In term of the annual reporting to the Commission, some of the reports are very detailed and informative (UK then France (although in French)), generating besides the information required an analysis of the situation. Others are very poor, sometimes only containing information dating from a few years back and not giving information on the fishing effort deployed in the reporting year and/or written in the native language without being accompanied with a proper translation (e.g., ICES WGBYC 2014, ICES 2014). The 2013 reports of Germany and Belgian and particularly Sweden are notable in this regard. Translations might not be required, but are essential to the work of ICES WGBYC, which review the reports.

So here as well, the compliance to Reg. 812/2004 with regards to reporting is not ideal.

2.3 Implementation of regulations under the Habitats Directive - HD 12(4)

2.3.1 Monitoring

UK is the only MS to date having implemented the bycatch monitoring of protected species as such. In France, for marine mammals in general, and harbour porpoises in particular, such monitoring is, however, part of the ObsMer monitoring programme.

Regarding harbour porpoises in the North Sea, the monitoring conducted under Reg. 812/2004 has shown that trawl fisheries do not represent a threat to porpoises. However, this is not the case for gillnet and driftnet fisheries.

Data brought under point 3.2 clearly shows that the monitoring conducted by MS, if any, is at present insufficient for getting a proper evaluation of the extent of bycatch of harbour porpoises in the North Sea at large.

As such, MS do not comply with their monitoring obligations under the Habitats Directive.

2.3.2 Implementation of conservation measures as required

As long as the extent of bycatch will not be reliably known in the North Sea, it will be, by definition, impossible to MS to implement conservation measures “as required to ensure that incidental capture and killing does not have a significant impact on the species concerned”.

Also “take... conservation measures as required” namely requires formulating explicit conservation and management objectives, which have not been agreed upon at present.

Conservation measures have been implemented by some MS under Reg. 812/2004, see under 2.2.2 for details, both using pingers corresponding to the specification (Article 4) or using alternative pingers under a derogation (DDD-03L in UK fisheries).

Several MS are experimenting with alternative acoustic deterrent devices, ADDs, DDD-02 (Netherlands), Banana pinger (Denmark, Netherlands, Sweden⁹, UK¹⁰), the Acoustic Alerting Device “PAL” (Germany¹¹, Denmark). For reviews see ASCOBANS BYCWG 2013 (AC20/Doc.3.1.b), 2014 (AC21/Doc.3.1.1.a Rev.1), and ICES WGBYC (2013, 2014).

Several MS are also experimenting/implementing other mitigation methods besides ADDs, such as changes in fishing practice. With regards to harbour porpoise bycatch in the North Sea, these includes reduction in net length and a closed season in the Netherlands, alternative fishing gears (Germany, Netherlands¹², Sweden¹³), excluding gillnet from some coastal areas, and reducing net height and mesh size (Germany) (ASCOBANS AC21/Inf.12.1.e, AC21/Inf.12.1.g, ICES WGBYC 2014).

2.3.2.1 Monitoring long-term effectiveness of conservation measures

One could state that monitoring the long-term effectiveness of the applied mitigation measures is embedded within the spirit/requirement of the HD 12(4). However, very little has been done for looking at the long-term efficiency of pingers in the North Sea (Area IV), nor even in fisheries having a high level of bycatch in the 1990s (e.g. Danish gillnet fisheries).

Only UK seems to monitor with dedicated observers, vessels over 12m that are required to and use pingers under Reg. 812/2004, for getting an on-site evaluation of their long-term effectiveness. It does so in Areas VIIe and VIId (Northridge *et al.* 2012, 2013, 2014), although not in Area IV.

In general, the monitoring conducted on the segment of the fleet required to use pingers (vessel >12 m) is at insufficient levels and/or conducted under the DCF (Data Collection Framework for on board discards and catch sampling), which is not believed to be providing reliable data on marine mammal bycatch as presently designed, see Point 3.2.6 and ICES WGBYC (2013) and ICES (2013ab).

2.3.3 The case of recreational fisheries

MS have given little attention to their recreational fisheries, in term of bycatch monitoring and mitigation, although bycatch is known to occur in several countries (e.g., Denmark, Belgium, Netherlands). In all MS, except Germany, fishing with static nets is allowed with some restriction in terms of platform or length of nets (Desportes 2013, in AC21/Doc.2.2.1.a).

Table 2.4. Programmes implemented by MS in the North Sea for collecting effort and bycatch data in marine recreational fisheries (MRF) and mitigated bycatch if required.

Germany is not included, as recreational net fisheries are not allowed there.

| | Effort data | Bycatch data | Mitigation | Reference |
|----|--|-----------------------|------------------|--------------------------------|
| SE | None | None | none | S. Brockmark, pers. comm. 2013 |
| DK | None | Yes, from Spring 2012 | none | Agrifish 2012 |
| NL | None, coming in 2014 | none, coming in 2014 | none | M. Scheidat, pers. comm. 2013 |
| BE | None, guesstimate | none | Yes, 2001 & 2006 | J. Haelters, pers. comm. 2013 |
| FR | Interview, estimation | indirectly | none | Y. Morizur, pers. comm. 2013 |
| UK | None, but non-angling MRF supposed to be at a very low level | | | K. MacLeod, pers. comm. 2013 |

⁹ <http://www.aquatecgroup.com/images/datasheets/aquatec%20group%20-%20aquamark%20848.pdf>

¹⁰ Crosby *et al.* 2013: http://www.cornwallwildlifetrust.org.uk/livingseas/dolphin_pinger_trial

¹¹ Conrad *et al.* 2013: http://www.elac-nautik.de/uploads/images/pdf/L3_ELAC_Nautik_Protection_of_Marine_Mammals.pdf

¹² ASCOBANS AC20/Doc.13g.rev1

¹³ ASCOBANS AC20/Doc.13.i (P)

The Danish AgriFish Agency launched in 2012 an initiative for assessing bycatch of harbour porpoise in recreational fisheries (AgriFish 2012, 2013). Fisheries inspectors checking the legality of the used equipment must report the bycatch if any and a mandatory field has been included for this purpose in their reporting scheme. A total of 1840 checks of recreational fishing gear were conducted in 2012 and no harbour porpoise was reported bycaught (AgriFish 2013). However, the report does not indicate the inspection strategy.

In 2013, the Netherlands conducted an impact assessment¹⁴ on the effects of set net fisheries on the conservation of harbour porpoises in the Natura 2000 area Noordzeekustzone. For this assessment, existing data on bycatch in set nets, both commercial and recreational were analysed (AC21/Inf.12.1.g). The report of the study is in Dutch and the results on recreational fisheries were not communicated further. The 2014 Dutch report to ASCOBANS (AC21/Inf.12.1.g) does not indicate whether the programme for collecting effort and bycatch data in recreational fisheries has been implemented.

Belgium is the only country annually reporting bycatch in recreational fisheries (and as such, known to the EU - see under 2.1.2).

The analysis and results of the French telephone survey designed to identify and qualify pressure of recreational fisheries have not been made publicly available (Y. Morizur, pers. comm.).

MS did not report on any initiative towards the mitigation of harbour porpoise bycatch in recreational fisheries since the adoption of the Conservation Plan. However, Belgium has twice implemented mitigation methods in recreational fisheries. In 2001, Belgium banned recreational fishing with gill nets below the low water line (JO of 14 Feb. 2002) as a measure to protect marine mammals and particularly porpoises. Further measures were taken in 2006 (JO 28 Dec. 2006), limiting the kind of nets, their height and length (ASCOBANS AC14/Doc.19p).

There is overall limited compliance to the Habitats Directive requirements amongst MS with regards to monitoring and assessment of the impact of bycatch on harbour porpoise populations, and consequently implementation of conservation measures as required.

¹⁴ http://www.rijkswaterstaat.nl/images/NEA%20Standaardvisserij%20-%20Imares_tcm174-363163.PDF

3. PROGRESS IN IMPLEMENTATION - ACTION 4

Regular evaluation of all fisheries with respect to extent of harbour porpoise by-catch

Description of Action 4 - (Extracts)

- **specific objective:** evaluate bycatch levels in all relevant fisheries
- **rationale:** although mitigation measures are in place for some fisheries, it is essential to assess, at regular intervals, whether those measures are achieving the desired goals or require adjustment
- **target:** to estimate levels of bycatch of harbour porpoises in the North Sea at regular intervals to enable mitigation measures to be reviewed and if necessary modified
- **method:** analyse data provided by Range States/Parties from observer schemes and elsewhere (e.g. from strandings, see Action 9) on bycatch and fishery data and incorporate this into a population dynamics modeling framework
- **implementation-timeline:** immediate, and at intervals of 3-5 years

Priority

- importance: high
- feasibility: high/medium

3.1 Legal framework

3.1.1 CR (EC) 812/2004

Under Reg. 812/2004, mandatory monitoring schemes using observers are only required for vessels with an overall length of 15 m or over, and only for some areas and under specific conditions, as given in Table 2.2 for the North Sea. There is also specification for the level of coverage that must be achieved, according to fleet size. Similarly, the collection of scientific data on incidental catches of cetaceans for vessels below 15 m is only required for the same fisheries.

