



Towards an EU Action Plan on Cetacean Bycatch



Sarah Dolman^{a,*}, Sarah Baulch^b, Peter G.H. Evans^c, Fiona Read^a, Fabian Ritter^a

^a Whale and Dolphin Conservation (WDC), Brookfield House, 38 St Paul Street, Wiltshire SN15 1LJ, United Kingdom

^b Environmental Investigation Agency (EIA), 62-63 Upper Street, London N1 0NY, United Kingdom

^c Sea Watch Foundation, Ewyn y Don, Bull Bay, Amlwch, Isle of Anglesey LL68 9SD, United Kingdom

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ABSTRACT

For decades, cetacean bycatch has been a major conservation and welfare concern in Europe, with high numbers of harbour porpoises, dolphins and whales continuing to die each year. Despite binding legal requirements to reduce bycatch, there has been limited effective monitoring or mitigation. Bycatch is also an important welfare issue. At this critical juncture, with discussion of incorporating monitoring and mitigation of bycatch of protected species in Europe into the Data Collection Framework and Technical Measures Framework taking place to help deliver the reformed Common Fisheries Policy (CFP), a clear, effective strategy could identify the steps that are required by all EU Member States to reduce bycatch towards zero. Here, implementation of current monitoring and mitigation obligations are reviewed. Recommendations are made for the provision of clear EU guidance in order to improve and unify population surveillance and bycatch monitoring, with enhanced implementation and enforcement from Member States. A more regionalised evidence-based approach to monitoring and mitigation is in line with the move to more regionalised management under the CFP, with Member States robustly showing that bycatch levels are decreasing over a set period of time (e.g. 5 years) by a specified amount. To this end, an EU Action Plan on Cetacean Bycatch, comparable to the existing 2012 Action Plan for reducing incidental catches of seabirds in fishing gear, might be beneficial and could ultimately form a model for an international Food and Agricultural Organisation (FAO) Cetacean Bycatch Reduction Action Plan.

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1. Introduction

Direct interaction with fishing gear, both commercial and artisanal, is considered to be the greatest global threat to the conservation of cetaceans [1,2]. In Europe, incidental catches are of concern for a number of cetacean species [3], including the harbour porpoise (*Phocoena phocoena*) which is particularly vulnerable to bycatch in gillnets [4–13]. However, despite binding European legislation that mandates monitoring and mitigation, knowledge of bycatch numbers remains poor, there has been little change in fisheries management and, in general, inadequate effort to reduce the numbers of cetaceans caught in nets. As a result, thousands of cetaceans continue to die each year in European waters, for some species at levels likely to be causing population level impacts [3,10–12,14].

In Europe, all cetaceans are strictly protected under Article 12 of the EU Habitats Directive (HD). Additional obligations on Member States include the conservation of cetacean populations and the monitoring and mitigation of bycatch and other

anthropogenic impacts under the Marine Strategy Framework Directive (MSFD) and Council Regulation (EC) No. 812/2004, as well as through regional agreements such as ASCOBANS and ACCOBAMS. Under the EU Habitats Directive it is an offence to deliberately capture, kill or disturb cetaceans; or to cause deterioration or destruction to their breeding or resting places (Articles 12 and 16). Article 12 requires that Member States establish a system to monitor the incidental capture and killing of all cetaceans, and to take measures to ensure that incidental capture and killing does not have a significant negative impact on the species concerned, whilst Article 11 requires Member States to implement surveillance of the conservation status of habitats and species of Community Interest. The EU Biodiversity Strategy to 2020 [15] also contains specific actions in relation to bycatch. In particular, Action 14a states that the EU will design measures to avoid the bycatch of unwanted species in accordance with EU legislation and international obligations, with financial incentives to support implementation of the MSFD, as required under Action 14b.

The MSFD requires Member States to implement a programme of assessment, targets, monitoring and measures designed to achieve or maintain Good Environmental Status (GES) by 2020. Under Descriptors 1 and 4 of the MSFD there are requirements that “the distribution and abundance of species are in line with

* Corresponding author.

E-mail address: sarah.dolman@whales.org (S. Dolman).

prevailing physiographic, geographic and climatic conditions” and that “all elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity”. Actions to achieve GES for other descriptors relating to noise and other forms of pollution, marine litter and fish stocks should also positively contribute to cetacean conservation. However, the European Commission has stated that Member States have shown a lack of ambition and coherence in the targets and measures defined [16]. Whilst it is clear that bycatch remains a significant issue, the majority of Member States are relying on existing legislation as their measures to reach GES for marine mammals, neither proposing new measures nor strengthening implementation and enforcement, and sometimes even reducing the number of measures. Such limited ambition seems highly unlikely to be sufficient to meet GES, and is likely to only serve to maintain the status quo. The MSFD is now entering its critical phase, with lack of funding for monitoring, and uncertainty about how conservation objectives will be reconciled with the needs of other marine sectors being among the main concerns [17].

