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Environment, Food and Rural
Affairs Committee

Caught in the net: by-catch of dolphins and porpoises off the UK coast

Third Report of Session 2003–04

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written evidence*

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Environment, Food and Rural Affairs Committee

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Summary

Worldwide, the incidental capture of small cetaceans—that is, dolphins and porpoises—in fishing gear is thought to be the most significant threat to the conservation of the species. In UK waters, the species of cetacean predominantly affected by, and therefore threatened by, by-catch are the common dolphin, the bottlenose dolphin and the harbour porpoise.

The evidence suggests that different species of cetacean are at risk from different fisheries, depending on the fishing gear and techniques used. Harbour porpoises appear particularly susceptible to being caught in wide-meshed nylon gill and tangle nets, principally those that are bottom-set. Bottlenose dolphins can be assumed to be at risk from the same fishing gear. Common dolphins appear particularly susceptible to being caught in pelagic (mid-water) trawl gear, in fisheries that are prosecuted in non-coastal waters. The pelagic trawl fishery for sea bass, in particular, has been implicated in by-catch of this species.

The UK Government is legally obliged to deal with the problem of small cetacean by-catch. The Government's ability to act is, however, constrained by the provisions of the European Community's Common Fisheries Policy.

In 2003, both the UK Government and the European Commission put forward proposals intended to mitigate levels of small cetacean by-catch. In March 2003, Defra published a consultation paper on cetacean by-catch, UK small cetacean by-catch response strategy. In July 2003, the European Commission adopted a draft regulation intended to curb by-catch of small cetaceans.

In this report, we evaluate the Government's proposals, taking into account the European's Commission's draft regulation. Although we commend Defra for its useful strategy paper, we consider it does not go far enough. We make a number of recommendations to the Government about what further action is required.

In respect of gill net fisheries, we recommend that acoustic deterrent devices, known as pingers, be made mandatory on all bottom-set gill nets in the Celtic Sea, as they will be in the North Sea, regardless of the distance of the fishery from the coast. We also recommend that equivalent mitigation measures should be put in place in respect of set gill nets used in the English Channel.

In respect of pelagic trawl fisheries, we make particular recommendations about the sea bass fishery, although we urge the Government to place much greater emphasis on monitoring levels of cetacean by-catch in other pelagic fisheries. If by-catch of small cetaceans in the sea bass fishery is to be addressed effectively, we consider that action is required at European Community level, because the fishery is prosecuted by several member states. If other member states do not agree to take effective mitigating action to reduce levels of cetacean by-catch, we recommend that the Government makes a formal request to the European Commission, asking it to impose emergency measures in the form of closing this fishery. Such a closure could last for up to six months. In order to provide a long-term management solution for this fishery, we recommend that the Government pursue discussions at the European level about introducing a cetacean mortality scheme.

1 Introduction

1. Cetaceans are the order of marine mammals that is comprised of the separate species of whales, dolphins and porpoises. “By-catch” is the word used to describe the incidental capture of cetaceans (or other animals) during fishing activities. Worldwide, by-catch of small cetaceans—that is, dolphins and porpoises—is thought to be the most significant threat to the conservation of the species.

2. In UK waters, the species of cetacean predominantly affected by, and therefore threatened by, by-catch are the common dolphin, the bottlenose dolphin and the harbour porpoise. Evidence of total levels of by-catch and its impact on small cetacean populations is incomplete and therefore inconclusive. However, what evidence there is suggests that the impact of by-catch on the population levels of these small cetaceans may well be significant.

Recent initiatives

3. In 2003, both the UK Government and the European Commission put forward proposals intended to mitigate levels of small cetacean by-catch. In March 2003, Defra published a consultation paper on cetacean by-catch, *UK small cetacean by-catch response strategy*. The strategy reflects work undertaken by Defra in consultation with the devolved administrations and, if implemented, would apply to the whole of UK waters and also to UK fishing vessels operating outside these waters. Consultation on the strategy ended on 13 June 2003 and the Department has since published a summary of the responses received to the consultation.¹ In July 2003, the European Commission adopted a draft regulation intended to curb by-catch of small cetaceans.² This proposal is currently awaiting consideration by the Council of the European Union and the European Parliament; if adopted in its present form, the regulation would apply to all Community waters, although it would impact on only some fisheries within those waters.

Our inquiry

4. In July 2003, we decided to investigate by-catch of small cetaceans by the fishing industry operating off the UK coast. We were particularly interested in examining the scale and causes of by-catch, and the relevant research. We also set out to consider the likely effectiveness of the proposals in the Government’s *UK small cetacean by-catch response strategy*, and what further steps should be taken either by the Government or by the European Union to address the problem. The European Commission published its draft regulation subsequent to our announcement of our terms of reference, and we have taken it into account in our consideration of our inquiry.

¹ Available at www.defra.gov.uk/corporate/consult/cetacean/index.htm

² Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, 24 July 2003, 2003/0163 (CNS)

5. We appointed a Sub-committee, under the chairmanship of Candy Atherton MP, to carry out the inquiry. It received 16 written memoranda and took oral evidence from: Nick Tregenza, an academic from south-west England studying cetacean by-catch in that area; the Association of Sea Fisheries Committees; the Whale and Dolphin Conservation Society and The Wildlife Trusts; the National Association of Fishermen's Organisations; Linda Hingley, a Devon resident who has set up an organisation, Brixham Seawatch, to record cetacean strandings on the south-west coast; and the Minister for Nature Conservation and Fisheries, Ben Bradshaw MP, together with Defra officials. We are grateful to all those who gave evidence or otherwise assisted our inquiry.

2 Extent of the cetacean by-catch problem

6. It is difficult—if not impossible—to reach definitive conclusions about present rates of by-catch, on the basis of the evidence currently available. Two main groups of data are required: reasonably accurate estimates of the size of cetacean populations and reasonably accurate estimates of the numbers killed as a result of by-catch.

Population estimates

7. Estimates of the populations of small cetaceans in the waters around the UK appear to involve a wide margin of error. Defra's strategy document explains that:

Firstly, we are not confident of the geographical limits of any biological population of these species and secondly, there is usually a wide margin of error within the abundance estimates. The mobility of small cetaceans is such that they have been recorded in waters away from the core of their ranges ... The wide margin of error with the population estimates emphasises the need to take a precautionary approach when developing proposals to reduce the impact of by-catch on the population.³

In this inquiry, we are particularly interested in the populations of the harbour porpoise, the bottlenose dolphin and the common dolphin.

Harbour porpoise

8. Defra estimates that the total UK continental shelf (including territorial waters) population of harbour porpoise to be in the order of 150,000 individuals.⁴ The strategy document describes the harbour porpoise as widely distributed in all continental shelf waters around the UK, "with the exception of the southern North Sea and the English Channel where there has been an apparent reduction of

³ Department of Environment, Food and Rural Affairs, *UK small cetacean by-catch response strategy*, March 2003, para 8 ("Defra strategy")

⁴ Defra strategy, para 9

numbers”.⁵ The Joint Nature Conservation Committee (JNCC) agrees with this estimate, but adds that numbers of porpoises present in UK waters vary seasonally, and more animals are likely to pass through UK waters than are present at any one time.⁶

Bottlenose dolphin

9. Bottlenose dolphins appear to spend much of their time inshore.⁷ Defra estimates that there are between 300 to 500 individuals in UK inshore waters.⁸ The JNCC estimates that there are probably fewer than 300 individuals in UK inshore waters.⁹ Groups of bottlenose dolphins are semi-resident in two main areas of UK territorial waters: Cardigan Bay, off Wales, and the Moray Firth, off Scotland.¹⁰ Smaller groups are found in inshore waters off south Dorset and around Cornwall, amongst other areas. The JNCC comments that the species was “formerly more widespread, especially in the southern North Sea and English Channel ... and has certainly declined in range”.¹¹ Nick Tregenza told us that the bottlenose dolphin population off south-west England could be critically endangered if even one dolphin were caught.¹²

Common dolphin

10. The population estimate referred to in Defra’s consultation paper is 75,449 individuals, on the basis of a 1994 survey that covered the Celtic Sea and parts of the North Sea.¹³ The species is described as abundant and widely distributed in the eastern north Atlantic and in UK waters, and common in the western approaches to the English Channel and the Celtic Sea.¹⁴ Nick Tregenza comments that “little is known of the geographical extent of the population from which ‘our’ common dolphins come”.¹⁵

By-catch estimates

11. Estimates of the numbers of cetaceans killed as a result of by-catch are imprecise. There are several reasons for this. It is probable that only some of the cetaceans that die as a result of by-catch are washed ashore; the remaining carcasses either sink or decompose at sea.¹⁶ Whether a dead animal is washed ashore is dependent on the distance of the fishery from the shore, the depth of water in which the fishery takes place and the prevailing weather

⁵ Defra strategy, para 9

⁶ <http://www.jncc.gov.uk/Publications/JNCC312/>

⁷ Nick Tregenza commented that “two distinct forms are suspected, one living close to the coast and one offshore”; Ev 10 and Q 42.

⁸ Defra strategy, para 12

⁹ <http://www.jncc.gov.uk/Publications/JNCC312/>

¹⁰ Both these areas are candidate Special Areas of Conservation (SACs); see paragraphs 39 to 42.

¹¹ <http://www.jncc.gov.uk/ProtectedSites/SACselection/>

¹² Ev 10 [Nick Tregenza]

¹³ Defra strategy, para 19; the “95% confidence limits” for this population are 23,000 to 285,000 individuals.

¹⁴ Defra strategy, para 11

¹⁵ Ev 10 [Nick Tregenza]

¹⁶ Fishermen in south-west England, who are prosecuting fisheries *not* implicated in cetacean by-catch, report dead cetaceans coming up in their fishing gear: Ev 49 [Linda Hingley].

and sea conditions over a period of time. Of by-catch that is washed ashore, only some comes ashore on the UK coast, and it is likely that not all of that is recorded. There are reports of cetaceans that show signs of having died as a result of by-catch coming ashore in France and the Channel Islands.¹⁷ The Wildlife Trusts states that, in 2002, over a period of ten days, more than 300 dolphins and porpoises were washed ashore on France's Atlantic coast and that the majority of these animals showed signs of having been caught in fishing nets.¹⁸

12. Of by-catch that is washed ashore on the UK coast, only some animals are able to be autopsied to ascertain their cause of death—many specimens are too decayed. For example, on the Cornwall coast, 33 harbour porpoise and seven common dolphin strandings were recorded between 1 January and 14 January 2004. Of these, only 17 harbour porpoises and two common dolphins were sent for post-mortem.¹⁹

13. Defra is responsible for collecting the post-mortem data. Between 1990 and 2002, by-catch was the most common cause of mortality for harbour porpoises (156, representing 30% of established causes of death) and for common dolphins (176, representing 66% of established causes of death) at post-mortem.²⁰ In 2002, the most recent year for which data has been properly analysed, 655 cetacean strandings were reported. Of the 189 able to be examined at autopsy, 29 of the 119 harbour porpoises examined and 29 of the 44 common dolphins examined were diagnosed as having died as a result of by-catch. Preliminary data for 1 January 2003 to 30 September 2003 indicates 653 reported cetacean strandings, including 247 harbour porpoises, 173 common dolphins and 6 bottlenose dolphins.²¹

14. A further difficulty is that the exact proportion of fishing effort carried out by the UK fleet as a proportion of the overall fishing effort appears either to be unknown or only a rough estimate.²² Even if sufficient data could be gathered by on-board observers to enable a reasonably accurate estimate of the numbers of cetaceans caught by UK-registered vessels, it would still not be clear what proportion of overall by-catch that estimate represented. In addition, there is no indication of the scale of cetacean by-catch in industrial fishing.