This means, in particular, that there is no mandatory or 'scientific' monitoring required under CR (EC) No 812/2004 for any gillnet fisheries in the North Sea at large, nor even in ICES area IV, where a high bycatch rate had been estimated in the 1990s. Driftnet fisheries conducted in area IV and VIIed by vessels larger than 15, should be monitored, but it is unclear whether such fisheries occur (see under 2.1.2).

3.1.2 Habitats Directive (1992)

Under the Habitats Directive, bycatch monitoring is a requirement under Article 12(4) "*MS shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall undertake further research or conservation measures as required to ensure that incidental capture and killing does not have a significant impact on the species concerned*".

3.1.3 ASCOBANS Conservation Plan (2009)

Action 4 of ASCOBANS Plan has a similar scope to that of the HD and is asking for a '*regular evaluation of all fisheries*', although its specific objective limits the evaluation of bycatch levels to all *relevant* fisheries. The task comes as Action no 4, with *Importance* rated as high, but acknowledging that feasibility is may not be straightforward. It stipulates that this evaluation should be immediate - i.e. starting in 2009, and renewed at intervals of 3-5 years.

Taking into account the results of the monitoring carried out under CR (EC) 812/2004, MS can argue that trawl fisheries are not relevant fisheries for harbour porpoise bycatch in the North Sea. ICES WKREV812 (2011) concludes ‘*There appears to be little evidence that trawl (including pelagic trawl) fisheries provide a threat to harbour porpoises in the Baltic or elsewhere suggesting that any observational effort should be placed on gillnet fisheries*’ and ‘*Concerning pelagic trawl fisheries, it is clear that most of these present little or limited threat to cetacean populations and a large number of fishing trips and days at sea have been monitored under Regulation 812/2004 without any cetacean bycatch having been observed. There is a clear case to refocus monitoring activity*’. Relevant fisheries under the Plan can therefore be limited to net fisheries.

3.1.4 Expectations

Considering this legal context and the known and largely recognised risk of net fisheries to harbour porpoise, one could assume that NSMS have given a high priority to the task of monitoring net fisheries with respect to extent of harbour bycatch and that, five years after the adoption of the Conservation Plan, a clear picture of the extent of harbour porpoise bycatch in the North Sea is starting to emerge.

3.2 Monitoring of marine mammal bycatch in the North Sea

3.2.1 Monitoring tools

North Sea countries use various tools for fulfilling their monitoring obligations regarding marine mammal bycatch, as illustrated in Table 3.1. UK has since 2005 established a dedicated marine mammal observer scheme. In France, the program OBSMER manages all the observations required under various fishery regulations, including 812/2004, and this includes a strict and prioritised marine mammal observer scheme for métiers with known risk of marine mammal bycatch. The monitoring performed in net fisheries in area VII and IVc (not required under Reg. 812/2004) is included under this programme. These two countries are at present the only ones running dedicated monitoring of marine mammal bycatch. Some countries have, in recent years, appended a marine mammal observer scheme to the DCF monitoring scheme (DK, DE, NL, FR, UK), others do not (BE, SE) - but in most if not all cases, with inadequate sampling effort, see below and particularly under 2.2.2 and 3.2.6.

Table 3.1. Methodologies used for monitoring marine mammals in the NS net fisheries
GNS, gillnetter; d.a.s, days at sea; IDW, inner Danish waters.

| | Dedicated marine mammal observer scheme | Marine mammal observer scheme appended to the DCF | Remote Electronic Monitoring (REM) in the North Sea (ICES areas VIIed, IV and IIIa) |
|----|--|--|---|
| SE | Yes (2006-2008) No (2009-2012) | No (2009-2012) | (One project in the Baltic in 2008) A project aborted in 2010 |
| DK | Yes (2006-2008) No (2009-2012) | Yes (2011-2012) (No for trawl fishery) | 1 GNS in IVb and IIIa in 2010-2011 12 d.a.s on 1 GNS >15m in IIIa in 2012. (Other projects in the Baltic Sea and IDW) |
| DE | No (all years) | YES (2008, 2010-2012) No (2009) | |
| NL | No (all years) | Yes (2008-2012) | 1 GNS < 10m in IVc in 2011, 24 d.a.s From Dec. 2012-2015, 12 GNS < 15m in IVc |
| BE | No (all years) | No (2009-2012) | |
| FR | Yes, since 2008 FILManCet (Nov. 2008-2010), OBSMER (Apr. 2011-present) | Yes (2010-2012) | |
| UK | Yes, since 2005 + Protected Species monitoring | Yes (2010-2012) | |

3.2.2 Overall monitoring in 2012

As mentioned above, there is no mandatory monitoring in net fisheries in the North Sea (NS) at large (VIIde, IV and IIIa) under CR (EC) No 812/2004. Consequently, and although it is mandatory under the HD, MS conduct very limited marine mammal bycatch monitoring in net fisheries in the NS, as clearly illustrated in Table 3.2.

Germany and the Netherlands did not cover any net fisheries within the DCF monitoring in 2012. **As a result, Sweden and Belgium, but also Germany and the Netherlands, did not perform any marine mammal bycatch monitoring in net fisheries in the NS in 2012.**

Denmark monitored 0.8% of its net fishing effort through the DCF and 0.1 % using REM, with no bycatch reported in both cases. UK conducted a similar level of monitoring, but 60% was done by dedicated observers. France had also a similar level of dedicated monitoring, all under the programme ObsMer.

As a result, less than 0.7% of the total static and drift net effort reported for the North Sea is monitored for marine mammal bycatch, with less than 0.5% monitored by dedicated observers/REM. Indeed, these figures are overestimated, because an unknown but likely significant part of the fishing effort is not taken into consideration (see point 3.2.5.).

Table 3.2. Overall level of marine mammal bycatch monitoring in net fisheries (set and drift nets) in the North Sea at large (ICES areas VIIed, IV and IIIa) in 2012

Metier level 3 "Nets" here regroups the following gear categories¹⁵: gillnets (GN), set gillnets (GNS), driftnets (GND), trammel nets (GTR) and combined gillnets-trammel nets (GTN). DCF, Data Collection Framework for on board discards and catch sampling; REM, remote electronic monitoring; OM, dedicated observation conducted under the French programme ObsMer; DO, monitoring conducted by dedicated marine mammal observers.

Data are extracted from the 2013 MS annual reports on the implementation of CR (EC) 812/2004 for the calendar year 2012 (No, Bjørge et al. 2013; DK, Agrifish 2013, table 5.2; DE, Friedrichsen 2013 [EN], text 7. and annex 1 table 2; NL, Couperus 2013, table 3; BE, Verhegghen 2013, text 1.; FR, Morizur et al. 2013, table on pages 21-24, UK, Northridge et al. 2013, tables 5.2 and annex 2 table 2.2). In the case of the German report, it is assumed that the data given in Annex 1, 2nd table are data for Metier Level 3 - nets, although it is not indicated to which gears the data refer to in the English version. For Sweden the data are taken from ICES WGBYC (2014), as no effort data are given in the annual report (Anonym 2014).

| Countries | Metier level 3 | Days at sea (DAS) | Days observed | | Method | Observed ByCatch HP |
|-----------|----------------|-------------------|---------------|------|-----------|---------------------|
| | | | n | % | | |
| Sweden | Nets | 884 | 0 | 0 | | |
| Denmark | Nets | 10572 | 80 | 0,76 | DCF | 0 |
| | | | 12 | 0,11 | REM | 0 |
| Germany | Nets | 1778 | 0 | 0 | | |
| Holland | Nets | 3152 | 0 | 0 | | |
| Belgium | Nets | 215 | 0 | 0 | | |
| France | Nets | 29695 | 212 | 0,71 | OM | 4 |
| UK | Nets | 38186 | 109 | 0,29 | DCF | 0 |
| | | | 155 | 0,41 | DO | 7 |
| All | Nets | 84482 | 379 | 0,45 | DO/OM/REM | 11 |
| | | | 189 | 0,22 | DCF | 0 |
| | | | 568 | 0,67 | All | 11 |

¹⁵ Definition and classification of fishing gear categories, FAO 1990: <http://www.fao.org/docrep/008/t0367t/t0367t00.HTM>

3.2.3 Level of monitoring per fisheries segment

Table 3.3 provides a detailed picture of the bycatch monitoring by areas, vessel size and gears and gives the methodology used. As indicated under Table 3.2, for the purpose of the present report most of the effort data were directly extracted from the MS Annual Reports to the EU, but are not very detailed there, except for Denmark, France and UK.

