

Agenda Item 6

Relevant EU Policy

Common Fisheries Policy

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Views on the current legislative process to revise & update EU bycatch measures and suggested solutions to reduce bycatch

Action Requested

- Take note
- Comment

Submitted by

Whale and Dolphin Conservation



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

Secretariat's Note

The Rules of Procedure adopted at the 19th Meeting of the ASCOBANS Advisory Committee remain in force until and unless an amendment is called for and adopted.

What future for cetacean bycatch in European waters?

Views on the current legislative process to revise & update EU bycatch measures and suggested solutions to reduce bycatch

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Background

For decades, cetacean bycatch has been a major conservation and welfare concern in the European Union with high numbers of harbour porpoises, dolphins and whales dying each year (see Table 1). Despite binding legal requirements to monitor and reduce bycatch, cetacean bycatch monitoring has been insufficient in most fisheries and areas (ICES, 2011; Northridge, 2011; Desportes, 2014; ICES, 2016; Read et al., 2017), and has thus often impeded the application of effective mitigation.

The current EU cetacean bycatch legislation (Council Regulation (EC) No. 812/2004) has been found to have significant weaknesses (European Commission, 2009; 2011; ICES, 2013; 2014; 2015; 2016) and is being repealed and incorporated into a proposed *Regulation on the conservation of fishery resources and the protection of marine ecosystems through technical measures (2016/0074)* (hereafter referred to as the *Technical Conservation Measures (TCM) Regulation*). In March 2016, the European Commission produced a technical conservation measures legislative proposal that includes measures for cetacean bycatch (European Commission, 2016). Under the ordinary legislative procedure, the European Parliament and the Council of the European Union examine the Commission's proposal in parallel, and may approve, reject, or as is typically the case, propose amendments. The European Council reviewed and proposed amendments to the Commission proposal in early 2017 and the European Parliament is currently reviewing the Commission proposal.

The Parliamentary committee responsible for examining the Commission proposal is the Committee on Fisheries (PECH), and a formal opinion has also been given by the Committee on Environment, Public Health and Food Safety (ENVI, 2017). A draft report has been produced in the PECH Committee by its designated MEP rapporteur. Subsequently, additional amendments were proposed by the full membership of PECH MEPs (Table 2 provides a list of PECH Committee MEPs), including a number of 'ENVI Opinion' amendments that were not included in the draft PECH report. Compromise amendments are presently being negotiated within the PECH committee between the rapporteur and shadow rapporteur MEPs. The PECH Committee will vote on amendments in October and the final committee report is then voted on by the European Parliament plenary, and requires a simple majority to be adopted. Additional amendments may be tabled at plenary stage but only by the responsible committee (PECH), a political group, or at least 40 individual members.

Typically, once the European Parliament and the Council of the European Union have agreed their separate amendments to the Commission's proposal, there are then informal negotiations, known as trialogues, between the European Parliament, the Council of the European Union and the European Commission, with a view to reaching early agreement on legislation. If they cannot agree, a second reading takes place, following similar processes as already described above, with the possibility to table further amendments.

The proposed regulation provides the opportunity to improve bycatch mitigation requirements and to help safeguard European cetacean populations. However, in our view the evidence to date indicates that this opportunity seems likely to be missed. Rather than providing the critically needed strengthening of the Commission's proposal, many of the proposed amendments in the PECH Committee draft report would

significantly weaken both the provisions of the existing cetacean bycatch legislation and the Commission's proposal. Nevertheless, a number of amendments have been tabled by members of the PECH Committee that would strengthen the proposed legislation and ensure a higher level of protection for cetaceans and other sensitive marine species from bycatch. A briefing detailing the key amendments relating to the issue of cetacean bycatch is available (Dolman *et al.*, 2017). These amendments are summarised below.

Amendments that would weaken bycatch mitigation

There is a significant risk that with the repeal of EC Regulation 812/2004 and adoption of the TCM Regulation existing cetacean bycatch measures will be weakened. Measures may be removed altogether in some regions, based on some proposed amendments from the PECH Committee. These include to:

- i) remove the existing prohibition on carrying or deploying driftnet gear in the Baltic Sea or to provide exemptions for small scale coastal fisheries within 4 nautical miles of the coast – a resumption of legal driftnetting would threaten the already critically endangered Baltic Sea harbour porpoise population further;
- ii) remove all existing cetacean bycatch monitoring and mitigation measures in South Western waters¹, or regions within it, and remove the requirement for the use of Acoustic Deterrent Devices – moves that would threaten at least harbour porpoise (*Phocoena phocoena*), bottlenose dolphin (*Tursiops truncatus*) and short-beak common dolphin (*Delphinus delphis*) populations; and
- iii) remove all requirements for monitoring and mitigation of cetacean bycatch in the Mediterranean - threatening sperm whale (*Physeter macrocephalus*), common and striped dolphin (*Stenella coeruleoalba*) populations and potentially others.