Harbour porpoise

15. By-catch of harbour porpoises occurs predominantly in the Celtic Sea and in the North Sea. We note the comment of the Natural Environment Research Council (NERC) that the greatest numbers of animals being taken in UK fisheries are harbour porpoises and that “present levels of porpoise by-catch are probably not sustainable in some areas”.²³

¹⁷ Q 88 and Ev 26 [Whale and Dolphin Conservation Society]; see also NJC Tregenza and Anne Collet, “Common dolphin *Delphinus delphis* by-catch in pelagic trawl and other fisheries in the North East Atlantic”, *Report of the International Whaling Commission*, vol 48 (1998), pp 453–459.

¹⁸ Ev 21 [The Wildlife Trusts]

¹⁹ Ev 89 [Nick Tregenza]

²⁰ Ev 56 [Defra]; based on UK strandings data collected between September 1990 and December 2002.

²¹ Defra quarterly reports for 1 January 2003 to 31 March 2003, 1 April 2003 to 30 June 2003 and 1 July 2003 to 30 September 2003

²² Defra strategy, para 71

²³ Ev 77 [Natural Environment Research Council]

16. In the Celtic Sea, observations between 1992 and 1994 of the bottom-set gill net fishery for hake estimated that some 2,200 harbour porpoises were killed annually as a result of by-catch.²⁴ This figure was estimated to represent 6.2% of the local population; the actual figure may in fact be higher, as some animals may drop out of the nets undetected and several sections of the fishing fleet, such as vessels under 15 metres in length, were not surveyed.²⁵ The National Federation of Fishermen's Organisations (NFFO) told us that, since 1994, there has been a "very dramatic reduction" in the size of the hake fleet, from about 50 to about 12 vessels: it therefore submitted that annual harbour porpoise by-catch is probably now about 2% of the local population.²⁶

17. In the North Sea, annual by-catch of harbour porpoises in bottom-set gill net fisheries laid by Danish vessels alone has been estimated to average 5,591 porpoises or 3.3% of the local population between 1987 and 2001.²⁷ The UK fleet has been estimated to be responsible for by-catch of approximately 1,000 animals in 1995, reducing to around 600 in 2000.²⁸ Defra describes Norway as also having a significant take of fish from bottom-set gill net fisheries in the North Sea and, therefore, presumably also being responsible for cetacean by-catch.²⁹

18. The JNCC states that, if these numbers are placed in a population context, "it is likely that the by-catch [in UK fisheries] to the south-west on the Celtic shelf is taking a higher proportion of the population than the by-catch [in UK fisheries] in the North Sea".³⁰ Of course, as the JNCC points out, in both cases other nations are also catching harbour porpoises from the same population as are the UK fisheries. In the case of the North Sea, Danish fisheries have been observed, and by-catch assessed. The JNCC considers that observations of gill net fisheries of other nations to the south-west of the UK "have probably been inadequate".³¹

Bottlenose dolphin

19. No bottlenose dolphins are recorded as having been stranded in Defra's autopsy data. However, both The Wildlife Trusts and Nick Tregenza raised concerns about the potential danger posed to the bottlenose population in the south-west by inshore bottom-set gill nets.³² Mr Tregenza told us that bottlenose dolphins have been known to be caught in nets in Scotland, Ireland and Wales.³³ He considers that by-catch of a bottlenose dolphin is unlikely to be identified in England, for a number of reasons, including the fact that there is a very low rate of fishermen spontaneously reporting by-catch and the fact that the dolphins are

²⁴ Q 48; Ev 19, 26, 83 [The Wildlife Trusts; Whale and Dolphin Conservation Society; International Fund for Animal Welfare]

²⁵ Ev 83 [International Fund for Animal Welfare]

²⁶ Q 158 [National Federation of Fishermen's Organisations]

²⁷ Ev 83 [International Fund for Animal Welfare]

²⁸ Defra strategy, para 35

²⁹ Defra strategy, para 73

³⁰ Ev 69 [Joint Nature Conservation Committee]

³¹ *Ibid.*

³² Q 89 [The Wildlife Trusts]

³³ Ev 12 [Nick Tregenza]

comparatively large and heavy, and so would be likely to drop out of the net or be cut out of it, outboard.³⁴

Common dolphin

20. We received few estimates of the numbers of common dolphins killed as a result of by-catch. However, in February 2002, the then Minister for Fisheries, Elliot Morley MP, said that he believed up to 50 dolphins a day were being killed in the pelagic trawl fishery for sea bass.³⁵

21. Estimates of the proportion of the common dolphin population killed as a result of by-catch are difficult to make, although the Wildlife Trusts estimated that by-catch of common dolphins in the sea bass fishery represented between 2% and 3.5% of the local population.³⁶ This is due to the lack of knowledge about the size of common dolphin populations off the UK coast.

22. Despite this, it is clear that by-catch of common dolphins occurs predominantly in the seas off south-west England during the winter months.³⁷ Defra's preliminary data shows that, for the period from 1 January 2003 to 30 September 2003, numbers of harbour porpoises stranded remained fairly constant throughout. However, significantly higher numbers of dolphins were recorded stranded in the winter months, between 1 January and 31 March: 132 common dolphins were recorded stranded in this period, compared to only 41 in the six months between 1 April and 30 September. Of the 132 common dolphins stranded between January and March, 25 were sent for post-mortem, 23 of which were stranded on the south-west English coast. Of these 23, by-catch was listed as a cause of death for 17.³⁸

23. Common dolphin by-catch appears to be continuing at comparable levels during winter 2003–04. Linda Hingley states that, in December 2003, she counted 25 dolphins washed ashore on the South Devon coast. All ten or 12 of the dolphins able to be sent for post-mortem were found to have died as a result of by-catch.³⁹ Nick Tregenza states that, in the first two weeks of January 2004, seven common dolphins were washed ashore on the Cornish coast.⁴⁰

Other species of dolphin

24. The statements above about the common dolphin are likely to apply to other species of dolphin. In UK waters, the common dolphin is much more abundant than other species, and therefore constitutes the majority of recorded strandings, and all by-catch observed on board fishing vessels. However, Defra refers to a number of other cetaceans that are present in UK waters, including the white-

³⁴ Ev 12 [Nick Tregenza]

³⁵ "Trawl nets with escape hatch could help save dolphins", *The Guardian*, 12 February 2002

³⁶ Ev 22 [The Wildlife Trusts]

³⁷ Q 257 [Ben Bradshaw MP]

³⁸ Defra quarterly reports for 1 January 2003 to 31 March 2003, 1 April 2003 to 30 June 2003 and 1 July 2003 to 30 September 2003; the causes of death for the remaining six common dolphins were two 'not established', two 'to be confirmed', one 'physical trauma' and one 'hepatopathy'.

³⁹ Information supplied by Linda Hingley, 19 January 2003.

⁴⁰ Ev 89 [Nick Tregenza]

beaked dolphin, the Atlantic white-sided dolphin, Risso's dolphin and the striped dolphin.

25. There is some evidence of these other species being caught in or adjacent to UK waters. The Whale and Dolphin Conservation Society refers to a Dutch study of pelagic trawl fisheries for mackerel and horse mackerel, conducted in the early 1990s, which recorded by-catch of small cetaceans including the Atlantic white-sided dolphin and white-beaked dolphins.⁴¹ Defra refers to a study of a pair-trawl for tuna, conducted by the Republic of Ireland in 1998 and 1999, which recorded by-catch of the Atlantic white-sided dolphin and the striped dolphin.⁴²

3 Fisheries implicated in cetacean by-catch

26. A number of different fisheries take place off the UK coast, employing a range of fishing gear and techniques to target various species of fish. Some fisheries appear to have a much higher likelihood of catching cetaceans than others, due to the gear and techniques used. The evidence we have received suggests that there are particular by-catch problems in fisheries using gill nets and in those using trawling gear to pursue pelagic (or mid-water) fish species.

By-catch of harbour porpoise

27. Harbour porpoises appear particularly susceptible to being caught in wide-meshed nylon gill and tangle nets.⁴³ These are often set in coastal waters, where porpoises tend to feed. The porpoise is primarily a benthic (or sea-bed) feeder; consequently, it is particularly susceptible to being caught in bottom-set gill nets, although it can be caught in other fishing gear.⁴⁴

28. Defra's strategy document refers to two observer studies that appear to show that gill net fisheries, particularly those in the North Sea and off south-west England, are responsible for most by-catch of the harbour porpoise:

- (a) Between 1992 and 1994, the Natural Environment Research Council's Sea Mammal Research Unit (SMRU) was funded by the European Commission to deploy independent observers on board UK vessels prosecuting gill net fisheries in the Celtic Sea. The SMRU estimated that UK gill net boats in the 15 metre and over sector took around 740 harbour porpoises per year between these dates.⁴⁵
- (b) In 1994, the SMRU was funded by the Ministry of Agriculture, Fisheries and Food to deploy independent observers on board UK gill and tangle net vessels in the North Sea. The SMRU estimated that UK vessels took approximately 1000 porpoises in 1995,

⁴¹ Ev 26 [Whale and Dolphin Conservation Society]

⁴² Defra strategy, para 44

⁴³ See Ev 8 [Association of Sea Fisheries Committees of England and Wales] for a description of gill and tangle nets.

⁴⁴ Defra strategy, para 34

⁴⁵ Defra strategy, para 34

reducing to around 600 porpoises in 2000. The reduction was primarily associated with an overall decline in gill net fishing effort (due to a general depletion of fish stocks in the North Sea).⁴⁶

29. However, this is not to suggest that the problems associated with bottom-set gill nets occur only in the Celtic and North Seas. The Whale and Dolphin Conservation Society described the English Channel as “the most intensively gill netted area of waters around Britain”.⁴⁷ Although there no longer appears to be a significant population of harbour porpoise in the English Channel and southern North Sea, it is likely that there once was. As an example, Nick Tregenza told us that Virginia Woolf wrote about seeing porpoises up the River Ouse, in Sussex, some four miles from the coast: “they are never seen there now”.⁴⁸

By-catch of bottlenose dolphin

30. As discussed above, there is little evidence of bottlenose dolphins being victims of by-catch. However, given that bottlenose dolphins, like harbour porpoises, come in very close to shore, and feed in inshore waters, it can be assumed that these dolphins are at risk from the same fisheries that pose a threat to porpoises.