Except in a few sectors, the level of bycatch monitoring is very low and well below 1%, even when the DCF monitoring is included. Overall, the dedicated monitoring of bycatch is conducted at a level of 0.55% in the Channel, 0.22% in the North Sea proper and 0.28% in ICES area IIIa. In other words, well over 99% of net fishing in the North Sea is conducted without any marine mammal by catch monitoring.

Besides some countries not conducting any monitoring in the North Sea in 2012 (Sweden, Holland, Germany and Belgium), some fishery segments are particularly poorly monitored by the other countries. In the North Sea proper, these include the smaller Danish gillnetters, the larger French trammel netters, and the larger British gillnetters and trammel netters. In the Channel, those segments include the British drift-netters and smaller gillnetters.

Only UK has any monitoring in the driftnet fisheries, although driftnetting occurs in most countries in coastal areas, mostly by smaller boats and at an unknown level. Masters (2014) notes “It was not possible to obtain any estimation for the total number of driftnet vessels operating in this way across EU waters.”

It is worth noting that, although no mandatory or ‘scientific’ monitoring is required for any gillnet fisheries in the North Sea under Reg. 812/2004, driftnet fisheries, however, required monitoring in Areas IV and VIIed.

Since fishing effort data are lacking for vessels below 10m in most countries, the level of monitoring indicated in Table 3.4 for vessels below 15 m is clearly overestimated (see point 3.2.5).

3.2.4 2012 - exceptional in term of low bycatch monitoring?

The monitoring level in 2012 is not an exception. ICES SG/WGBYC keeps repeating that monitoring is patchy, uneven, and often at levels so low in many segments that this prevents reliably extrapolating to the fishery segment.

If one looks at Annex 4, Table 4f of ICES WGBYC (2014), which report the 2012 bycatch estimates stratified by fishing area, vessel size and métier, there are 35 entries reporting the number of marine mammals observed bycaught. In less than 23 % of these, is there an extrapolation reported by the MS for the fishing segment.

ICES WGBYC (2014) notes: *“Porpoise bycatch in the North Sea and adjacent waters has been monitored for over 20 years, but a comprehensive assessment of the scale of bycatch in this area has not been achieved. This is because bycatch monitoring has been carried out in specific métiers and by individual Member States over a long period of time, resulting in a series of bycatch rate estimates for specific fishery sectors which covers only the minority of all gillnet fisheries in the region.”*

Table 3.3. Level of marine mammal bycatch monitoring in the North Sea in 2012, detailed by area, vessel size, metier and methodology used

The blue colour indicates sums of segments. The yellow background indicate segments where the monitoring effort is higher than 1%, the purplish red background underlines segments where the monitoring effort is less than 0.3%.

| | Metier Level 3/4 | Vessel size m | VIIde | | | | IV | | | | IIIa | | | |
|------------------------|--------------------------|---------------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|-------------|------------------|-------|
| | | | Day at sea | | | | Day at sea | | | | Day at sea | | | |
| | | | Effort | Obs. | Obs. % | Meth. | Effort | Obs. | Obs. % | Meth. | Effort | Obs. | Obs. % | Meth. |
| Sweden | Nets | na | 0 | | | | | | | 884 | 0 | 0 | | |
| Denmark | All Gillnet (GN) | <15 | 0 | | | 3148 | 5 | 0,16 | DCF | 3168 | 57 | 1,80 | DCF + 21% REM | |
| | | >=15 | 0 | | | 4094 | 30 | 0,73 | DCF | 162 | 0 | 0,00 | | |
| | Net, Total DCF | | 0 | | | 7242 | 35 | 0,48 | DCF | 3330 | 57 | 1,71 | DCF+REM | |
| Germany | Nets | >=10 | 0 | | | 1672 | 0 | 0 | | 106 | 0 | 0,00 | | |
| Holland | Nets | | 0 | | | 26 | 0 | | | 0 | | | | |
| | Set gillnet (GNS) | | 0 | | | 2838 | 0 | | | 0 | | | | |
| | Trammel net (GTR) | | 0 | | | 288 | 0 | | | 0 | | | | |
| | Net | na | 0 | | | 3152 | 0 | 0 | | 0 | | | | |
| Belgium | Set gillnet (GNS) | na | 66 | 0 | 0 | 149 | 0 | 0 | | 0 | | | | |
| France | Set gillnet (GNS) | <15 | 7812 | 35 | 0,45 | DO | 6 | 0 | 0,00 | | 0 | | | |
| | | 15-24 | 613 | 4,5 | 0,73 | DO | 0 | | | | 0 | | | |
| | Trammel net (GTR) | <15 | 16850 | 132,5 | 0,79 | DO | 2666 | 11 | 0,41 | DO | 0 | | | |
| | | 15-24 | 1397 | 28 | 2,00 | DO | 351 | 1 | 0,28 | DO | 0 | | | |
| | Nets, Total DO | | 26672 | 200 | 0,75 | DO | 3023 | 12 | 0,40 | DO | 0 | | | |
| UK | Set gillnet (GNS) | <15 | 23627 | 23 | 0,10 | DO | 3582 | 27 | 0,75 | DO | 0 | | | |
| | | >=15 | 145 | 1 | 0,69 | DO | 238 | 0 | 0,00 | DO | 0 | | | |
| | TangTrammel net (GTN) | <15 | 5362 | 60 | 1,12 | DO | 773 | 7 | 0,91 | DO | 0 | | | |
| | | >=15 | 149 | 29 | 19,46 | DO | 1096 | 0 | 0,00 | DO | 0 | | | |
| | Driftnet (GND) | <15 | 2059 | 5 | 0,24 | DO | 1155 | 3 | 0,26 | DO | 0 | | | |
| | Nets, Total DO | | 31342 | 118 | 0,38 | DO | 6844 | 37 | 0,54 | DO | 0 | | | |
| | Set gillnet | na | 23772 | 27 | 0,11 | DCF | | | | | | | | |
| | Trammel net | na | 5511 | 80 | 1,45 | DCF | | | | | | | | |
| | Driftnet | na | 2059 | 2 | 0,10 | DCF | | | | | | | | |
| Nets, Total DCF | | 31342 | 109 | 0,35 | DCF | | | | | | | | | |
| ALL | NETS | All | 58080 | 318 | 0,55 | DO | 22082 | 49 | 0,22 | DO | 4320 | 12 | 0,28 | REM |
| | | | | 427 | 0,74 | ALL | | 84 | 0,38 | ALL | | 57 | 1,32 | ALL |

3.2.5 Largely under-reported fishing effort for North Sea net fisheries

It is worth underlining that the effort registered and reported for net fisheries in the North Sea at large is less than the actual fishing effort, and likely significantly under-reported for at least three reasons:

- 1) **Most countries do not have effort data for vessels below 10m, but this segment represents a non-negligible segment of the fleet.** As example,
 - Germany has no effort data for vessels $\leq 10\text{m}$, which are not required to keep a logbook and have to record their catches only in monthly landing declarations (DE, AR 812/2004 2013) and part-time fishermen do not have to report effort. The German gillnet fleet in the North Sea was composed in 2008 of 30 vessels $< 7.5\text{m}$, 20 vessels between 7.5-15m, and only a single one $> 15\text{m}$ (Kock 2010).
 - The same is true for Denmark, where vessels $\leq 10\text{m}$ and part-time fishers do not have to report fishing effort.
 - In the UK, only vessels greater than 10m are obliged to fill out logbooks. Some smaller vessels fill in logbooks on a voluntary basis, and port officials record, then, the number of days at sea by these boats. In 2010, of the 622 UK *registered* fishing vessels using gillnets in 2010 in Vllefghj, only 22 of these were over 12m (Northridge¹⁶).

In this matter and although the fleet of MS is composed of other gear types besides drift- and set net, it is informative to look at the size composition of the MS fleet in 2012 (Table 3.4). Clearly, in all countries the great majority of the fleet is composed of vessels below 10m length and their fishing effort may be substantial. In the case of the UK, data from Masters (2014) indicate that the effort by vessel 10m and below constitutes 53% of the total drift and fixed net effort, while the value of their landings represents 40% (Table 11 and 12 of Masters 2014).

In the UK, driftnet fisheries operate in Areas IVbc, Vllled and VIIf (Bristol Channel) and in a number of estuaries (Masters 2014). UK had 286 and 246 vessels under 10m reliant upon drift and fixed net in 2011 and 2012 respectively, with an average of 87 and 86 days at sea (Masters, 2014¹⁷), i.e. equivalent in 2012 to 21,156 days at sea in total - although not all in the North Sea.