In an effort to further address cetacean bycatch, Council Regulation (EC) No. 812/2004 (Reg. 812) introduced technical measures aimed at reducing the number of cetaceans caught incidentally through the use of acoustic deterrent devices (ADDs), introducing a system for monitoring bycatch in certain European fisheries. The Commission reviewed Reg. 812 in 2009 and 2011, and found on both occasions that while it had improved the knowledge on bycatch, it had significant weaknesses, both in its constitution and its implementation [18,19]. It excludes many areas and fisheries where bycatch rates are high, excludes small vessels from observer monitoring, mitigation and reporting of effort data, relies too heavily on ADDs, and has poor linkage with reporting under the EU Habitats Directive [20]. Vessels less than 15 m in length are not required to take part in the on-board observer scheme mandated under Reg. 812, with monitoring generally conducted through scientific studies and pilot projects instead. However, delivery of the ‘scientific studies’ has been limited, likely due to the lack of specificity around what monitoring levels are required [20]. As such, the observer monitoring and mitigation undertaken under Reg. 812 covers only a small proportion of the fishing fleet, with the specified geographical coverage failing to encompass some key hotspots and contributors to bycatch [20]. Furthermore, even in areas and fisheries covered by the regulation, there has been inconsistent implementation, low inspection and enforcement of mitigation measures or monitoring of their efficacy. Although some Member States have conducted additional monitoring of those fisheries falling outside the scope of Reg. 812, in line with the requirements of the Habitats Directive, overall monitoring levels fall short of that required to provide robust estimates of cumulative bycatch levels, and large sectors of the European fishing fleet remain unmonitored [21].

The ICES Working Group on Bycatch of Protected Species database currently stores nine years (2006–2014) of data on dedicated monitoring effort and bycatch of cetaceans, as reported to the European Commission (EC) by Member States affected by Reg. 812 [22]. However, in addition to the inherent shortcomings of monitoring coverage achieved under Reg. 812, evaluation of the magnitude of bycatch mortality has been hindered by the lack of an accurate measure of total fishing effort of different fisheries from relevant European waters, as well as inconsistent submission and content of annual reports by some Member States. It has been concluded that the regulation is still not fully meeting its objectives, with high bycatch evident in a number of fisheries, and the actual impacts of bycatch on populations continuing to be poorly understood [21].

Hence, whilst there is strong and coherent legal protection of cetaceans, along with requirements for population surveillance and bycatch monitoring and mitigation on paper, these obligations have not been fully implemented and enforced by Member States. Thus, the application of effective mitigation has been extremely patchy and, more than twenty years on from implementation of the Habitats Directive, we are in a situation where knowledge of the status of populations and current bycatch levels remains limited. Yet existing monitoring clearly indicates the potential for bycatch mortality to be unsustainable in some areas [23]. ASCOBANS Resolution 3.3 on Incidental Take of Small Cetaceans (*extant*) states “that the general aim should be to minimise (i.e. to ultimately reduce to zero) anthropogenic removals within some yet-to-be-specified time frame, and that intermediate target levels should be set”. However, no timeframe has been set as yet despite 15 years passing since this resolution was adopted.

In its position document EP-PE_TC1-COD(2012)0216, the European Parliament stated that “... the Commission should, before the end of 2015, submit a legislative proposal for a coherent, overarching legislative framework for ensuring the effective protection of cetaceans from all threats” [24]. The review of Reg. 812 and potential legislative proposal was subsequently formally called for in Regulation No. 597/2014 of the European Parliament and of the Council, amending Council Regulation (EC) No. 812/2004 [25], which states that “In view of the requirement for Member States to take the necessary measures to establish a system of strict protection for cetaceans in accordance with Regulation (EC) No 812/2004, and given the shortcomings of that Regulation identified by the Commission, the appropriateness and effectiveness of the provisions of that Regulation for protecting cetaceans should be reviewed by 31 December 2015. On the basis of that review, the Commission should, if appropriate, submit to the European Parliament and to the Council an overarching legislative proposal for ensuring the effective protection of cetaceans, including through the regionalisation process”.

The European Commission has now indicated that, rather than proposing new overarching legislation, it will seek to, in time, repeal Reg. 812 and incorporate monitoring of bycatch of protected species into proposed changes to the Data Collection Framework (DCF), with mitigation requirements to form part of the Technical Measures Framework (TMF) under the reformed Common Fisheries Policy (CFP).¹ In the recent EC proposal for a new DCF it is suggested that data on bycatch of protected species could be collected by scientific observers during their routine fisheries sampling programmes (for which the primary purpose is monitoring fish and fish bycatch). However, ICES has advised that, although useful, this would not be sufficient as fisheries selected to monitor commercial fisheries are not necessarily the ones that should be sampled to monitor bycatch of protected species [26]. For example, the existing DCF was primarily designed to quantify discards of commercial species, and therefore only maintains low level monitoring of set-net and pelagic trawl fisheries which whilst not generating large amounts of commercial discard, represent a relatively higher risk of protected species bycatch [21].

The recent EC proposal for the DCF suggests that the EU Multi-Annual Plans (EU MAPs) will state that Regional Coordination Groups, in consultation with end-users, specify which species and fisheries to sample for bycatch of protected species, as well as the variables (what data to collect and how to collect it) and the way in which the sampling should be carried out [27]. With discussions at an early stage, and scant details of monitoring protocols, it remains unclear as to whether a revised DCF will be fit for purpose

¹ Letter from European Commission to UNEP / CMS / ASCOBANS Secretariat titled ASCOBANS recommendations on the requirements of legislation to address monitoring and mitigation of small cetacean bycatch, dated 2/12/2015.

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