By-catch of common dolphin

31. Common dolphins appear particularly susceptible to being caught in pelagic (mid-water) trawl gear, in fisheries that are prosecuted in non-coastal waters. Virtually all the evidence we received suggested that the pelagic trawl fishery for sea bass, which takes place off south-west England, is the primary cause of common dolphin by-catch. However, it should be noted that pelagic trawl fisheries are unlikely to be *entirely* responsible for common dolphin by-catch. For example, scientists consider that common dolphins are also susceptible to by-catch in the Celtic Sea gill net fishery. A study estimated that about 200 common dolphins per year may be taken in this fishery (excluding small vessels, tangle netters and French vessels).⁴⁹

Pelagic trawl fishery for sea bass

32. The pelagic trawl fishery for sea bass targets the fish as they migrate from inshore waters out to sea and gather in large numbers to spawn. The fishery therefore takes place in the seas off south-west England, anywhere from Start Point in Devon, through the Celtic Sea and down into the Bay of Biscay. The fishery is a winter fishery: it starts in November/December and ends in April/May. The season in which the fishery is carried out, and the area in which it is prosecuted, coincide with large numbers of common dolphin strandings on England’s south-west coast: for example, between 1 January and 31 March 2003, 265 dead small cetaceans were found on the coast of south-west England.⁵⁰ Linda Hingley told us that it is only in

⁴⁶ Defra strategy, para 35

⁴⁷ Q 114 [Whale and Dolphin Conservation Society]

⁴⁸ Q 48 [Nick Tregenza]

⁴⁹ Ev 76 [Natural Environment Research Council]

⁵⁰ Ev 21 [The Wildlife Trusts]

the winter months that she sees common dolphins washed ashore.⁵¹ She described the animals she finds as showing signs of having died as a result of by-catch, such as damage to the beak and the fins, but as being otherwise healthy, “the alpha males, the alpha females ... the breeding population”.⁵²

33. However, other fisheries are also carried out off south-west England over the winter months. What implicates the sea bass fishery, above all others, is data gathered by the SMRU between 2000 and 2003, using independent observers deployed on UK vessels prosecuting this fishery. Defra funded the SMRU to carry out this research. The results of these observations were:

- 2001: observations of 116 hauls recorded 53 common dolphins caught
- 2002: observations of 66 hauls recorded 8 common dolphins caught
- 2003: observations of 131 hauls recorded 30 common dolphins caught.

The average number of animals taken in a net at one time was just over four; the maximum observed was ten. Although observations were made in all months between November and April, all but one dolphin was recorded in late February and March.⁵³

4 UK’s legal position

34. The UK Government is legally obliged to deal with the problem of small cetacean by-catch, under a range of international agreements and regulations. The Government’s ability to act is, however, constrained by the provisions of the European Community’s Common Fisheries Policy.

Legal obligations to protect small cetaceans

35. The UK is a party to several agreements that create legal obligations to protect populations of small cetaceans from by-catch. The most important of these are ASCOBANS and the EC Habitats Directive; the UN Convention on the Law of the Sea is also relevant.

ASCOBANS

36. The Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas—known as ASCOBANS—was concluded under the auspices of the United Nations Convention on Migratory Species, and came into force in 1994. Its aim is to minimise (and ultimately to reduce to zero) anthropogenic removals of cetaceans from the Baltic and North Seas. There are currently eight parties to the

⁵¹ Ev 50 [Linda Hingley]

⁵² Ev 50, 53, 54 [Linda Hingley]

⁵³ Ev 77 [Natural Environment Research Council]

agreement: Belgium, Denmark, Finland, Germany, the Netherlands, Poland, Sweden and the United Kingdom.⁵⁴

37. The parties to ASCOBANS consider by-catch to pose the most serious threat to cetacean populations in the Baltic and North Seas. Consequently, in 2000, the parties passed a resolution which called on competent fishery authorities to ensure that the total anthropogenic removal of marine mammals was reduced as soon as possible to below a level of ‘unacceptable interaction’. An unacceptable interaction was agreed as being above 1.7% of the best estimate of the total population. The resolution also underlined that the intermediate precautionary objective was to reduce by-catch to less than 1% of the best available population estimate.⁵⁵ These targets were accepted by North Sea Ministers, including the UK, in 2002 at the 5th North Sea Conference.

EC Habitats Directive

38. Council Directive 92/43/EC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive) imposes two requirements on the UK in respect of cetaceans. The first requirement applies only to the bottlenose dolphin and the harbour porpoise, whereas the second applies to all cetaceans.

Requirement applying to bottlenose dolphin and harbour porpoise

39. Article 3 of the Habitats Directive requires member states to designate Special Areas of Conservation (SACs) in respect of specified species.⁵⁶ Included amongst these species are the bottlenose dolphin and the harbour porpoise. Member states must take all necessary measures to ensure the conservation of species in SACs, and to avoid their deterioration and disturbance.

40. SACs are designated in three stages:

- each member state identifies possible SACs and submits them to the European Commission;
- the Commission then adopts a list of sites of Community importance;
- the member state concerned then designates the site as a special protection area within six years.

41. The UK has submitted a number of possible SACs to the Commission; to date, however, the Commission has yet to adopt a list of sites of Community importance. Despite this, the UK has used domestic legislation to enable protection to be given to ‘candidate’ SACs—that is, SACs which have been submitted to the Commission.⁵⁷ Of the 65 candidate marine SACs currently designated in the UK:

⁵⁴ In addition, there are six “non-party range states”—that is, parties that co-operate with ASCOBANS without having formally acceded to the agreement: Estonia, France, Latvia, Lithuania, Norway and the Russian Federation.

⁵⁵ *Resolution No. 3: Incidental Take of Small Cetaceans*, 3rd Session of the Meeting of Parties, Bristol, UK, July 2000

⁵⁶ These are listed in Annex II to the Habitats Directive.

⁵⁷ The Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716) and The Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2000 (SI 2000/192), which transpose the Habitats Directive in the UK.

- three were selected in order to protect the bottlenose dolphin—two as their primary purpose and one as a secondary purpose.⁵⁸ One of these sites is off the Scottish coast and the other two are off the Welsh coast;⁵⁹
- none offer protection to the harbour porpoise. The Joint Nature Conservation Committee (JNCC) attributes this to the fact that, currently, there are no readily identifiable areas “representing the physical and biological factors essential to their life and reproduction”, as is required by the Habitats Directive.⁶⁰ The JNCC states that further work is underway to try to identify areas to consider for designation as SACs for harbour porpoises although, currently, none of the areas under consideration are in the south-west.⁶¹

42. Any SACs intended to protect the bottlenose dolphin or the harbour porpoise are more than likely to lie within the UK’s territorial sea (that is, within 12 nautical miles). Responsibility for proposing SACs that lie in this zone is a devolved matter: the relevant statutory conservation agency (the Countryside Council for Wales, English Nature, the Environment and Heritage Service in Northern Ireland and Scottish Natural Heritage) is therefore responsible for identifying and submitting to the Commission a proposed SAC of this type.

Requirement applying to all cetaceans

43. Article 12(4) of the Habitats Directive requires member states to establish systems to monitor the incidental capture and killing of all cetaceans. In light of the results of this monitoring, member states are required to undertake further research or conservation measures to ensure that the incidental capture and killing “does not have a significant negative impact on the species concerned”.⁶² However, the Whale and Dolphin Conservation Society believes that few, if any, member states are monitoring cetacean by-catch adequately, in terms of requirements of the Habitats Directive, and that no member states are fulfilling the requirement to ensure that by-catch does not have a significant negative impact.⁶³

United Nations Convention on the Law of the Sea

44. The United Nations Convention on the Law of the Sea has been in force since 1994; the UK acceded to it in 1997.⁶⁴ The Convention creates an obligation for those states that are parties to the Convention to co-operate over the conservation of marine mammals and, in the case of cetaceans, to work through the appropriate international organisations for their conservation, management and study.⁶⁵ It

⁵⁸ As at 24 October 2003

⁵⁹ The SACs are known as: the Moray Firth, off Scotland; Bae Ceredigion/ Cardigan Bay, off Wales; Pen Llyn a’r Sarnau/ Llyn Peninsula and the Sarnau, also off Wales.

⁶⁰ Article 4(1)

⁶¹ Memorandum from the JNCC submitted to this Committee in relation to its inquiry into the marine environment and information from the JNCC on 20 January 2004. The memorandum will be published in the Committee’s forthcoming report on the marine environment.

⁶² Article 12(4)

⁶³ Ev 27 [Whale and Dolphin Conservation Society]

⁶⁴ The Convention was opened for signature in 1982 and came into force on 16 November 1994.

⁶⁵ This obligation applies both within a coastal state’s exclusive economic zone (Article 65) and on the high seas (Article 120).

enables a coastal state or an international organisation to go beyond the provisions of the Convention in prohibiting, limiting or regulating the exploitation of marine mammals.

Extent of UK's jurisdiction

45. Under the United Nations Convention on the Law of the Sea, the UK's territorial sea extends up to 12 nautical miles from the UK coastline and its exclusive economic zone extends up to 200 nautical miles from the coastline.⁶⁶ The Convention provides that a coastal state enjoys rights of sovereignty and jurisdiction over both these zones, but that it may exercise greater rights of control over its territorial sea.

46. As a member of the European Community, however, the UK's waters form part of "Community waters". The UK can exercise only those rights of sovereignty and jurisdiction that are permitted under the Community's Common Fisheries Policy (CFP). The Council Regulation that provides the regulatory structure for the CFP gives all member states a right of equal access to resources in Community waters.⁶⁷ Given the provisions of the CFP, it is not clear the UK is able to enforce national conservation measures on vessels within UK waters.

47. The CFP does, however, give a coastal state some ability to restrict access to fisheries in its territorial sea. Therefore, within 12 nautical miles of its coast, the UK can restrict access to those fishing vessels that traditionally fish in those waters from ports on the adjacent coast, provided that those restrictions do not prejudice certain existing access arrangements, specified in the Council Regulation.⁶⁸ France, Ireland, Germany, the Netherlands and Belgium all have existing access arrangements, relating to various fisheries, although the only state with access rights relevant to the fisheries we are examining in this inquiry is France. Importantly, however, no other member state has access rights within six nautical miles of the UK's coastline.⁶⁹

Imposing emergency measures under the Common Fisheries Policy

48. Any member state can ask the European Commission to impose emergency measures where there is "evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action".⁷⁰ The UK recently made such a request, in relation to the Darwin Mounds, coral reefs off north-west Scotland which resulted in the Commission deciding to impose emergency measures.⁷¹ Any measures imposed

⁶⁶ Articles 2, 3, 56 and 57 of the United Nations Convention on the Law of the Sea

⁶⁷ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Official Journal L 358, 31/12/2002 pp 0059–0080

⁶⁸ These arrangements are specified in Annex I of 2002 Council Regulation.