Table 3.4. EU fishing fleet by vessel length in 2012

Extracted and modified from Masters (2014). Source Eurostat, Marine Management Organisation

| MS | 8.00m and under | 8.01 - 10.00m | 10.00m and under | 10.01- 15.00m | 15.01m and over | Total | % Fleet <10m |
|----|-----------------|---------------|------------------|---------------|-----------------|-------|--------------|
| SE | 631 | 344 | 975 | 294 | 125 | 1,394 | 70 |
| DK | 1,713 | 437 | 2150 | 306 | 287 | 2,743 | 78 |
| DE | 980 | 170 | 1150 | 137 | 264 | 1,551 | 74 |
| NL | 220 | 88 | 308 | 67 | 475 | 850 | 36 |
| BE | - | - | - | 11 | 201 | 212 | 0 |
| FR | 3,672 | 1,524 | 5196 | 1,186 | 761 | 7,143 | 73 |
| UK | 3,474 | 1,558 | 5032 | 695 | 679 | 6,406 | 79 |

¹⁶ Simon Northridge, Acoustic deterrents in UK gillnet fisheries: acoustic deterrents_UK_Northridge.pdf

¹⁷ <http://www.devonandsevernifca.gov.uk/sitedata/Misc/driftnetreport.pdf>

2) The effort in net recreational fisheries in the different countries is unknown, but also adds to the overall fishing effort in net fisheries (In Germany, recreational net fishing is not allowed; in UK, the level is thought to be very low compared to angling).

3) ICES WGBYC (2014) speculated over the completeness of fisheries data held by ICES DataCentre that ICES WGBYC uses to assess the extent of marine mammal bycatch and other protected species. Members of the DataCentre expressed the likelihood that MS only provide the required 80% of sampled effort/data in accordance with DCF requirements based on landings, cost or total effort (WGBYC 2014). ICES WGBYC (2014) noted that *“this 80% requirement has implications for determining impact of bycatch of protected species, as sampled effort which detects such bycatch may not necessarily be submitted to ICES”*. It was concluded that *“it is not currently possible for ICES to provide comprehensive fishing effort data”*.

ICES WGBYC (2014) also notes that “fishing effort data for gillnet fisheries are not available in any useful format for all the EU Member States and Norway. Data provided at the workshop are probably the most complete that are available for the North Sea, but were not available for Norway, Germany or Belgium”.

As rightly noted by Masters (2014) for driftnet fishing in the UK, but which can be generalised to the lesser segment of the fleets and the fleet as a whole, **“a lack of data on bycatch issues within the fisheries does not indicate a lack of impact *per se*. It is more indicative of the difficulties associated with monitoring and researching this kind of fisheries.”** Difficulties include the absence of vessel position systems, log-books, designated ports and compulsory fishing authorization.

3.2.6 Problem in using DCF as a tool for marine mammal bycatch monitoring

Some of the NS MS are solely using DCF observers for fulfilling their monitoring obligations towards marine mammal bycatch. Others are using such observers to supplement their dedicated monitoring effort. ICES WGBYC (2011) noted that *‘While such observers are undoubtedly providing useful information, some difficulties have also arisen. In fisheries where bycatch is a rare event, and there is much other sampling work to be conducted by the observer, bycatch events may be easily missed due to the priority of other tasks’*.

PETS (Protected and Endangered Species) monitoring is not always mandated under the DCF (e.g. CR (EC) No 199/2008), although recorded by some. Some MS have appended a marine mammal observer scheme to the DCF protocol (see Table 3.1).

One problem is that the many different tasks that the DCF observers have to perform have very different aims as well as different practical locations - discards, biological sampling (sometimes under deck), and bycatch monitoring incl. monitoring of bycatch falling out of the net. Protocols are not always clearly prioritizing the tasks, which raises concerns regarding data consistency and validation, with e.g. the problem in differentiating between ‘0’ bycatch and ‘not recorded’. If bycatch monitoring is done under the DCF, ICES WGBYC 2013 emphasizes the need for strict protocols and priorities for the observers (limiting the tasks), for proper training and for an adequate sampling manual and review of problems and solutions.

There are also conflicting priorities in allocation of métiers, as the DCF programme’s main purpose is to monitor the discards of fish. Net fisheries have low national priority under the DCF in any country because they mostly do not generate much discard, but they are the gears most associated with the bycatch of harbor porpoises. AS an example AgriFish (2012) reports that in DK in 2011, the bulk of the DCF observer coverage was in bottom trawls and Danish seines as these fisheries have been shown to have the largest quantities of discard. This explains in part why gillnet fisheries have been so poorly covered by MS only monitoring marine mammal bycatch through DCF programmes.

The advice that ICES delivered to the EU in April 2013 on monitoring schemes and use of the DCF for monitoring marine mammal bycatch (ICES 2013a) can be summarized as follows (ICES WGBYC 2014):

“Sampling under the Data Collection Framework (DCF) can contribute to the assessment of bycatch of cetaceans and other species, but is not sufficient on its own as currently implemented by Member States. Not all fisheries are adequately covered and many issues, including design and sampling protocols would need to be modified/extended if DCF monitoring was to be the sole source of information. Monitoring under Regulation 812/2004 is much more specific for cetaceans, and has included the use of dedicated observers and remote electronic video recording. Development of remote electronic video recording seems likely to be a cost-effective way of assessing bycatch in the future”.

Indeed studies in Denmark and elsewhere have shown that remote electronic monitoring (REM) was a cost effective way of fully documented fisheries and monitoring discard and bycatch and also on smaller vessels (e.g., Kindt-Larsen *et al.* 2011, 2012).

3.3 Observed and estimated bycatch level in the North Sea

3.3.1 Recent estimate

3.3.1.1 WGBYC

The observed bycatch of harbour porpoise in the North Sea in 2012 reported by MS is given in Table 3.4 by fishing area and métier. A number of harbour porpoise bycatch events with and without pingers were reported for the North Sea and combined for providing bycatch figures for each stratum.

Table 3.4 also gives the bycatch estimates for the specific fishery segments, both provided by MS and extrapolated by WGBYC. Extrapolated bycatch estimates were based on number of animals divided by total observed days at sea multiplied by total effort in days at sea for a given stratum. The reliability of the extrapolated figures likely varies among the different strata, some being based on very low observer coverage. If they cannot be used as reliable estimate of bycatch, at least they may be used to highlight strata requiring further monitoring.

The 2012 bycatch data also highlight clearly that the monitoring level is not adequate for assessing the extent of bycatch in the North Sea, although there is clearly a potential for unsustainable risk.

Table 3.4. Bycatch of harbour porpoise (Hp) as reported by MS for the North Sea in 2012

The information in grey is the information reported by MS, the information in green is the information extrapolated by WGBYC (Modified from ICES WGBYC 2014)

| Species | MS | ICES Area | Vessel size (m) | Metier | | Effort (day at sea) | | No. Hp | Bycatch estimate | | Monitoring level % | Porpoise per observed day |
|-----------------|----|-----------|-----------------|-------------------|---------------|---------------------|------|--------|------------------|--------------------|--------------------|---------------------------|
| | | | | Level 4 | Level 5 | Total | Obs. | | Provided | Extrapolated WGBYC | | |
| Ph | FR | IVc | <15 | Trammel net (GTR) | Demersal fish | 2659 | 11 | 2 | | 483 | 0,41 | 0,18 |
| Ph | FR | VIIc | 15-24 | Trammel net (GTR) | Demersal fish | 876 | 17 | 2 | | 103 | 1,94 | 0,12 |
| Ph | UK | VIIc | <15 | Set gillnet (GNS) | Demersal fish | 3035 | 2 | 2 | | 3035 | 0,07 | 1,00 |
| Ph 5, Dd 2, Gg1 | UK | VIIc | >15 | Set gillnet (GNS) | Demersal fish | 143 | 29 | 5 | | 25 | 20,28 | 0,17 |

Notable extrapolated bycatch estimates include 3035 harbour porpoises in a UK gillnet fishery in the western Channel that UK has previously mentioned as one of the principal areas of concern for cetacean bycatch (e.g.

Northridge *et al.* 2012, 2013). Such coverage of 0.07% clearly provides a highly inaccurate estimate of bycatch, but this estimate highlights a stratum requiring urgent further monitoring.

Another notable extrapolated bycatch estimate is 483 harbour porpoises in a French trammel net fishery (vessel <15m) in the southern North Sea (Area IVc), with a coverage of 0.4%.

Another notable bycatch rate in 2011 - not associated with an extrapolation as not thought to be representative - is six porpoises caught in 24 days at sea observed by REM in a Dutch set gillnet fishery in the southern North Sea by a vessel of <15m (Couperus 2012).

Again, this bycatch rate may not be reliable, but certainly point to the fact that the smaller segment of the fleet (vessels <15m) also catch porpoises and require a higher monitoring level, so the extent of bycatch in this segment can be reliably assessed.