If these measures were to be adopted they are likely to result in higher numbers of cetaceans dying in fishing gear in EU waters and could set bycatch reduction efforts back decades.

Amendments that would strengthen bycatch mitigation

Other PECH MEPs have put forward amendments that would considerably strengthen the proposal, and in some respects go further than the current EC 812/2004 Regulation. These include:

- i) the consideration of welfare impacts on sensitive species (such as marine mammals, seabirds and turtles) that result from fishing activities;
- ii) an obligation to ensure bycatch of sensitive species is minimised and where possible eliminated;
- iii) reporting of sensitive species bycatch;
- iv) robust assessment of bycatch mitigation measures;
- v) expansion of bycatch measures from cetaceans to include seals;
- vi) extension of bycatch measures to a more appropriate range of fishing gear types;
- vii) support for the assessment of fisheries impacts in Natura 2000 sites;
- viii) inclusion of the prohibition of static nets at certain depths in Mediterranean waters, as elsewhere;
- ix) real-time closures for sensitive species;
- x) measures for monitoring and mitigation of marine mammal bycatch in the Outermost Regions (e.g. French Guiana, Réunion and Mayotte); and,
- xi) a prohibition on the deployment of gears known to have a high risk of cetacean bycatch (e.g. bottom set gillnet, driftnet, entangling net or high vertical opening trawl) without the use of proven mitigation technology, in line with the recommendations made by ASCOBANS to the European Commission in 2016.

The adoption of this last set of amendments would help significantly improve the application and assessment of mitigation in order to progressively reduce, and where possible eliminate, bycatch of cetaceans in fishing gear in European waters (and Outermost Regions) and there is therefore a need for broad, cross-party support to ensure they receive a majority vote.

¹ ICES sub-areas VIII, IX & X (Union waters, including Bay of Biscay, Spain, Portugal and offshore, including waters around the Azores)

Identifying management solutions to reduce bycatch

Bycatch continues to pose a major threat to cetacean individuals and populations in EU waters, with indications of population level impacts in all but the Outer Regions (Table 1). Efforts to strengthen and coordinate cetacean bycatch solutions are long overdue.

Working in partnership with fisheries stakeholders is central to successful bycatch mitigation efforts. Fishermen do not want to catch cetaceans, but they may need to be convinced about the value of providing accurate data on bycatch and implementing management approaches. Ongoing outreach and collaboration are central to successful efforts to assess and reduce bycatch.

A review of existing cetacean bycatch mitigation methods was recently undertaken, covering methods such as reduction of fishing effort, closed areas, acoustic deterrent devices (ADDs), fishing gear modifications and alternative gears, reducing gear loss (or discarding) and wet storage (setting gear to preserve use of an area) (Leaper & Calderan, 2017). While ADDs have been the principal method stipulated by EU legislation, it is vital that mitigation does not solely rely on ADDs, as these are not known to be effective for all species and only apply to certain gear types; hence, there should be species and gear-specific mitigation as appropriate and ongoing monitoring of the efficacy of all mitigation methods applied (including to understand issues surrounding habituation). Where methods do not result in reductions in bycatch, Member States should introduce additional or alternative mitigation measures based on scientific advice. Drawing on the scientific literature, our paper provides a preliminary summary of fishery and species-specific potential bycatch solutions (Table 2). We urge that such a toolbox of mitigation approaches be developed, coordinated and implemented through regional fora and at the Member State level.

Recommendations

Robust monitoring and mitigation is needed to assess, prioritise and reduce bycatch. Countries need to implement scientifically robust bycatch monitoring schemes and effective management measures to reduce bycatch, with enforcement and assessment of effectiveness and compliance. This is the highest priority for those fisheries identified as having a population level impact and, in turn, will reduce the number of individuals suffering welfare impacts (see Table 1).

In order to ensure such requirements are incorporated within the proposed TCM Regulation, it is essential to influence the members of the European Parliament PECH Committee (Table 3) who will be voting on the amendments detailed above in October 2017. Decisions taken by MEPs in coming months will influence the future regulation surrounding levels of cetacean bycatch monitoring and mitigation and we therefore strongly urge scientists and other concerned parties to reach out to PECH MEPs, particularly those in their own Member State, raising their concerns and the issues highlighted here.