⁶⁹ *Ibid.*

⁷⁰ Article 7 of Council Regulation (EC) No 2371/2002

⁷¹ The Commission imposed emergency measures prohibiting the use of demersal (bottom) fishing, which was known to damage the mounds, for a period of six months, from 22 August 2003 (Commission Regulation 1475/2003). The Commission has subsequently put forward a proposal for a Council Regulation that would impose a permanent ban on demersal fishing in the area: draft instrument 12448/03 of 11 September 2003.

may last up to six months, and may be renewed for a further six months. The Commission may also take such a decision on its own initiative.

49. Member states are also empowered to impose emergency measures unilaterally, within their own exclusive economic zone (up to 200 nautical miles), where there is “evidence of a serious *and unforeseen* threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities ... [and] any undue delay would result in damage that would be difficult to repair”.⁷² Any measures imposed may last up to three months and cannot be renewed.

5 Assessing the Government’s proposals

50. We now turn to the proposals and recommendations contained in Defra’s consultation document, *UK small cetacean by-catch response strategy*. We have examined what we consider to be the most important of the proposals, which we have grouped as follows:

- proposals relating to the compulsory use of pingers on certain set net fisheries;
- proposals setting out action to be taken in respect of pelagic fisheries;
- proposals that would impose other restrictions on fishing effort;
- proposals relating to further research and data collection.

Our examination of each of these is set out in parts 6 to 9 of this report. It should be borne in mind that, because of the operation of the Common Fisheries Policy (CFP), Defra’s proposals would apply only to UK-registered vessels and, subject to the exceptions in the CFP, to fisheries within the UK’s territorial sea (12 nautical miles). Consequently, where relevant, we considered it important to assess the strategy document in light of the proposals contained in the European Commission’s draft regulation, published subsequent to the strategy document.

Strategy document—a welcome step forward

51. **We commend the Department for having taken the initiative in putting together a useful discussion of the problem of small cetacean by-catch as it affects UK vessels and fisheries, and for having acknowledged the seriousness of the problem.** The document draws together helpful evidence from a range of sources and should act as a useful basis for future Government action in this area. The document was generally welcomed by our witnesses: although a number of reservations were expressed about the nature of the proposals contained therein, there was a general recognition that the mere fact of its publication represented a positive step forward.

⁷² Article 8 of Council Regulation (EC) No 2371/2002

Timing of implementation

52. It is not clear on the face of either Defra's proposals or the European Commission's draft regulation when either is likely to be implemented. In respect of the UK Government's proposals, the Minister told us, in December 2003, that he is "hoping to move forward with practical, concrete proposals in the New Year".⁷³ However, he also stated that "there will certainly be changes to our policy ... we are already changing the policy as a result of what we are discovering all the time" as a result of the consultation exercise which ended on 13 June 2003.⁷⁴ He did not elaborate on the nature of those changes.

53. We also discussed with the Minister the likely timing for implementation of the Commission's draft regulation. The Minister stated that "we shall be pushing [the Commission's proposals] in the New Year in discussions both with the Commissioner and with colleagues ... I cannot second-guess what timetable the Commission is going to use to implement the proposals ... [but] I would hope that they would move forward with concrete proposals [in 2004]".⁷⁵ Defra's strategy document states that it is unlikely that any formal regulatory proposals from the Commission will be in place before the end of 2004.

54. The Minister emphasised to us that the Government will move ahead with implementing its own proposed mitigation measures, regardless of the timetable for implementing the Commission's draft regulation. **We endorse this approach. We urge the Government to move with the greatest possible alacrity in implementing its proposals, whether or not the Commission's proposals make progress.** Given that the proposals represent only a first step in addressing the cetacean by-catch problem, it is vital that they be put into practice as soon as possible, to enable their efficacy to be assessed and proposals for a 'second step' to be formulated. Furthermore, under the terms of the ASCOBANS agreement, the Government has committed itself to reducing total anthropogenic removal of small cetaceans to below 1.7% of the best estimate of the total population. It has not yet put in place any measures to address this target. **Any further delay in acting to address the ASCOBANS target of reducing total anthropogenic removal of small cetaceans to below 1.7% of the best estimate of the total population is unacceptable.**

55. Inevitably, however, any action taken by the UK Government will go only a small way towards mitigating levels of cetacean by-catch. Action at the European level is vital. For this reason, **we urge the Government to continue to push for the speediest possible implementation of the Commission's proposals.** The Commission itself recognises that its proposals are only a first, short-term step towards addressing the by-catch problem. The present proposals must therefore be implemented with all possible haste, so that a broader, more strategic programme can be formulated and put in place. Delays in implementing the Commission's

⁷³ Q 211

⁷⁴ Q 212

⁷⁵ Qq 215–216 [Ben Bradshaw MP]

draft regulation can only result in further depletion of populations of small cetaceans in Community waters.

6 Compulsory use of pingers on certain set net fisheries

Recommendations contained in Defra's strategy document

Summary of proposals

Acoustic deterrents, known as pingers, should be compulsory on fishing nets deployed in certain fisheries in the Celtic and North Seas. Pingers are small battery-operated devices that can be attached to fishing nets at 100 metre or 200 metre intervals. It is thought they work to reduce cetacean by-catch by emitting a sound that deters cetaceans from coming too close to fishing nets. The fishing vessels required to use pingers would be:

- a) in the Celtic Sea, vessels operating 6 nautical miles or more from the coast and using bottom-set gill nets
- b) in the North Sea, (i) vessels operating set net fisheries using a mesh size greater than 220mm and (ii) vessels operating in the offshore wreck net fishery.⁷⁶

A voluntary arrangement to take observers onboard should be entered into with the fisheries obliged to use pingers. Observers would be necessary in order to assess the effectiveness of the use of pingers. The need for mandatory observers would be reviewed in light of the success of these arrangements.⁷⁷

Any intensive deployment of pingers in coastal areas should be supported by a research programme to identify whether pingers may exclude cetaceans from habitats significant to their survival.⁷⁸

Proposals contained in European Commission's draft regulation

56. The European Commission's draft regulation, published in July 2003, would require pingers to be used in all fisheries in Community waters that could produce significant by-catch and in which an important reduction of incidental catches of cetaceans would be expected. In effect, this would mean that pingers would be required in fisheries using bottom-set gill nets in areas with populations of small cetaceans. The fisheries off the UK coast that would be affected would be those in the Celtic and North Seas and also, unlike Defra's proposals, the English Channel. The proposals would go further than those put forward by Defra in another respect, in that they would apply to all fishing vessels using bottom-set gill nets in the Celtic Sea, regardless of whether they are operating inside or outside the six nautical mile limit.

⁷⁶ Defra strategy, paras 47, 99–101

⁷⁷ Defra strategy, para 110

⁷⁸ Defra strategy, para 113

Pinger use in the English Channel

57. Defra’s strategy proposes making pinger use mandatory only in specified fisheries in the Celtic and North Seas. Both the Whale and Dolphin Conservation Society (WDCS) and the International Fund for Animal Welfare (IFAW) expressed concern that Defra’s strategy does not address the recovery of cetacean populations in the English Channel.⁷⁹ Defra states that it has not put forward proposals in respect of the English Channel because by-catch in this area is “negligible”, as there are very few porpoises in the area.⁸⁰

58. The WDCS and the IFAW both argue that it is precisely because of the decline of cetacean populations in the English Channel that measures to limit or mitigate gill net fishing are required, in order to allow populations to recover. The IFAW argues that by-catch rates cannot accurately be described as “negligible” because, “although by-catch rates may be very low, the impact may be significant ... in a population as small as that found in the Channel, *any* by-catch is likely to have a significant effect.”⁸¹

59. We agree that it seems short-sighted of the Government to propose no action to limit or mitigate gill net fishing in the English Channel, described as “the most intensively gill netted area of waters around Britain”.⁸² We do not accept the argument that, because cetacean populations in the area appear to have declined dramatically, there is little to be gained from acting to protect what populations may remain. Populations certainly will not begin to recover if nothing is done to reduce the impact of gill net fishing on the area. **We therefore recommend that measures equivalent to those contained in Defra’s strategy document in respect of the Celtic and North Seas should be put in place in respect of set gill nets used in the English Channel.**

Pinger use in the Celtic Sea

60. In the Celtic Sea, Defra’s strategy would make pinger use compulsory only on bottom-set gill nets set *more than* six nautical miles from the coast. The Minister gave two main reasons for the decision to limit mandatory pinger use in this way. First, he stated his belief that this restriction will enable enforcement officers to focus on the area where he considers the by-catch problem to be greatest, that is, gill net fisheries outside the six nautical mile limit. He also submitted that the mandatory pinger requirement will be more readily enforceable outside the six nautical mile limit, because there are fewer, larger vessels fishing outside the limit.⁸³ Second, the Minister suggested that, across the European Community, a requirement to use pingers outside the six nautical mile limit is more likely to achieve general acceptance than a blanket requirement to use pingers in all

⁷⁹ Ev 28, 85 [WDCS; International Fund for Animal Welfare]

⁸⁰ Defra strategy, para 72

⁸¹ Ev 28 [International Fund for Animal Welfare]

⁸² Q 114 [Whale and Dolphin Conservation Society]

⁸³ Qq 235, 237–39 [Ben Bradshaw MP, Martin Capstick and Colin Penny]

waters.⁸⁴ The Minister seemed to imply that, although the European Commission’s proposed regulation as currently drafted would apply to all gill nets, irrespective of the six nautical mile limit, it is realistic to expect that the final regulation will make pingers mandatory only outside the limit.

61. Defra’s proposal to target only those vessels operating outside the six nautical mile limit was supported by the Joint Nature Conservation Committee (JNCC). The JNCC stated that these vessels “are believed to generate most by-catch per vessel” and that this targeted approach “will reduce the inevitable logistic difficulties in implementing a full deployment on all UK vessels and ... the difficulties likely to occur in enforcement”.⁸⁵ The Association of Sea Fisheries Committees also preferred Defra’s proposals to those of the Commission, on the basis that “no problems with cetacean by-catch are known to occur” in inshore waters and that the Commission’s proposal is a “completely disproportionate response to a problem that does not exist” because it would require pingers to be used on all gill nets.⁸⁶

62. However, we note that Defra’s strategy document does not refer to any evidence that by-catch levels are greater outside the limit than inside it. In fact, the document gives no reasons at all for the decision to limit mandatory pinger use to fisheries outside the six nautical mile limit. Furthermore, we have received a number of submissions arguing that levels of harbour porpoise by-catch are significant both inside and outside the 6 nautical mile limit and that pinger use should therefore be mandatory on all bottom-set gill nets in the Celtic Sea.⁸⁷ For example, Nick Tregenza told us that sufficiently intensive observer monitoring has not taken place in the UK to enable us to be confident as to whether cetacean by-catch is worse inside or outside the six nautical mile limit. In countries where more intensive observer monitoring of gill net fisheries has been carried out, he said that the evidence has demonstrated that “inshore nets catch porpoises just as effectively as offshore nets”.⁸⁸

63. Consequently, **we are extremely concerned by the restrictions that Defra proposes to place on mandatory pinger use in the Celtic Sea.** We have received no convincing evidence to justify the proposal that mandatory pinger use should be confined to gill nets set outside the six nautical mile limit. On the contrary, we consider that the restrictions may backfire, by creating an incentive for fishermen to set an increased amount of bottom-set gill nets in inshore waters, in order to avoid the mandatory pinger requirement. This could well cause an increase in by-catch inside the six nautical mile limit.