It is worth noting, as can be seen in Table 3.2, that in the North Sea at large, bycatch events have exclusively been reported by dedicated marine mammal observers and not through DCF programmes. In other areas, the majority of the bycatch events are similarly reported by dedicated observers. Northridge *et al.* (2013) state in the UK annual report for 2012: *“it is worth noting that during 2012 in 1064 non-dedicated sea days conducted under the English and Northern Irish discard programmes, no marine mammal bycatch was recorded. By comparison, 33 marine mammals were observed bycaught in 414 dedicated sea days conducted under the protected species bycatch programme in 2012. A similar pattern was evident in the 2011 data. These figures are likely to be influenced by the proportion of different gear types monitored and by the specific duties required of the observers in each programme. Nevertheless it highlights the importance of designing and optimising monitoring programmes specifically for purpose.”*

This pattern is again observed in the 2013 data (Northridge *et al.* 2014) and the authors note *“207 non-dedicated monitoring days were conducted during 2013 in a variety of static net fisheries under the English and Northern Irish discard sampling programmes (Table A2.2). It is worth noting that no cetacean bycatch were recorded despite the fact that many of the fisheries sampled are the same as those sampled by dedicated observers under the bycatch programme and from which we have several records of cetacean bycatch occurring in 2013 (26 in 2013).”*

3.3.1.2 UK - Annual Report to ASCOBANS based on bycatch estimate for 2013

The UK Annual Report to ASCOBANS (AC21/Inf.12.1.j) mentioned that the latest UK cetacean bycatch report for 2013 as required under EU Reg. 812/2004¹⁸ suggests a large increase in estimated porpoise bycatch, not primarily due to an increase in direct observations, but rather the result of the inclusion of new data for the year 2013. Observer days covered 166 trips (346 days) on static gear vessels, of which 18% were in the North Sea (Area IV).

Among the static gears sampled, 25 days were categorized as drift nets and 321 as fixed nets. The levels of porpoise bycatch by the UK fleet in UK waters in 2013 is estimated to be between 1600-1900 individuals per year (18 actual observed porpoise bycatch incidents), which is significantly higher than in previous years where levels had been estimated at ca. 800 individuals per year. However, bycatch estimates for other species have remained consistent with previous years.

AC21/Inf.12.1.j notes *“There are several reasons for this estimated increase in harbour porpoise bycatch. Firstly, all UK gillnet fisheries have now been included in the assessment, whereas in previous years estimates*

¹⁸ <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=18535>

were only included for those fisheries where sufficient sampling had been undertaken. Extrapolation of observed bycatch rates to all peripheral areas and the assumptions made relating to fishing effort introduces a greater degree of uncertainty into the 2013 estimates. It is also likely that bycatch has been overestimated in some areas, notably ICES Area VIId where observed bycatch rates remain lower than other Area VII sub-areas. Secondly, porpoise bycatch rates may have actually increased in some areas over the past decade - although the trend is difficult to quantify at this time. Thirdly, bycatches have been observed in some fisheries (e.g. drift nets and light gillnets for flatfish such as sole) that were not previously seen due to a lower sampling frequency. These métiers were excluded from previous estimates.”

Clearly, the increased UK bycatch estimates, encompassing more fisheries than in previous years, reinforce the statement that “a lack of data on bycatch issues within the fisheries does not indicate a lack of impact *per se*” and reinforce the necessity to increase the monitoring level in the North Sea.

3.4 Bycatch risk assessment

Porpoise bycatch in the North Sea and adjacent waters has been monitored for over 20 years, but a comprehensive assessment of the scale of bycatch in this area has not been achieved (ICES WGBYC 2014). The ICES Workshop WKRev812 (ICES, 2010b) suggested that to make progress in assessing porpoise or other protected species bycatch, it should be possible to compile existing data on fishing effort, with whatever bycatch rate estimates are available for the general area so as to provide an indication of whether or not these levels of bycatch rate might pose a conservation threat, given the present fishing effort. One way of doing this is to use the Bycatch Risk Assessment (BRA) approach “Given a species abundance estimate and a bycatch reference limit, as well as an estimate of total fishing effort, one can ask what overall bycatch rate would be needed to exceed the bycatch reference limit and then decide whether or not this is feasible” (ICES WGBYC 2014).

Problems inherent to the fishing effort data and reference level (reference level *per se*, underlying abundance estimate, bycatch rate estimates) are discussed in detail in ICES WGBYC (2014). It is not the purpose of this report to discuss them further. It is only to report the approach presented in ICES WGBYC (2014), using updated and corrected fishing effort data taken from the national annual reports to the EU (see legend under Table 3.2), as the effort data used in ICES WGBYC (2014) clearly were not complete.

The reported fishing effort for gillnet (drift gillnets, trammel nets and tanglenets) in ICES Area IV and IIIa in 2012 is summarised from Table 3.3 in Table 3.5.

Table 3.5. Fishing effort (Days at sea, DAS) for gillnets (drift, trammel and, tangle- nets) in ICES Area IV and IIIa in 2012. For Norway the value used was provided by ICES WKREV812

| Fishing area | IV | IIIa | Total (DAS) |
|--------------|---------------|--------------|---------------|
| NO | 9011 | 0 | 9011 |
| SE | 0 | 884 | 884 |
| DK | 7242 | 3330 | 10572 |
| DE | 1672 | 106 | 1778 |
| NL | 3152 | 0 | 3152 |
| BE | 149 | 0 | 149 |
| FR | 3023 | 0 | 3023 |
| UK | 6844 | 0 | 6844 |
| TOTAL | 31,093 | 4,320 | 35,413 |

The overall bycatch rate (animals per day) that would be needed to exceed bycatch limits calculated under different reference limit methods at current levels of fishing effort for gillnets fisheries (35,423 DAS), are given

in Table 3.5. ICES WGBYC (2014) collated bycatch rate estimates for 58 fishery strata in Areas IV and IIIa (dating back to 1995). They range from zero to 2.77 porpoises per day at sea, with an overall bycatch rate of 0.139. This overall bycatch rate is higher than the level of 0.104 porpoises per day that would result in a 1.7% take based on the reported levels of fishing effort (see Table 3.5).

Table 3.5. Overall bycatch rate associated with bycatch limits under different reference level limit in the North Sea (Areas IV and IIIa)
Reference level limits for porpoises in the North Sea are based on Scheidat et al. (2013), using an abundance estimate of 216,400.

| Reference limit method | Bycatch limit | Associated overall bycatch rate Considering 35,413 DAS |
|-----------------------------------|---------------|---|
| ASCOBANS 1.7 % | 3679 | 0.104 |
| ASCOBANS 1 % | 2164 | 0.061 |
| PBR, Potential Biological Removal | 1246 | 0.035 |
| CLA, Catch Limit Algorithm | 840 | 0.023 |

ICES WGBYC (2014) pointed out that “this overall mean of 0.139 is probably misleading as it is strongly influenced by sampling focused on turbot and other fisheries where bycatch rates are known to be high”. Looking at the spread of the 58 bycatch rates, 38% exceed the 0.023 level (CLA reference limit), 29% the 0.035 level (PBR reference limit), 26% the 0.061 level (% reference limit) and 24% the 0.104 level (1.7% reference limit).

It also needs to be borne in mind that the effort reported and used for this Bycatch Risk Assessment is likely to be significantly under-estimated, as explained in point 3.2.5.

3.5 Outlook

In summary, and as noted again in the UK Annual Report to ASCOBANS (AC21/Inf.12.1.j, “the situation in the North Sea remains unclear as only limited monitoring has been carried out since the last 1990s”.

But, as underlined by ICES WGBYC (2014), with the data now collected, it cannot be said that bycatch does not represent a conservation risk for harbour porpoise in the North Sea. ICES WGBYC (2014) notes “**These results suggest that current bycatch levels might exceed the conservation limits, but all of the caveats listed above should be borne in mind.**”

The present results certainly point to the necessity for further action being taken by MS in terms of monitoring and fishing effort reporting, in order to clarify the conservation status of the harbour porpoise in the North Sea.

This was already the advice of ICES to the EC in 2010 (ICES 2010a, Item3), when for harbour porpoises in the North Sea and Skagerrak, it was recommended to “*enhanced short-medium term observation to decide appropriate actions*”.

Four years later, ICES (2014) in its last advice to the EC reiterates the need for further and better data “A preliminary assessment of overall harbour porpoise bycatch rates in the North Sea was carried out using information gathered since 1995. This assessment indicated that bycatch rates in some fisheries may be above any proposed reference limits, but the uncertainty is large. There may also be biases in the choice of fisheries to monitor towards fisheries with a higher bycatch. **Better quality data on bycatch rates and fishing effort from more fisheries is required from EU Member Countries before this assessment can be refined and conclusions drawn as to the overall bycatch of harbour porpoise in the North Sea**”.