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Table 1. Cetacean bycatch in European waters by Common Fisheries Policy region

Region	Evidence of cetacean bycatch
North Sea	<p>Evidence of population level impacts on harbour porpoises as a result of bycatch in static nets in the North Sea, Kattegat, and Skagerrak¹, inner Danish waters² and Norwegian coastal waters³. Target fish species are monkfish & cod, turbot, sole & skate.</p> <p>Documented bycatch of minke whales and humpback whales in static creel gear targeting shellfish, with likely population level impacts on humpback whales.⁴</p>
North Western Waters	<p>Evidence of population level impacts of bycatch on common dolphins in trawls for mackerel, pilchard, anchovy and blue whiting⁵ and harbour porpoises in static nets for cod, hake, pollack, saithe sole, anglerfish, turbot, haddock and ling.^{6,7}</p> <p>Documented bycatch, with insufficient monitoring to determine level of impacts, of:</p> <ul style="list-style-type: none"> - common and striped dolphins in static nets, including for anglerfish, turbot, haddock^{8,9}, historic driftnet fleets for Albacore tuna¹⁰ and in trawls for blue whiting, sardine, anchovy;¹¹ - pilot whales, white-beaked dolphins, white-sided dolphins and bottlenose dolphins in trawls for horse mackerel, hake, tuna and sea bass;¹² - minke whales in trammel nets;¹³ and potential entanglement in static gear off Ireland¹⁴ - minke whales and humpback whales in static creel gear for shellfish off Scotland;¹⁵ - Risso's dolphin in unknown fisheries.¹⁶
South Western Waters	<p>Evidence of population level impacts on harbour porpoise as a result of bycatch in beach seines¹⁷ (targeting small pelagic shoaling species, e.g. anchovy, sardine and horse mackerel¹⁸) and static gear set for hake, blue whiting, scad, megrim and monkfish¹⁹ in the Iberian Peninsula,²⁰ common dolphins in Portuguese waters²¹ and bottlenose dolphins in Andalusia.²²</p> <p>Documented bycatch, with insufficient monitoring to determine level of impacts, of:</p> <ul style="list-style-type: none"> - common and striped dolphins in static nets²³ and common dolphins in trawls catching blue whiting, mackerel, hake, and horse mackerel;²⁴ - common dolphins in purse-seine nets set for sardine, scad, and mackerel.²⁵
Baltic Sea	<p>Evidence of population level impacts on the critically endangered and distinct population of harbour porpoises in static gillnets and semi-driftnets for cod and salmonids²⁶ and historically also in banned driftnets; more than 150 stranded harbour porpoises (out of a population less than 1,000) along the German Baltic shores with 47% regarded incidental catches or suspected incidental catches in 2007.²⁷</p>
Mediterranean Sea	<p>Evidence of population level impacts from bycatch on:</p> <ul style="list-style-type: none"> - common and striped dolphins in static nets²⁸ and the historic driftnet fleet for swordfish and sunfish;²⁹ - demographically isolated population of sperm whales in static and (illegal) drift nets.³⁰ <p>Documented bycatch, with insufficient monitoring to determine level of impacts, of:</p> <ul style="list-style-type: none"> - bottlenose dolphins, Risso's dolphins, pilot whales, fin whales and minke whales in static nets;³¹ and Risso's dolphins in long-lines for large pelagic species (such as swordfish, bluefin and albacore tuna);³² - long-finned pilot whales, and striped dolphins in drift-nets;³³

Region	Evidence of cetacean bycatch
	<ul style="list-style-type: none"> - striped dolphin, common bottlenose dolphin, false killer whale, common dolphins, pilot whales and sperm whales in long lines;³⁴ - beaked whales in illegal drift-nets.³⁵
Black Sea	<p>Evidence of population level impacts from bycatch in static nets on endangered harbour porpoises (a sub-species), bottlenose and common dolphins.³⁶</p> <p>Documented bycatch, with insufficient monitoring to determine level of impacts, of harbour porpoises in the Sea of Azov.³⁷</p>
Outermost Regions	<p>Documented bycatch of:</p> <ul style="list-style-type: none"> - Sotalia spp (Guiana dolphin and Tucuxi) strandings with net marks from French Guiana;³⁸ - In Réunion: Risso’s dolphins, false killer whales and short-finned pilot whales on longline and gamefish sport-fishery that uses troll-line and capture of Indo-Pacific bottlenose dolphin in beach-seine nets;³⁹ - In Mayotte, Indo-Pacific bottlenose, spinner, spotted dolphin, melon-headed whales and short-finned pilot whales have been caught by net, hand line and longline;⁴⁰ humpback whales in gillnets.⁴¹