64. We are particularly concerned by the risk that the restrictions would pose to the bottlenose dolphin population off south-west England. As discussed above, there

⁸⁴ Qq 234–35 [Ben Bradshaw MP]

⁸⁵ Ev 70 [Joint Nature Conservation Committee]

⁸⁶ Ev 3 [Association of Sea Fisheries Committees]

⁸⁷ Ev 20, 28, 73, 80, 85 [The Wildlife Trusts; Whale and Dolphin Conservation Society; WWF; RSPCA; International Fund for Animal Welfare]

⁸⁸ Q 34 [Nick Tregenza]

are probably fewer than 300 of these dolphins remaining in UK inshore waters. The south-west population probably numbers only 20 or so individuals and is slowly re-establishing itself.⁸⁹ prior to 1990, these dolphins had not been seen off Cornwall for about 20 years.⁹⁰ Consequently, the impact of even one bottlenose dolphin dying as a result of by-catch could be catastrophic for the overall population. Yet Defra's strategy document seems to offer no protection from by-catch for this threatened species.

65. We therefore recommend that the deployment of pingers be made mandatory on all bottom-set gill nets in the Celtic Sea, regardless of whether those nets are set inside or outside the six nautical mile limit. We consider that the decision to target waters outside the six nautical mile limit creates an unacceptable risk of cetacean by-catch in inshore waters, particularly to the bottlenose dolphin. **We urge the UK Government to argue at the European level for pinger deployment to be made mandatory on all bottom-set gill net fisheries in Community waters that could produce significant by-catch and in which an important reduction of incidental catches of cetaceans would be expected, regardless of the distance of the fishery from the coast. We also urge the Government to argue that it should be given power of enforcement in UK waters on this issue.**

Practical implications of requiring mandatory use of pingers

Enforcement difficulties

How will 'effective' pinger operation be measured?

66. Defra's strategy document does not discuss how inspectors will assess whether the pingers on any given net are, on the whole, working effectively. This is important because pingers can still deter cetaceans effectively from a net even where not every pinger is operating properly. Depending on the model used, pingers are placed either 100 metres or 200 metres apart along the length of the net. If one pinger stops functioning, the two pingers on either side of it are close enough to 'cover' for the defective one.

67. It would therefore seem unreasonable for Defra to impose an absolute requirement that every pinger on any given net should be functioning properly. It may be left to an individual inspector's judgment to determine whether the pingers on a particular net can be said to be operating effectively, on the whole. The potential lack of clarity could result in regular challenges to inspectors' decisions.

Where will inspections of pingers take place?

68. To be effective, inspections of pingers may well need to take place at sea, at least in the Celtic Sea. If pingers were to be inspected on land and found defective, it would be open to skippers to claim that they did not intend to fish outside the 6

⁸⁹ Defra strategy, para 19

⁹⁰ Q 48 [Nick Tregenza]

nautical mile limit with the relevant nets. In such a case, it would be difficult to proceed with legal action against offenders. This suggests that pingers will need to be inspected at sea which, in practical terms, is likely to be a very difficult task. Inspectors will have little choice but to require fishermen to haul in their nets—often miles of net, on comparatively small boats—and then to check the operation of each individual pinger: a difficult and time-consuming task.

69. We consider that these questions require detailed, practical answers if pinger deployment is to be successful and if fishermen are to be in a position to fulfil the mandatory pinger requirements properly. **We urge the Government to provide specific answers to the questions ‘How will “effective” pinger operation be measured?’ and ‘Where will inspections of pingers take place?’ as soon as possible, prior to implementing any of its proposals.**

Costs to fishermen

70. If implemented, Defra’s proposal will involve significant expense for fishermen prosecuting gill net fisheries. Defra estimates the cost of purchasing pingers for a vessel as follows:

The indicative cost ... is directly related to the number of pingers required for each vessel. This is dependant on the length of net used, and at what spacing the pingers should be attached to those nets. Of course larger vessels, on average, deploy longer lengths of nets and would therefore require more pingers. Assuming that one pinger is required for every 200 metres of net, the cost to place pingers on the over 10-metre fleet has been estimated at an average of £4,000 per boat (assuming £60 per pinger). For the under 10-metre fleet the cost should be around £750 per boat. The total cost for the [relevant gill net] fleets ... is estimated to be between £650,000 and £900,000. These costs are for the initial purchase of the pingers, and do not take into account training to use pingers or future servicing costs.⁹¹

Defra states that UK-registered fishermen are eligible to apply for funding to cover the cost of purchasing pingers, under the EU FIFG grant programme.⁹² The programme makes funding available to encourage fishermen to adopt more selective fishing methods, a purpose which covers the adoption of fishing practices intended to reduce cetacean by-catch, such as the purchase of pingers.⁹³

71. Assuming fishermen are successful in obtaining funding to cover pinger purchase costs under this programme, the costs they will be left with are those associated with ongoing costs of pinger maintenance and battery replacement, as well as the labour costs associated with ‘pingering up’ nets.

⁹¹ Defra strategy, para 102

⁹² Defra strategy, para 91; under the EU FIFG (Financial Instrument for Fisheries Guidance) programme, projects are co-financed by EU funds and by national payments.

⁹³ Defra strategy, para 91

Voluntary observer scheme

72. Defra proposes that the effectiveness of the use of pingers in the specified fisheries should be assessed by way of an independent observer scheme. The scheme is intended, at least initially, to be only voluntary; fishermen will therefore not be obliged to carry observers on board. If voluntary arrangements were to prove inadequate, Defra says that it would then move to introduce legal requirements to carry observers.⁹⁴

73. Comprehensive monitoring is essential if any assessment of the effectiveness of pingers is to be meaningful. However, practical problems could prevent any monitoring programme from being comprehensive. The Association of Sea Fisheries Committees suggested that many smaller, inshore fishing vessels (which typically carry three crew) would be unable to carry observers, due to not having enough space, let alone a spare bunk, in which to accommodate an extra person. Defra may therefore find itself unable to implement a monitoring scheme in respect of an entire sector of the gill netting fleet, a situation which would undermine the value of data collected across the scheme.

74. We invite Defra to explain how it will ensure that any monitoring scheme involving voluntary carriage of observers provides comprehensive data on the effectiveness of pingers in reducing cetacean by-catch on all types of vessels laying bottom-set gill nets. We consider that, for any monitoring scheme to be effective, Defra will need to have the power to require any specified vessel to carry an observer, where Defra believes a vessel to be unreasonably refusing to carry an observer.

Risk of habitat exclusion

75. Evidence suggests that pingers do have some mitigation effect on by-catch. However, it is not in fact clear why they have this effect, nor whether they will continue to have this effect in the medium to long-term. Consequently, concerns have been raised that pingers may exclude harbour porpoises, in particular, from their natural habitats, especially where those habitats are narrow inlets in which porpoises become trapped by the laying of nets across the entrance to the inlet.

76. As Defra's strategy document currently stands, habitat exclusion could pose a problem only in the North Sea, as pingers could be deployed within six nautical miles of the coast there. If, as we recommend, pinger use is made mandatory within six nautical mile of the coast in the Celtic Sea, then the risk of habitat exclusion would also need to be monitored there. **If, in future, pingers are proven to exclude harbour porpoises from key habitats to an extent that is detrimental to populations, we recommend that the Government should give serious consideration to prohibiting the use of bottom-set gill nets in these areas altogether.**

⁹⁴ The Wildlife Trusts told us that they were aware of several boats based in Newlyn that had refused to carry observers: Q 112.

Imposing other restrictions on bottom-set gill net fisheries

77. As a final word, it is important to bear in mind that pingers are not the only method of mitigating cetacean by-catch in the bottom-set gill net fisheries. Concerns have been raised that small cetaceans may become habituated to pingers over a period of time and that pingers could therefore cease to have a deterrent effect. If this proves to be the case or if, for any other reason, pingers fail to have the desired effect in reducing by-catch, then we believe that other restrictions should be placed on these fisheries. At this stage, we make no comment on the most appropriate method of imposing these restrictions. However, possibilities include limiting the length and number of gill nets set, introducing restrictions on total amounts of catch or introducing a cetacean mortality limit scheme, as discussed at paragraph 98 below.

7 Taking action in respect of pelagic fisheries

Recommendations contained in Defra's strategy document

Summary of proposals

Further trials should be carried out on the use and effectiveness of pingers in pelagic trawl fisheries with an identified by-catch of cetaceans. At present, this recommendation would appear to relate only to the pelagic trawl fishery for sea bass: Defra states that, to date, this is the only pelagic trawl fishery in which cetacean by-catch has been seen.⁹⁵

Further research is needed into separator grids, a device that is fitted inside a pelagic trawl net, with the aim of mitigating cetacean by-catch.⁹⁶

Cetacean by-catch in the pelagic fishery for sea bass

78. Defra's strategy document concludes that, on the basis of current evidence, cetacean by-catch is a problem only in the pelagic trawl fishery for sea bass. Defra summarises the evidence as follows:

Since 2000 ... a number of surveys [have been carried out] to estimate the level of by-catch in UK pelagic fisheries ... observers [were placed] on board thirteen UK vessels for a total of 190 days at sea, covering 206 trawling operations around the UK. The fisheries ... covered include herring, mackerel, sprat, pilchard, blue whiting, anchovy and [sea] bass. To date, no cetacean by-catch has been seen in any of these fisheries, with the exception of the [sea] bass fishery.⁹⁷

⁹⁵ Defra strategy, para 112

⁹⁶ Defra strategy, para 114

⁹⁷ Defra strategy, para 36

79. The strategy document proposes two measures to address the by-catch problem in this fishery:

- further trials on the use and effectiveness of pingers in this fishery; and
- further trials of separator grids in this fishery.

80. We discuss the separator grid trials in greater detail, below. However, based on data gathered by the Sea Mammal Research Unit (SMRU) between 2000 and 2003 (set out in paragraph 33 above), **we agree with Defra that there is clear evidence that the sea bass fishery has been responsible for a significant number of deaths of common dolphins as a result of by-catch.**

Trials of separator grids

81. A separator (or selection) grid is a device that is fitted inside a pelagic trawl net, with the aim of mitigating cetacean by-catch. It is designed to let targeted fish swim further down into the net, whilst deflecting larger animals such as dolphins. The nets are configured to allow dolphins to either turn round and exit the net or swim through an escape flap positioned in the net above the grid.⁹⁸ Defra states that separator grids are currently used in many fisheries around the world to exclude unwanted fish or other animals from the catch, including in New Zealand and Tasmania, where grids have been “successfully deployed” on an experimental basis to minimise catches of sea lions and fur seals in two hoki (blue grenadier) trawl fisheries and a squid trawl fishery.⁹⁹ The strategy document notes, however, that the New Zealand trials have been criticised on the basis that animals escaping through the grid may suffer trauma that may impact on their subsequent survival.¹⁰⁰

82. Defra has funded the SMRU to carry out trials of separator grids, using a pair of Scottish trawlers prosecuting the pelagic sea bass trawl fishery during the 2001–02 and 2002–03 seasons.¹⁰¹ In the 2002–03 trial, two animals died in 82 hauls over a seven-week period beginning in March 2003; in observations elsewhere in the fishery without the grid deployed, 28 dolphin casualties were recorded in 49 hauls. Defra considers that these results indicate that the separator grid system is effective in minimising dolphin mortality, although it notes that scientists are not yet entirely sure what part of the system is acting to deter dolphins.