4. SUMMARY OF PROGRESS IN IMPLEMENTATION OF THE PLAN

A qualitative summary assessment of the progress realised by the MS in implementing the 12 actions defined in the Conservation Plan, is presented in Table 4.1.

Except for Action 2 and 4, which repeats the situation in 2012, the summary encompasses the period since the adoption of the Plan in 2009, although giving more weight to new activities. As an example, NL receives a '2' for Action 3 for having initiated a large scale long-term monitoring of smaller gillnets with CCTV cameras in December 2012, although they had only done little monitoring of this segment previously.

Table 4.1. Summary of progress in the implementation of Conservation Plan

Except for Actions 2 and 4: 0, no progress; 1, small progress or at experimental level; 2, steady progress; 3, fully implemented; na, not applicable; Rem, remote electronic monitoring.

Table 4.1. Summary of progress in the implementation of Conservation Plan

Except for Actions 2 and 4: 0, no progress; 1, small progress or at experimental level; 2, steady progress; 3, fully implemented; na, not applicable; Rem, remote electronic monitoring.

| Conservation Plan for HP in the North Sea: Actions | | Priority | | SE | DK | DE | NL | BE | FR | UK |
|--|--|----------|-----------------------------|--|------|------|-------|----|-----|------|
| 1 | Implementation of the CP: co-ordinator and Steering Committee | High | | 2: Coord part time, task of C and NSSG not completed | | | | | | |
| 2 | Implementation of existing regulations on bycatch of cetaceans - e.g. EC 812/2004 & Habitat Directive (HD) (* Table 1ab, ICES WGBYC 2013 for year 2011) | High | Vessels requiring pingers. | yes? | 18 | yes? | yes? | 1? | 90 | 30? |
| | | | % vessels using pingers | ? | ? | >3 | 0 | 0 | 0 | >5 |
| | | | Enforcement policy | 0 | ? | ? | na | na | na | 2 |
| | | | Dedicated observer prog | 0 | 0 | 0 | 0 | 0 | yes | yes |
| | | | Monitoring under HD | 0 | 0 | 0 | 0 | 0 | yes | yes |
| 3 | Establishment of BYC observation programmes on small vessel (<15m) and recreational fisheries in NS | High | Professional | 0 | 1 | 0 | 2 | 0 | 2 | 2 |
| | | | Recreational | 0 | 1 | na | 0 | 0 | 1? | na |
| 4 | Regular evaluation of relevant fisheries, extent of HP BYC Gillnet fisheries =>15 m vessels, dedicated, % DAS observed Gillnet fisheries <15 m vessels, dedicated, % DAS observed Cetacean scheme appended to DCF/DCR schemes DCF observation in 2012 in NS, % DAS observed | High | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | 0 | 0 | 0 | 0 | 0 | 1,4 | 1,8 |
| | | | | 0 | 0,2 | 0 | ? Rem | 0 | 0,7 | 0,3 |
| | | | | no | yes | yes | yes | no | yes | yes |
| | | | | 0 | 0.76 | 0 | 0 | 0 | na | 0.41 |
| 5 | Review of current pingers, dev. of altern.pingers and gear modif. | High | | 2 | 2 | 2 | 2 | na | 1 | 2 |
| 6 | Finalise a management procedure approach for determining maximum allowable bycatch limits | High | | General progress: SCANS II & WGMME, WKBYC | | | | | | |
| | | | | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| 7 | Monitoring trends in distribution and abundance of HP in NS | High | Large scale | 0 | | | | | | |
| | | | Reg/survey | 0 | SACs | 3 | 3 | 3 | 1 | 1 |
| | | | Reg/Model | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8 | Review of the stock structure of HP in NS | High | | 1 | 1 | 1 | 0 | 0 | 1 | 1 |
| 9 | Collection of incidental HP data through stranding networks | Medium | | 1 | 0 | 0 | 3 | 3 | 1 | 3 |
| 10 | Investigation of the health, nutritional status and diet of HP in NS | Medium | (mostly diet in DK, NL, BE) | 0 | 2 | 2 | 2 | 2 | 1 | 3 |
| 11 | Investigation of the effects of anthropogenic sounds on HP | Medium | | 0 | 2 | 3 | 2 | 2 | 1 | 3 |
| 12 | Collection and archiving of data on anthropogenic activities and development of a GIS | Medium | | 0 | 0 | 1 | 1 | 1 | 0 | 2 |

5. SUGGESTION FOR THE REVISION OF CR (EU) 812/2004

The European Commission twice reviewed the implementation of EC Reg. 812/2004 (EC COM (2009) 368¹⁹ and EC COM (2011) 578²⁰).

Besides reviewing annually the implementation of Reg. 812/2004, the ICES Working Group on Bycatch of Protected Species also looks at the adequacy of the regulation to address the bycatch problem (ICES SGBYC 2008, 2009, 2010; ICES WGBYC 2011, 2012, 2013, 2014). ICES provided specific advice (2010a, 2013ac, 2014) and held a workshop to specifically Evaluate Aspects of EC Regulation 812/2004 (WKREV812) in 2010 (ICES 2010b). In 2013 an ICES workshop (WKBYC) was held to address three specific requests from the EC regarding monitoring schemes, ways of defining reference points to bycatch and how to best revise the technical specifications and conditions of use of Acoustic Deterrent Devices in light of technical and scientific progress (ICES 2013b). Problems in the implementation of Reg. 812/2004 and its adequacy were also summarised comprehensively by Northridge (2011) and discussed within the ASCOBANS/ECS Cetacean Bycatch Mitigation Workshop²¹ (2010) and the ASCOBANS Bycatch Working Group (2014, AC21/Doc.3.1.1.a Rev.1). These fora analysed the problems inherent to the regulation and recommended ways of improving it. Further inputs can be found in several studies, both in terms of optimizing monitoring, assessing the impact of bycatch, defining relevant mitigation measures to be taken and mitigation methods to be employed in relation to specific fisheries segment (e.g., Northridge *et al* 2011, 2012, Dawson *et al* 2013, Kindt-Larsen *et al* 2013, Morizur *et al* 2014).

In general both the mitigation and the monitoring were judged to be less than optimally directed, with large segment of the fleet, known to present bycatch risk, totally left out of the regulation both in terms of mitigation and monitoring, particularly vessels below <15 m in terms of monitoring and vessels below 12m in term of mitigation measures. In the North Sea, mitigation methods were required in specific net fisheries, but no monitoring of their long-term effectiveness was required.

The NSSG has not comprehensively analysed and discussed the adequacy of the regulation, but has however made a few specific recommendations, which are tabled in Annex 1.5

It should also be stressed that it is crucial to engage the fishing community in the revision process of Reg. 812/2004, if one wants to facilitate and speed up the implementation of any future regulation regarding marine mammal bycatch. This was little the case when Reg. 812/2004 was drawn. This has previously been pointed out by ASCOBANS (2010) “Parties should try to influence the revision of EC Regulation 812/2004 so that it ...b) allows fishers (and other stakeholders) to participate fully and from the start in the development of the revision.” And re-emphasise by Northridge *et al* (2011) “We conclude by reiterating the importance of engaging the fishing community with this task, and stress that their proactive involvement will be critical if these issues are to be satisfactorily resolved in the longer term”.

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0368:FIN:EN:PDF>

²⁰ http://www.ascobans.org/sites/default/files/document/AC19_4-07_EC_Communication_812_2004_1.pdf

²¹ http://www.ascobans.org/sites/default/files/document/AC17_4-07_BycatchWorkshop_1.pdf

6. CONCLUSION

As the past and present reviews of the task Implementation of the Conservation Plan show, if there has been progress, it has been far from fully implemented six years after being adopted. In some domains, in particular Action 4, little progress has been made in the NS since the adoption of the Plan, even more so if the scope of the Action instead of covering *all fisheries* is restricted to *relevant fisheries*, i.e., net fisheries. Two countries, UK and France, have dedicated more effort in assessing the impact of bycatch in the North Sea, but even there, monitoring levels are so low that extrapolation is unreliable in many fishery segments. The Netherlands initiated in December 2012 a REM programme, which should produce a more reliable monitoring level in the Dutch gillnet fisheries.

As a result, the conservation status of the harbour porpoise in the North Sea remains unclear, with very patchy information in most domains, not least regarding bycatch.

The North Sea Steering Group should discuss in depth which strategy would be the best for speeding up the implementation process, and maybe more important for getting implemented the Actions which would allow to clarify the conservation status of the harbour porpoise in the North Sea. Without such a clarification, it is difficult to communicate the plan to stakeholders, and in particular those affiliated to the fisheries sector, and therefore to progress the implementation of effective and balanced mitigation measures.