Table 2. Cetacean species and preliminary fishery specific bycatch solutions

Species	Fishery <i>region, where specified</i>	Potential mitigation measures <i>These are likely to vary from region to region, & best in combination</i>	Notes
Harbour porpoise (HP)	Beach seine <i>Portugal</i>	Inclusion of beach seines for mandatory ADDs Trials on alternative mitigation Spatial & temporal restrictions Monitoring & compliance efforts	Beach seines are not permitted in most countries. ADDs not required under current legislation because it is considered a mobile gear.
	Driftnets Static gillnets <i>Baltic Sea</i>	Maintain existing ban on driftnets Cod pots to replace gillnets Spatial & temporal restrictions where high densities of HP occur	Draft proposal from European Parliament PECH Committee proposes reintroducing driftnet use in the Baltic
Common dolphin (CD)	Pair trawls Pelagic trawls Very high vertical opening (VHVO) trawls Other gear types	Real time spatial & temporal restrictions, where high densities of CD, as soon as bycatch occurs ADDs trials on wide range of vessels Trial of exclusion grids/hatches on trawls, with monitoring of efficacy and any welfare impacts Monitoring & compliance efforts	Regional collaborations required across the English Channel, Celtic Sea & Bay of Biscay ADDs trials to assess effectiveness for CD Concern about welfare impacts of exclusion grids
Harbour porpoise Common dolphin Striped dolphin (SD) Bottlenose dolphin (BND)	Static gillnets <i>Mediterranean</i> <i>Black Sea, Andalucía & Galicia (BND)</i>	Multiple mitigation measures required, including: ADDs on all static nets, not based on vessel size Restrictions (e.g. spatial, temporal, gear types) where high densities of cetaceans occur Trials on alternatives to pingers Monitoring & compliance efforts	Regional collaborations required across the North Sea for HP ADDs trials to assess effectiveness for CD & BND
Baleen whale (humpback & minke whale)	Static creels / pots	Reduce the amount of rope, including wet storage Cap on number of licenses Application of best practice ² Training and capacity building in whale disentanglement	
Sperm whale Common dolphin Striped dolphin	Driftnets <i>Mediterranean</i>	Stop use of illegal driftnets Compliance efforts	Wider use of illegal driftnets beyond the Mediterranean is not well documented, but may still occur
Various species	Long-lines	Gear modifications, such as 'net sleeve' or changes to hooks Robust monitoring	Unknown levels of impacts

² For example: <http://www.scottishcreelfishermensfederation.co.uk/entanglement.htm>

Table 3. MEPs on the EU PECH Committee³

MEP	Representative country
Alain CADEC (Chair)	France
Linnéa ENGSTRÖM (vice-Chair)	Sweden
Jarosław WAŁĘSA (vice-Chair)	Poland
Werner KUHN (vice-Chair)	Germany
Renata BRIANO (vice-Chair)	Italy
Marco AFFRONTI (member)	Italy
Clara Eugenia AGUILERA GARCÍA (member)	Spain
David COBURN (member)	United Kingdom
Richard CORBETT (member)	United Kingdom
Peter van DALEN (member)	Netherlands
Diane DODDS (member)	United Kingdom
João FERREIRA (member)	Portugal
Sylvie GODDYN (member)	France
Mike HOOKEM (member)	United Kingdom
Ian HUDGHTON (member)	United Kingdom
Carlos ITURGAIZ (member)	Spain
António MARINHO E PINTO (member)	Portugal
Barbara MATERA (member)	Italy
Gabriel MATO (Rapporteur)	Spain
Norica NICOLAI (member)	Romania
Liadh NÍ RIADA (member)	Ireland
Ulrike RODUST (member)	Germany
Annie SCHREIJER-PIERIK (member)	Netherlands
Remo SERNAGIOTTO (member)	Italy
Ricardo SERRÃO SANTOS (member)	Portugal
Isabelle THOMAS (member)	France
Ruža TOMASIĆ (member)	Croatia
Izaskun BILBAO BARANDICA (substitute)	Spain
José BLANCO LÓPEZ (substitute)	Spain
Nicola CAPUTO (substitute)	Italy
Ole CHRISTENSEN (substitute)	Denmark
Rosa D'AMATO (substitute)	Italy
Norbert ERDŐS (substitute)	Hungary
John FLACK (substitute)	United Kingdom
Elisabetta GARDINI (substitute)	Italy
Jens GIESEKE (substitute)	Germany
Julie GIRLING (substitute)	United Kingdom
Anja HAZEKAMP (substitute)	Netherlands
Maria HEUBUCH (substitute)	Germany
Czesław HOC (substitute)	Poland
Yannick JADOT (substitute)	France
Seán KELLY (substitute)	Ireland
Gilles LEBRETON (substitute)	France
Verónica LOPE FONTAGNÉ (substitute)	Spain
Linda McAVAN (substitute)	United Kingdom
Francisco José MILLÁN MON (substitute)	Spain
Cláudia MONTEIRO DE AGUIAR (substitute)	Portugal
Rolandas PAKSAS (substitute)	Lithuania
Daciana Octavia SĂRBU (substitute)	Romania
David-Maria SASSOLI (substitute)	Italy
Maria Lidia SENRA RODRÍGUEZ (substitute)	Spain
Nils TORVALDS (substitute)	Finland

³ <http://www.europarl.europa.eu/committees/en/pech/members.html?action=5>

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