83. Further trials of the grids are currently underway in the UK-registered fleet for the 2003–04 sea bass season, which are intended to focus on ‘fine-tuning’ the system and establishing which aspect of the system is responsible for deterring dolphins from entering the trawl net’s cod end tunnel.¹⁰² The Minister told us that,

⁹⁸ See page 18 of Defra’s strategy document for a diagram showing the operation of a separator grid.

⁹⁹ Defra strategy, paras 60 and 61

¹⁰⁰ Defra strategy, para 62

¹⁰¹ The 2002–03 trial ran from 14 March to 25 March 2003. The first stage of the trial was originally scheduled to commence in December 2002, but had to be postponed to March because one of the trial boats was involved in a collision. Following the “official” end of the trial, in March, the skippers concerned voluntarily continued using the selection grid system, until 8 May when they ceased prosecuting the fishery.

¹⁰² Defra final project report, “Further development of a dolphin exclusion device”, 25 November 2002 to 31 March 2003

if these trials prove successful, the Government will make the use of separator grids mandatory for all UK vessels involved in this fishery.¹⁰³ We note that, under the EU FIFG grant programme, fishermen should be eligible for funding to cover the cost of purchasing separator grids.¹⁰⁴

Criticism of separator grids

84. Linda Hingley strongly criticised the recent trials of separator grids, describing them as “virtually useless”. She argued that the trials were not carried out at the peak of the sea bass season and that the data gathered was not properly recorded.¹⁰⁵ Ms Hingley believed that that the grids will not, in practice, work to reduce by-catch, and cited the New Zealand trials, referred to above, as providing evidence that animals risk being injured or killed when using the grid’s escape flap.

85. Other witnesses suggested that more information on separator grids—in particular, more information about the animal welfare implications—is required before they can be regarded as an effective and safe means of mitigating cetacean by-catch. Nick Tregenza pointed out that, if the separator grid system is working because the noise of the equipment involved scares away the dolphins (a possibility that the scientists conducting the trials acknowledge), it may cease to work after a year or two, as the dolphins habituate to it.¹⁰⁶

86. We have some hesitation in accepting some of the criticisms made of the 2002–03 trials. The grids used in Defra’s trials have been modified specifically for these trials, so any evidence of grids killing or injuring sea lions in the New Zealand trials is not directly relevant. Two cameras were used during the trials, to monitor the grid and the escape hole from both inside and outside the net, so that scientists were able to observe underwater activity around the grid.¹⁰⁷ If dolphins other than the two reported caught had been killed or seriously injured in the process of escaping the net, it is likely that such instances would have been recorded on camera.

87. Consequently, **we are encouraged by the results obtained to date from the separator grid trials, and we commend Defra for funding these trials over several seasons of the sea bass fishery.** However, we remind Defra that it is important not to treat separator grids as the “silver bullet” solution to cetacean by-catch problems. **If the grids are to be implemented more widely in the pelagic trawl fishery for sea bass, it is important that ongoing monitoring of their efficacy continues to be carried out, over a number of years.**

¹⁰³ Q 252 [Ben Bradshaw MP]

¹⁰⁴ Defra strategy, para 91

¹⁰⁵ Ev 49 [Linda Hingley]

¹⁰⁶ Q 81 [Nick Tregenza]

¹⁰⁷ Although there were no camera images available for three nights (but not days) during the trial, due to defective cameras; unfortunately, it was during one of these nights that the two dolphins were caught in the net and died: Defra final project report, “Further development of a dolphin exclusion device”, 25 November 2002 to 31 March 2003, p 7

Addressing cetacean by-catch in the sea bass fishery at the European level

88. Even if separator grids are successfully deployed on all UK-registered vessels prosecuting the pelagic trawl fishery for sea bass, this will be insufficient to address the wider cetacean by-catch problem. Under the Common Fisheries Policy (CFP), the UK can regulate only its own vessels, and the evidence indicates that the majority of vessels working this fishery are not UK vessels. The National Federation of Fishermen’s Organisations (NFFO) estimated that the fishery is prosecuted by approximately 60 French vessels (working as 30 pairs), fewer than ten Dutch vessels, although these are large vessels and do not work in pairs, and between two and six Scottish pair teams.¹⁰⁸ The Wildlife Trusts estimated that the fishery was prosecuted by around 40 French vessels, six to eight Scottish vessels, and around 15 Danish and Dutch vessels. Linda Hingley pointed out that the Scottish trawl vessels are larger than the French vessels: “I have always said that one Scottish pair team equals about three or four French teams because [the French vessels’] gear is smaller and they work it slightly differently.”¹⁰⁹

89. Consequently, **if by-catch of small cetaceans is to be addressed effectively, action must be taken at European Community level.** The Government accepts this point: the Minister told us that “until we can persuade our fellow European countries—and the Commission is making progress with this, coming up with its own proposals—the problem is not going to be solved by [the UK] alone.”¹¹⁰ Acting unilaterally, the UK Government is prevented by the CFP from imposing restrictions on other non-UK-registered vessels that are more stringent than any restrictions already imposed by the European Commission.

90. **We recommend that the Government should aim to reduce by-catch of the common dolphin in the pelagic trawl fishery for sea bass to within the ASCOBANS interim target of 1.7% by the end of 2005–06 sea bass season—that is, by April/May 2006.** To achieve this target, we recommend that the Government takes the following action:

- (a) **If the current separator grid trials do prove successful, we urge the Government to direct its best efforts towards convincing those other member states that are also prosecuting the pelagic trawl fishery for sea bass to adopt mandatory use of the grids.**
- (b) **If other member states do not agree to deploy separator grids, or to take other effective mitigating action to reduce levels of cetacean by-catch, we recommend that the Government makes a formal request to the European Commission, asking it to impose emergency measures in the form of closing the pelagic trawl fishery for sea bass.** We consider that the criteria under which such a request can be made are met in respect of this fishery: there is sufficient evidence of a serious threat to the conservation of living aquatic resources—that is, the common dolphin—as well as sufficient evidence

¹⁰⁸ Qq 143-47 [National Federation of Fishermen’s Organisations]

¹⁰⁹ Q 205 [Linda Hingley]

¹¹⁰ Q 213 [Ben Bradshaw MP]

of a serious threat to the marine eco-system resulting from fishing activities that requires immediate action. The Government should time its request to the Commission so as to ensure that the six-month closure requested will coincide with the season for sea bass—that is, from November/December to April/May.

91. We consider that a six-month closure of this fishery would provide a most useful indication of the extent of cetacean by-catch in the fishery: if significantly fewer common dolphins showing signs of having died as a consequence of by-catch were to be washed ashore on the south-west English coast, then this would constitute compelling evidence against the continuation of the fishery. We are pleased to note that our position would appear to have the support of the NFFO, who told us:

We are prepared to take a fairly firm line by saying that the technical solutions, the grids and the acoustic deterrent devices, should be given a period to work, but ultimately we cannot support a fishery that has a demonstrable adverse impact on cetaceans and, consequently, our public image as an industry.¹¹¹

Cetacean by-catch in other pelagic fisheries

92. As we have discussed above, we agree with Defra that the pelagic trawl fishery for sea bass is responsible for a significant amount of cetacean by-catch, and we consider that immediate action is required in respect of this fishery. However, we have also considered whether there may be a problem with cetacean by-catch in other pelagic fisheries that needs to be addressed.

Evidence of by-catch in these fisheries

93. There is some evidence that other pelagic fisheries may also be responsible for some by-catch of common dolphins, although few observer studies of by-catch in these fisheries appear to have been carried out. The Whale and Dolphin Conservation Society (WDCCS) and Nick Tregenza both note that, during the 1990s, observer studies of by-catch in pelagic trawl fisheries recorded dolphin catches in three other fisheries, those for mackerel, horse mackerel, hake and tuna:

- the WDCCS refers to a Dutch observer study of by-catch in the pelagic trawl fishery for mackerel and horse mackerel that was conducted in the early 1990s, which recorded by-catch of a wide range of cetaceans. In 1994, a total catch of 172 dolphins was recorded by 12 Dutch and two English vessels in this fishery.¹¹²
- Nick Tregenza states that, in an observer study published in 1995, dolphin by-catch was seen in tows catching mackerel. He suggests that dolphin by-catch may often be overlooked by the mackerel boats, because they tend to pump their catch aboard: dolphins are too big to come through the pump and are

¹¹¹ Q 143 [National Federation of Fishermen's Organisations]

¹¹² Ev 26 [Whale and Dolphin Conservation Society]

hard or impossible to see in the net. They are finally discharged well astern of the boat, still unseen.¹¹³

Defra itself cites an example of an experimental fishery involving pair trawling for tuna which was conducted by the Republic of Ireland in 1998 and 1999, during which period it recorded a total catch of 180 cetaceans.¹¹⁴

94. The WDCS also pointed out that a number of other pelagic fisheries share common characteristics with the pelagic sea bass fishery: other fisheries also use trawling and pair trawling gear and operate in the Celtic Sea/Bay of Biscay area during the winter months, when dolphin strandings occur on the south-west coast. In addition to the fisheries named above, they also cited the herring, blue whiting, pilchard, sardine and anchovy fisheries, and the albacore tuna fishery, which operates during the summer months but uses pair trawling gear.¹¹⁵ The WDCS considers that, until these fisheries are properly monitored, it is reasonable to assume that some, if not all, may be responsible for some cetacean by-catch.