With this background, it is also essential that all efforts be made for ensuring the successful completion of SCANS III, not only as a third synoptic survey of the North Sea in the near future, but also for the assessment of the impact of direct mortality caused by human activities and contributing to the development of a best practice guide for monitoring. Another priority should be a better understanding of the population structure of harbour porpoises in the North Sea.

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ANNEXES

Annex 1 - Action Points and recommendations

Status: Completed, pending, postponed, obsolete, ongoing, replaced, cancelled, repelled...

AP/recommendations in bold are still active, Status in blue requires further actions to be taken

NSC, North Sea Coordinator

Annex 1.1 - Action Points for the NSSG and status of completion

| AP 2011 | Action | Deadline | Status |
|------------|--|--------------------------|--|
| AP2011-01 | The chair of the SG will contact Elizabeth Guttenstein (European Commission) about contacts to relevant [<i>stakeholders</i>] organisations to participate in the NSSG | | Pending |
| AP2011-02 | The chair of the SG invites the regional advisory council (RAC) secretary to send a representative | | Pending |
| AP2011-03 | The chair will contact the secretariat for possibilities for funding industry representatives to attend a SG meeting. | | Completed: AC decide case/case |
| AP2011-04 | Each country will conduct and submit an inventory on the activities in regard to harbour porpoise conservation in the NS, identifying the key persons involved. Format will be guided by the 12 action points identified in the NSAP (to be submitted to the new NS coordinator with a CC to the SG chair) | Dec 20 2011 | Completed |
| AP2011-05 | The chair of the SG will ask the new NS Plan Coordinator to attend the NSRAC meeting in France, Boulogne-sur-Mer, France, October 10-11 2011. The chair of the SG will initiate contact to the NS RAC and announce the attendance and ensure the option for a ca. 15 min presentation to the meeting participants. | | Completed |
| AP2011-06 | The new NSAP coordinator will be asked to prepare a paper that highlights the aspects of the Marine Strategy Framework Directive (MSFD) relevant for the NSSG. | | Postponed |
| AP2011-07 | NSSG shall give guidance to the coordinator in preparing the paper as mentioned under AP06 | | Postponed |
| AP2011-08 | The chair will contact the Secretariat on the options to have a SG and AC meeting at a venue that facilitates fisheries' involvement. | a.s.a.p | Ok, NSSG free to suggest venues |
| AP2012M-01 | All countries to email comments or additions to the draft text for the ASCOBANS 20th Anniversary Volume regarding the NS conservation plan to Geneviève and Martine. | Mar 22 2012, 6 PM | Obsolete |
| AP2012M-02 | All countries to identify the appropriate contact people/persons within the country, check the activity report of the coordinator, and give additions and editions as required, especially with regards to appendices 2, 3, 4 and 5. | 30 Apr 2012 | Obsolete |
| AP2012M-03 | All countries to respond promptly to more detailed request for (detailed) information by the coordinator. Countries can respond whether this information can be found in the annual national report or whether additional, more detailed information will be send to the coordinator. | As request- ed by NSC | Ongoing |
| AP2012M-04 | All North Sea countries interested in a printed copy of the Dutch Conservation Plan for harbour porpoises (in English) to send postal details to Sanne van Sluis. A copy | N.a. | Completed |

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| | of the report will then be sent. Also, any details of missing information for the Dutch report, particularly related research, to be sent to Sanne van Sluis and Marije Siemensma. | | |
| AP2012M-05 | All North Sea countries to update the information provided on SACs in the North Sea, including the conservation objectives specific to the species/site and state of implementation. | 30 Apr 2012 | Ongoing |
| AP2012M-07 | Assist GD in completing a draft summary table on the type of fisheries that are or are not allowed in particular areas/zones focusing on types of fisheries that are most likely to have harbour porpoise bycatch | Next meeting | Completed |
| AP2012D-02 | Comment to GD on rating as listed for each country in the Excel-file on the progress made of the implementation of the conservation plan in the NS | 31 Dec 2012 | Obsolete |
| AP2012D-03 | Add or comment on the list of main focal points for the implementation of the conservation plan set up by GD | - | |
| AP2012D-04 | Factual changes to the interim report circulated prior to the conference call (e.g. numbers of bycatch) to be send to GD | 17 Dec 2012 | Obsolete |
| AP2012D-06 | Comments to the updated version of the interim report to be send to GD | 11 Jan 2013 | Obsolete |
| AP2013-01 | <i>To include a section on the implementation status of the North Sea Conservation Plan for Harbour Porpoises (NSCP), as well as regionally specific information, when the format for ASCOBANS Annual National Reports will be revised. Until that time, the North Sea Steering Group (NSSG) in collaboration with the Secretariat will develop a questionnaire specific to its needs, to be submitted annually by 31 March.</i> | - | Ongoing |
| AP2013-05 | The NSSG will dedicate attention in the next 1.5 years to collect information that can be of use for the revision of the EU cetacean bycatch regulation. The AC should transmit this information to the relevant EU fora. | - | Ongoing |

Annex 1.2 - Action Points for the NSC and/or the Secretariat and status of completion

| AP | Action | Deadline | Status |
|------------|--|--------------|--------------------------------|
| AP2012M-06 | Prepare a document to investigate whether further coordination and possibly standardising of national monitoring of abundance and trends is feasible between North Sea countries. Summarise progress and options | Next meeting | Completed (Desportes 2013a) |
| AP2012M-07 | Work on a draft summary table on the type of fisheries that are or are not allowed in particular areas/zones focusing on types of fisheries that are most likely to have harbour porpoise bycatch | Next meeting | Completed (Desportes 2013b) |
| AP2012D-01 | Collect information on what type of fisheries is allowed in each country, in connection to bycatch | Next meeting | Completed (Desportes 2013b) |
| AP2012D-03 | Set-up a list of main focal points for the implementation of the CP | - | |
| AP2012D-05 | Update and circulate a next version of the interim report | 31 Dec 2012 | Completed |
| AP2013-01 | To include a section on the implementation status of the North Sea Conservation Plan for Harbour Porpoises (NSCP), as well as regionally specific information, when the format for ASCOBANS Annual National Reports will be revised. Until that time, the North Sea Steering Group (NSSG) in collaboration with the Secretariat will develop a questionnaire specific to its needs, to be submitted annually by 31 March | - | Ongoing |
| AP2013-02 | The Secretariat/North Sea Coordinator should provide a page on the ASCOBANS website for the North Sea Conservation Plan, summarizing the plan and the progress in implementation, to promote and explain the Plan to relevant stakeholders (see Task 2 of Action 1 of the NSCP). | - | Ongoing |
| AP2013-03 | In order to understand the legal implications of landing bycaught porpoises throughout the ASCOBANS Area, the Secretariat should produce a synopsis of relevant legislation at EU and national levels, as well as information on experiences of working with incentives for their landing (in line with JG9 AP11). | | Pending |

Annex 1, part 3. Recommendations to the NSMS and AC.

| | Recommendations | Status |
|---------------|--|-----------|
| NSSG 2011 | 0 | |
| NSSG 2012M | To underline the necessity and promote a follow up of the SCANS II project in order to have a good and recent (static) estimate of harbour porpoise abundance and distribution in the NS, and a better idea on trends (based on 3 points 1995, 2005 and 2015?). | Completed |
| | To promote the synergy between current national monitoring programmes on harbour porpoise distribution and abundance between North Sea countries. | |
| | To allow for the coordinator of the North Sea plan attending at least one NSRAC meeting per year to get further acquainted with the network and be able promote more in general the North Sea conservation plan. | Completed |
| | To have the coordinator of the North Sea plan as an observer of all relevant working groups (bycatch and noise) within ASCOBANS to prevent duplication of work and exchange information between the working groups and NS plan. | Completed |
| | The secretariat is asked to arrange for the coordinator to be included in the mailing list of all relevant working groups within ASCOBANS e.g. bycatch and noise. | Completed |
| | A similar working relation can be established with the ICES working groups (WGBYC and WGMME). | |
| | To continue the position of coordinator of the North Sea plan after 2012 to be able to proceed efficiently on activity 8 of Triennium work plan 2010-2012 and activity 9 of the Triennium work plan 2013-2015: "Evaluate progress in the implementation of the Conservation Plan for Harbour Porpoises in the North Sea, establish further implementation priorities, carry out the periodic review of the Plan and promote the implementation of the Plan". | Ongoing |
| NSSG 2012D | Monitoring of bycatch of porpoises is needed for smaller (<12 m) vessels as this type of fisheries is important for bycatch and the current trend is an increase of the number of smaller vessels at sea. | |
| | Monitoring of bycatch can be conducted using electronic monitoring and/or observers aboard. In order to have this work, it should be mandatory to have a monitoring scheme and video in place. | |
| | All North Sea countries need to study the fishing effort of recreational fishery in combination with bycatch pressure, as done by France. | |
| | To enlarge the UK project to assess population trends based on existing monitoring data to get population trends based on current international monitoring. This may be used as a starting point for SCANS-III. | |
| | To stimulate the coordination of international monitoring and assess where we can do more together | |
| | To conduct a SCANS-III survey for providing information on trends in abundance of harbour porpoises at a larger scale. | |
| | To identify areas for special attention for harbour porpoises (e.g. protected areas, areas of concern). | |
| | To improve the monitoring effort in the northern part of the North Sea (mainly north-western). | |
| | The NSSG highlights the value of such a North Sea stranding database for harbour porpoises. | |
| NSSG AP2013-4 | In order to obtain a reliable picture of bycatch, monitoring programmes should include all set net fisheries, particularly vessels <15m. These should cover commercial full- and part-time fisheries and recreational fisheries, as called for in Actions 3 and 4 of the CP. Parties are encouraged to implement such programmes, considering also the latest methodologies | |