95. We acknowledge the evidence of the SMRU, which considers that any by-catch in other pelagic fisheries is unlikely to be very high. On the basis of what it has so far observed in other pelagic fisheries, the SMRU calculates that cetacean by-catch rates in the UK pelagic trawl fisheries for mackerel, herring, sprat, horse-mackerel and pilchard “are very unlikely to exceed 457 dolphins per year in total”.¹¹⁶

Need for monitoring in other pelagic fisheries

96. We are concerned that Defra has not properly taken into account the consideration, neatly summarised by Nick Tregenza, that “the current generalisation, from a small data set, that it is only the bass fishery [that is responsible for cetacean by-catch] is unreliable ... because of the variable and clumped distribution of the fish and the cetaceans it is to be expected that years will differ greatly in their catch rates in different fisheries.”¹¹⁷ From the evidence we have received, it seems clear to us that a “steady flow” of by-catch cannot be expected, and that rates of by-catch are likely to vary between fisheries and between years. For example, we have received evidence suggesting that, because common dolphins tend to travel in groups, they also tend to be caught in groups—a single trawl tends to catch either no dolphins, or a significant number of dolphins.¹¹⁸ In 1999, the Irish study referred to by Defra recorded 145 cetaceans caught in 313 observed hauls, of which only 31 hauls had a cetacean by-catch. Of the 145 cetaceans caught, 98 were taken in just ten hauls.¹¹⁹

97. Consequently, **we recommend that, in implementing its strategy document, the Government places much greater emphasis on moving quickly to set up**

¹¹³ Ev 11 [Nick Tregenza]

¹¹⁴ Defra strategy, para 44

¹¹⁵ Q 90 [Whale and Dolphin Conservation Society]

¹¹⁶ Ev 77 [Natural Environment Research Council]

¹¹⁷ Ev 11 [Nick Tregenza]

¹¹⁸ Q 205 [Linda Hingley]

¹¹⁹ Defra strategy, para 44

long-term observer monitoring programmes for other pelagic fisheries that take place off south-west England, particularly in the winter months, such as those for mackerel, horse mackerel and tuna. It would be most unfortunate if, on the basis of fairly recent evidence only, the Government were to conclude that the trawl fishery for sea bass is the only pelagic fishery requiring immediate attention. Bearing in mind that rates of by-catch are likely to vary between fisheries and between years, we urge the Government to focus on gathering more conclusive evidence about rates of cetacean by-catch in these other fisheries.

8 Considering restrictions on fishing effort

Recommendations contained in Defra's strategy document

Summary of proposals

Further consideration should be given as to whether any UK fishery should be subject to a mortality limit scheme.¹²⁰

Where any Special Areas of Conservation (SACs) are designated under the EC Habitats Directive, consideration should be given to whether restrictions should be imposed on any fisheries that impact on the species (the harbour porpoise or the bottlenose dolphin) for which the SAC has been designated.¹²¹

Mortality limit schemes

98. Defra's strategy document discusses the possibility of closing a fishery if cetacean by-catch in that fishery were to exceed a specified percentage of the relevant population. This is known as a cetacean mortality limit scheme. Under such a scheme, a fishery would be allowed a certain annual level of by-catch but, once that level was reached (calculated on the basis of observed by-catch), the fishery would be closed—although not necessarily permanently. Defra cites the example of the purse-seine tuna fishery in the Eastern Pacific Ocean. This is managed under the Agreement on the International Dolphin Conservation Program:

Under this Agreement per stock, per year, dolphin mortality caps are set for the fishery using the best available scientific evidence—in this fishery, 0.1% of the minimum estimated abundance. This is then converted to a dolphin mortality limit for each vessel. Having met this limit, a vessel is not permitted to continue pursuing that fishery.¹²²

¹²⁰ Defra strategy, para 103

¹²¹ Defra strategy, para 104

¹²² Defra strategy, para 68

Defra comments that, to be successful, such a scheme would have to be rigorously enforced and administered by way of a comprehensive observer programme.¹²³

Evidence received

99. The introduction of such a scheme in UK fisheries was broadly supported by both The Wildlife Trusts and the Whale and Dolphin Conservation Society (WDCS). The Wildlife Trusts advocated introducing a comparable scheme in the pelagic trawl fishery for sea bass, and setting the “mortality cap” at 1% of the best available population limit, in accordance with the ASCOBANS intermediate precautionary objective.¹²⁴ The WDCS expressed concern that such a scheme might risk becoming “effectively an authorised cetacean catch quota” if it were not subject to a stringent programme of limit reduction.¹²⁵

Our assessment

100. We can see advantages in introducing such a scheme in UK fisheries, in that it would enable specific, definitive guidelines to be laid down and particular fisheries to be targeted; the sea bass fishery would be an obvious candidate. In order for guidelines to be sufficiently specific and definitive, however, more research would first be required into common dolphin populations off the UK coast, in order for minimum population abundance figures to be accurately estimated.

101. Despite the attractions of a cetacean mortality limit scheme, we agree with Defra that, to be successful, such a scheme would need to be agreed upon and implemented at the European level. A single member state could not unilaterally implement such a scheme, because it would require the co-operation of all member states involved in prosecuting a particular fishery. **We therefore recommend that the Government pursue discussions about the introduction of a cetacean mortality scheme at European level, particularly in respect of the pelagic trawl fishery for sea bass. We consider that such a scheme could provide a long-term management solution for that fishery, if agreement between all member states prosecuting the fishery can be achieved.**

Designating Special Areas of Conservation under the Habitats Directive

Progress on designating SACs

102. As discussed in paragraph 41 above, to date the UK has identified three candidate Special Areas of Conservation (SACs) that offer protection to the bottlenose dolphin. No SACs have been identified in respect of the harbour porpoise, because of the difficulty in identifying areas that represent the physical and biological factors essential to harbour porpoises’ life and reproduction. **We understand that further work is underway to try to identify areas to consider for designation as SACs for harbour porpoises: we consider this is a matter that**

¹²³ *Ibid.*

¹²⁴ Ev 23 [The Wildlife Trusts]

¹²⁵ Ev 28 [Whale and Dolphin Conservation Society]

should be addressed as a matter of priority. We invite the Government to set out, in its response to this report, the work it has done to date on identifying SACs for the harbour porpoise.

Restricting fishery activities in SACs

103. Defra’s strategy document states that “consideration should be given to whether restrictions *should* be imposed on any fisheries that impact on the species (the harbour porpoise or the bottlenose dolphin) for which the SAC has been designated.”¹²⁶ Prior to the question of whether restrictions *should* be imposed on fisheries is the question of whether restrictions *can*, legally speaking, be imposed. We understand that this is an issue on which the UK Government has sought clarification from the European Commission.¹²⁷

104. At the nub of the issue is the interaction of the Habitats Directive and the Common Fisheries Policy (CFP). Under the Habitats Directive, the UK Government is legally obliged to take all appropriate steps to avoid, in SACs, “the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the [SAC] has been designated”.¹²⁸ In candidate marine SACs, fishing activities will clearly sometimes be a significant source of potential habitat deterioration. However, under the CFP, the restriction of fisheries for conservation reasons is a function that falls within the exclusive competence of the European Community. Consequently, it is not at all clear that the UK Government is legally able to impose restrictions on fishing activities in SACs.

105. We consider that this is a crucial point, which must be resolved as soon as possible. We understand that Defra has yet to receive a response from the Commission on this matter, despite the six months that have elapsed since the UK raised the issue. **We urge the Government to pursue the issue of whether it is legally able to impose restrictions on fishing activities in Special Areas of Conservation (SACs) to resolution at the European level. If the Commission concludes that member states are not able to impose restrictions on fishing activities in SACs, we consider that some other action must be taken at European level, to ensure that the protection offered to marine species under SACs is meaningful.**

¹²⁶ Emphasis added.

¹²⁷ Letter from Defra to European Commission, “Relationship of the Common Fisheries Policy and the Habitats and Wild Birds Directives—package meeting 7 May”, 28 July 2003

¹²⁸ Article 6(2) of the Habitats Directive

9 Need for further research and data collection

Recommendations contained in Defra's strategy document

Summary of proposals

Methods to identify trends in populations of harbour porpoise, common dolphin and bottlenose dolphin should be identified and set up as a matter of urgency.¹²⁹

Further research is needed into small cetacean population structure and seasonal movement.¹³⁰

The UK should develop an expanded by-catch monitoring scheme to assess levels of by-catch in UK fisheries at a statistically valid level.¹³¹

Proposals contained in European Commission's draft regulation

106. The European Commission describes the proposals contained in its draft regulation as a first, short-term step towards addressing the by-catch problem: it considers that greater knowledge of the problem is required before wider and more strategic measures can be implemented. The draft regulation would therefore require member states to implement at-sea observer schemes in those high-risk fisheries which use pelagic trawls or gill nets. Member states would have to ensure that observers covered minimum percentages of fishing effort; these vary from 5% to 10%, depending on the area being fished and the fishing method deployed.

Further research into small cetacean populations

107. The importance of having accurate population estimates is discussed in paragraphs 6 to 10 above. It is impossible to estimate levels of by-catch accurately in the absence of accurate population estimates. Consequently, **we agree with Defra that the Government should take action in order obtain more accurate estimates of small cetacean populations.** We also consider that the collection of such data would significantly improve the UK's ability to meet its obligations under Article 12(4) of the Habitats Directive, which requires member states to establish systems to monitor the incidental capture and killing of all cetaceans.¹³²

Expanding by-catch monitoring schemes

108. As currently drafted, the Commission's regulation would require member states to deploy sufficient independent observers to monitor from 5% to 10% of

¹²⁹ Defra strategy, para 106

¹³⁰ Defra strategy, para 107

¹³¹ Defra strategy, para 109

¹³² See paragraph 43 above.

fishing effort in specified high-risk fisheries. For example, in respect of the pelagic trawl fishery for sea bass, the UK would be required to monitor at least 5% of the fishing effort (or at least three vessels) from April to November; from December to March, at least 10% of the fishing effort would require monitoring.¹³³

109. Defra’s strategy document emphasises the need for the UK to expand its independent monitoring of by-catch in order to assess levels of by-catch at “a statistically valid level”. The document does not, however, discuss what minimum percentages of fishing effort should be covered by observers in order to achieve these statistically valid results. We asked the Minister whether Defra’s proposals should be amended in line with the Commission’s proposals, to specify that at least 5% to 10% of fishing effort must be subject to independent monitoring. In response, the Minister said that “it is unrealistic to assume that there is suddenly going to be an army of observers all over the place, we are going to have to think very carefully about how we use the observers we do employ and where they are best deployed”.¹³⁴ He also commented that “it is still much more sensible to monitor on a spot and voluntary basis rather than have permanent compulsory monitors all the time at this stage”.¹³⁵

110. We are concerned that the Minister’s response indicates that the UK may have insufficient people qualified to act as independent observers, should the Commission’s draft regulation be implemented in its present form. Given that the minimum percentages—5% to 10%—specified in the draft regulation are fairly modest, we wonder how the Government proposes to monitor by-catch at “a statistically valid level” if it has insufficient observers to cover the Commission’s proposed minimum percentages.

111. We also have some concerns about the categories of people who are likely to be recruited as independent observers. Defra appears to have ruled out imposing a requirement on fishermen to report any instances of by-catch to a central agency, because of concerns that any data so collected could not be relied upon.¹³⁶ It will therefore be entirely reliant upon its observers to provide accurate reports of by-catch. Defra told us that its observers are, currently, people employed and trained by the Sea Mammal Research Unit but that, if the Commission’s regulation is made as currently drafted, the people acting as observers in accordance with the regulation would probably be ex-fishermen.¹³⁷ We suggest that it may be desirable for Defra to aim to recruit observers from a broader range of backgrounds, in order to safeguard the overall independence and objectivity of the data collected by observers.