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| | that have been developed. | |
| NSSG AP2013-06 | Small cetacean bycatch mitigation should be enforced in the fisheries that have the highest impact on populations. | |
| NSSG AP2013-07 | In order to assess the total bycatch of small cetaceans in the North Sea and the effectiveness of bycatch mitigation measures, monitoring programmes or scientific studies are needed in the fisheries where mitigation measures are applied, as is also required in Article 2(4) of EC Reg. 812/2004. | |
| NSSG AP2013-08 | To support by all means the realization and success of a third large SCANS-type survey. | |
| NSSG AP2013-09 | To support the on-going development of international collaborative monitoring strategies for Harbour Porpoises in order to meet the surveillance requirements of the Habitats Directive and Marine Strategy Framework Directive, ensuring that the whole North Sea is covered. | |
| NSSG AP2013-10 | Consideration should be given to the possibility of further sub-structuring the Harbour Porpoise population in the North Sea. In order to refine population structure, collaborative genetic analysis of existing samples taking into account precise location and date is needed. | |

Annex 1.4 - Recommendations/suggestions from NSSG for amending the CPHPNS

| Meetings | Recommendations |
|------------|--|
| NSSG 2011 | 0 |
| NSSG 2012M | Action 4 should read: Regular evaluation of <u>relevant</u> [delete <i>all</i>] fisheries with respect to the extent of harbour porpoise bycatch |
| | To evaluate and update the NS Conservation Plan for harbour porpoises for the next triennium (2015) |
| NSSG 2012D | 0 |
| NSSG 2013 | 0 |

Annex 1.5 - Recommendation from NSSG regarding amending EU fisheries regulations regarding bycatch.

| | Recommendations |
|--------------------|--|
| NSSG 2011 | 0 |
| NSSG 2012M | To require monitoring of HP bycatch for smaller vessels (<15m) and recreational fisheries as a part of the reform of the CFP |
| | To stress the need for EC funding for monitoring population size and necropsy of stranded animals. |
| NSSG 2012D | Monitoring of bycatch of porpoises is needed for smaller (<12 m) vessels as this type of fisheries is important for bycatch and the current trend is an increase of the number of smaller vessels at sea. |
| | Monitoring of bycatch can be conducted using electronic monitoring and/or observers aboard. In order to have this work, it should be mandatory to have a monitoring scheme and video in place. |
| | Monitoring of bycatch is still needed when pinger are applied, e.g. to check efficiency of pingers in mitigating bycatch |
| NSSG 2013 | In order to obtain a reliable picture of bycatch, monitoring programmes should include all set net fisheries, particularly vessels <15m. These should cover commercial full- and part-time fisheries and recreational fisheries. |
| | Small cetacean bycatch mitigation should be enforced in the fisheries that have the highest impact on populations. |
| | In order to assess the total bycatch of small cetaceans in the North Sea and the effectiveness of bycatch mitigation measures, monitoring programmes or scientific studies are needed in the fisheries where mitigation measures are applied. |
| Interim discussion | Clear definitions of the gear types to which the regulation applies should be developed and included in the regulation. It is currently unclear whether certain types of fishing gear known to interact with cetaceans are covered by the scope of the regulation. |
| | Vessel lengths for different requirements have varied between 10m, 12m and 15m. This has not been particularly helpful for the overall understanding, implementation and enforcement of the regulations. If possible, some standardization would be helpful. |

Annex 2 - Activity report of the coordinator

Coordination of the CPHPNS - Activities carried out in the Period November 2013 to October 2014

Under the present contract running from November 1st 2013 to October 10, 2014, the North Sea coordinator was committed to 54 working days equivalents to ca. 2.5 person-months. Up to 18 days, could be used for pre-approved travel expenses in agreement and accordance with the Secretariat and the ASCOBANS North Sea Group (NSSG). The contacts established and pursued and the actions taken are listed below.

1 Participation in ASCOBANS meetings

- 10th Meeting of the Jastarnia Group in Bonn, Germany, April 1-3, 2014
- 4th Meeting of the NSSG, Gothenburg, Sweden, 28 August 2014
- ASCOBANS AC21, Gothenburg, Sweden, 28 August - 1 October, 2014

2 Participation in external meetings

- Meeting of the ICES Working Group on Protected Species (ICES WGBYC), Copenhagen, Denmark, 4-7 February 2014
- Meeting of the ICES ByCatch Advice Drafting Group (ADGBYC), Copenhagen, Denmark, 13-14 March 2014 (in replacement of the WGBYC chair) *“Assess the extent to which current fishery monitoring schemes, including among other things those conducted under the DCF and Regulation 812/2004, provide an acceptable means of assessing the nature and scale of cetaceans and other protected species bycatch. Consider alternative means and other sources of data that could be used to improve our understanding of the conservation threat posed to cetaceans and protected species by bycatch in European fisheries.”*
- 8th meeting of the Danish Natura 2000 Dialogforum, Copenhagen, Denmark, 17 March 2014

GD did not attend any NSRAC meeting in 2013-14. The still unclear situation in the NS, with a lack of overview on the bycatch pressure and the relative contribution of different fisheries segments, combined to a lack of a solid trend in abundance, would have prevented to deliver clear messages and requests.

3 Contact pursued with

- ASCOBANS Secretariat and the NSSG chairs.
- Delegates and member from the NSSG.
- Scientists and NGOs from NS countries involved with harbour porpoise work, by-catch and population monitoring.
- Scientists involved in the preparation of SCANS III.
- Scientists involved in the ICES WGBYC 2014
- Persons involved in the ICES ByCatch Advice Drafting Group
- AgriFish, the Danish Fishery Agency and Danish researchers involved in porpoise conservation
- Jastarnia group members

4 Actions taken, besides the participation to meetings

- Finalizing the minutes of the 3d meeting of the NSSG
- Continuing collating international and national regulations and guidelines regarding anthropogenic activities, as well as information on their implementation and enforcement in the different NS Sea range states.
- Collating new information on the implementation of the 12 Actions of Conservation Plan in the different North Sea Member States (MS), collated in the annual national progress reports made available to AC20 and AC21, as well as MS annual reports to the European Commission on the implementation of EC Reg. 812/2004.
- Collating new information on bycatch rates in different North Sea fisheries, based on the reports of the ICES SG/WGBYC, in order to produce a more manageable/user friendly North Sea overview of knowledge and gaps in bycatch reporting and monitoring.
- Preparation to the participation in the ICES WGBYC in Copenhagen, February 4-8, 2014.

- Preparation of a presentation of the North Sea Action Plan and the progress in its implementation to be given at the 2014 ICES Working Group on Bycatch of Protected Species, and a summary to be included in the report of the WG (ICES WGBYC 2014, point 9.4.2)
- Contributing in finalizing the report of the ICES WGBYC 2014, in the absence of the Chair
- Contributing in finalizing the Advice prepared by ICES ByCatch Advice Drafting Group (ADGBYC)
- Preparation to the participation to the 10th Meeting of the Jastarnia Group in Bonn, Germany, April 1-3, 2014.
- Working on developing a questionnaire specific to the needs of the NSSG for reporting to ASCOBANS
- Working in collecting data for characterising and qualifying the fishing effort with static gears in the North Sea for the different North Sea countries.
- Preparing material to be included on the ASCOBANS website on the North Sea Conservation Plan and the progress in implementation in the different countries
- Preparing the 6th interim report on the implementation of the Conservation Plan in view of the 4th meeting of the NSSG on August 28 in Gothenburg, Sweden.
- Preparation of the agenda for the 4th meeting of the NSSG, in collaboration with the new chair of the NSSG, P. Evans.
- Preparing a presentation to be given at the AC21 meeting, NSSG on August 29-September 1, in Gothenburg, Sweden.