¹³³ Annex III, Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, 24 July 2003, 2003/0163 (CNS)

¹³⁴ Q 250 [Ben Bradshaw MP]

¹³⁵ Q 225 [Ben Bradshaw MP]

¹³⁶ Qq 226–29 [Ben Bradshaw MP and Martin Capstick]

¹³⁷ Qq 247–49 [Ben Bradshaw MP and Colin Penny]

112. We therefore invite the Government to specify:

- (a) what minimum percentages of fishing effort it considers would need to be covered by independent monitors in order to enable levels of by-catch to be assessed at a statistically valid level; and
- (b) what categories of person it intends to employ to act as independent monitors.

Conclusions and recommendations

1. In respect of the *UK small cetacean by-catch response strategy*, we commend Defra for having taken the initiative in putting together a useful discussion of the problem of small cetacean by-catch as it affects UK vessels and fisheries, and for having acknowledged the seriousness of the problem. (Paragraph 51)

Timing of implementation of the Government's proposals

2. We endorse the Government's decision to move ahead with implementing its own proposed mitigation measures, regardless of the timetable for implementing the Commission's draft regulation. We urge the Government to move with the greatest possible alacrity in implementing its proposals, whether or not the Commission's proposals make progress. Any further delay in acting to address the ASCOBANS target of reducing total anthropogenic removal of small cetaceans to below 1.7% of the best estimate of the total population is unacceptable. (Paragraph 54)
3. We urge the Government to continue to push for the speediest possible implementation of the Commission's proposals. (Paragraph 55)

Compulsory use of pingers on certain set net fisheries

4. We recommend that measures equivalent to those contained in Defra's strategy document in respect of the Celtic and North Seas should be put in place in respect of set gill nets used in the English Channel. (Paragraph 59)
5. We are extremely concerned by the restrictions that Defra proposes to place on mandatory pinger use in the Celtic Sea. We therefore recommend that the deployment of pingers be made mandatory on all bottom-set gill nets in the Celtic Sea, regardless of whether those nets are set inside or outside the six nautical mile limit. We urge the UK Government to argue at the European level for pinger deployment to be made mandatory on all bottom-set gill net fisheries in Community waters that could produce significant by-catch and in which an important reduction of incidental catches of cetaceans would be expected, regardless of the distance of the fishery from the coast. We also urge the Government to argue that it should be given power of enforcement in UK waters on this issue. (Paragraphs 63 and 65)

6. We urge the Government to provide specific answers to the questions ‘How will “effective” pinger operation be measured?’ and ‘Where will inspections of pingers take place?’ as soon as possible, prior to implementing any of its proposals. (Paragraph 69)
7. We invite Defra to explain how it will ensure that any monitoring scheme involving voluntary carriage of observers provides comprehensive data on the effectiveness of pingers in reducing cetacean by-catch on all types of vessels laying bottom-set gill nets. We consider that, for any monitoring scheme to be effective, Defra will need to have the power to require any specified vessel to carry an observer, where Defra believes a vessel to be unreasonably refusing to carry an observer. (Paragraph 74)
8. If, in future, pingers are proven to exclude harbour porpoises from key habitats to an extent that is detrimental to populations, we recommend that the Government should give serious consideration to prohibiting the use of bottom-set gill nets in these areas altogether. (Paragraph 76)

Taking action in respect of pelagic fisheries

9. We agree with Defra that there is clear evidence that the sea bass fishery has been responsible for significant numbers of deaths of common dolphins as a result of by-catch. (Paragraph 80)
10. We are encouraged by the results obtained to date from the separator grid trials, and we commend Defra for funding these trials over several seasons of the sea bass fishery. If the grids are to be implemented more widely in the pelagic trawl fishery for sea bass, it is important that ongoing monitoring of their efficacy continues to be carried out, over a for a number of years. (Paragraph 87)
11. If by-catch of small cetaceans is to be addressed effectively, action must be taken at European Community level. (Paragraph 89)
12. We recommend that the Government should aim to reduce by-catch of the common dolphin in the pelagic trawl fishery for sea bass to within the ASCOBANS interim target of 1.7% by the end of 2005–06 sea bass season—that is, by April/May 2006. (Paragraph 90)
13. If the current separator grid trials do prove successful, we urge the Government to direct its best efforts towards convincing those other member states that are also prosecuting the pelagic trawl fishery for sea bass to adopt mandatory use of the grids. (Paragraph 90(a))
14. If other member states do not agree to deploy separator grids, or to take other effective mitigating action to reduce levels of cetacean by-catch, we recommend that the Government makes a formal request to the European Commission, asking it to impose emergency measures in the form of closing the pelagic trawl fishery for sea bass. (Paragraph 90(b))
15. We recommend that, in implementing its strategy document, the Government places much greater emphasis on moving quickly to set up long-term observer monitoring programmes for other pelagic fisheries that take place off south-west England,

particularly in the winter months, such as those for mackerel, horse mackerel and tuna. (Paragraph 97)

Considering restrictions on fishing effort

16. We recommend that the Government pursue discussions about the introduction of a cetacean mortality scheme at European level, particularly in respect of the pelagic trawl fishery for sea bass. We consider that such a scheme could provide a long-term management solution for that fishery, if agreement between all member states prosecuting the fishery can be achieved. (Paragraph 101)
17. We understand that further work is underway to try to identify areas to consider for designation as Special Areas of Conservation (SACs) for harbour porpoises: we consider this is a matter that should be addressed as a matter of priority. We invite the Government to set out, in its response to this report, the work it has done to date on identifying SACs for the harbour porpoise. (Paragraph 102)
18. We urge the Government to pursue the issue of whether it is legally able to impose restrictions on fishing activities in Special Areas of Conservation (SACs) to resolution at the European level. If the Commission concludes that member states are not able to impose restrictions on fishing activities in SACs, we consider that some other action must be taken at European level, to ensure that the protection offered to marine species under SACs is meaningful. (Paragraph 105)

Need for further research and data collection

19. We agree with Defra that the Government should take action in order obtain more accurate estimates of small cetacean populations. (Paragraph 107)
20. We invite the Government to specify:
 - (a) what minimum percentages of fishing effort it considers would need to be covered by independent monitors in order to enable levels of by-catch to be assessed at a statistically valid level; and
 - (b) what categories of person it intends to employ to act as independent monitors. (Paragraph 112)

Reporting back to the Committee

21. We recommend that the Government report back to us each year about the numbers of small cetaceans caught as by-catch, and on progress made in addressing the problem.

Formal minutes

Wednesday 21 January 2004

Members present:

Mr Michael Jack, in the Chair

| | |
|--------------------|----------------|
| Mr Colin Breed | Diana Organ |
| Mr David Drew | Joan Ruddock |
| Mr Michael Jack | Alan Simpson |
| Mr Mark Lazarowicz | David Taylor |
| Mr David Lepper | Paddy Tipping |
| Mr Austin Mitchell | Mr Bill Wiggin |

The Committee deliberated.

Draft Report [*Cetacean By-catch*] proposed by Ms Atherton, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 112 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No 134 (Select committees (reports)) be applied to the Report.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.-(*The Chairman*).

Several memoranda were ordered to be reported to the House.

The Committee further deliberated.

[Adjourned till Wednesday 11 February at half-past Three o'clock.

Witnesses

Monday 3 November 2003

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Peter Winterbottom and David Muirhead, **Association of Sea Fisheries Committees of England and Wales**

Ev 4

Nick Tregenza, **Academic**

Ev 12

Monday 10 November 2003

Joan Edwards and Richard White, **The Wildlife Trusts**

Ev 32

Ali Ross, **Whale and Dolphin Conservation Society**

Ev 32

Wednesday 3 December 2003

Barrie Deas, **National Federation of Fishermen's Organisations**

Ev 43

Linda Hingley, **Brixham Seawatch**

Ev 48

Ben Bradshaw MP, Martin Capstick and Colin Penny, **Department for Environment, Food and Rural Affairs**

Ev 59

List of written evidence

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| Cornwall Sea Fisheries Committee | Ev 1, 8 |
| Association of Sea Fisheries Committees of England and Wales | Ev 2 |
| Nick Tregenza | Ev 9, 12, 89 |
| The Wildlife Trusts | Ev 18 |
| Whale and Dolphin Conservation Society | Ev 25 |
| National Federation of Fishermen's Organisations | Ev 42 |
| Linda Hingley, Brixham Seawatch | Ev 48 |
| Department for Environment, Food and Rural Affairs | Ev 54 |
| Interfish Limited | Ev 68 |
| Joint Nature Conservation Committee | Ev 68 |
| World Wildlife Fund | Ev 72 |
| The Natural Environment Research Council | Ev 75 |
| Royal Society for the Protection of Birds | Ev 78 |
| Royal Society for the Prevention of Cruelty to Animals | Ev 79 |
| International Fund for Animal Welfare | Ev 82 |
| Scottish Pelagic Fishermen's Association | Ev 87 |

List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Interfish Limited (Appendices)
 The Wildlife Trusts (Appendices)
 International Fund for Animal Welfare (Appendix 2)

Reports from the Committee since 2001

Session 2003–04

| | | |
|---------------|-------------------------------------|--------|
| Second Report | Annual Report of the Committee 2003 | HC 225 |
| First Report | Water Pricing | HC 121 |

Session 2003–04

| | | |
|--------------------|--|----------|
| Eighteenth Report | Conduct of the GM Public Debate | HC 1220 |
| Seventeenth Report | Biofuels (<i>Reply, HC 929</i>) | HC 929-I |
| Sixteenth Report | Vets and Veterinary Services | HC 703 |
| Fifteenth Report | New Covent Garden Market: a follow-up (<i>Reply, HC 123</i>) | HC 901 |
| Fourteenth Report | Gangmasters (<i>Reply, HC 122</i>) | HC 691 |
| Thirteenth Report | Poultry Farming in the United Kingdom (<i>Reply, HC 1219</i>) | HC 779-I |
| Twelfth Report | The Departmental Annual Report 2003 (<i>Reply, HC 1175</i>) | HC 832 |
| Eleventh Report | Rural Broadband (<i>Reply, HC 1174</i>) | HC 587 |
| Tenth Report | Horticulture Research International (<i>Reply, HC 1086</i>) | HC 873 |
| Ninth Report | The Delivery of Education in Rural Areas (<i>Reply, HC 1085</i>) | HC 467 |
| Eighth Report | The Future of Waste Management (<i>Reply, HC 1084</i>) | HC 385 |
| Seventh Report | Badgers and Bovine TB (<i>Reply, HC 831</i>) | HC 432 |
| Sixth Report | Rural Payments Agency (<i>Reply, HC 830</i>) | HC 382 |
| Fifth Report | The Countryside and Rights of Way Act 2000 (<i>Reply, HC 748</i>) | HC 394 |
| Fourth Report | Water Framework Directive (<i>Reply, HC 749</i>) | HC 130 |
| Third Report | The Mid-term Review of the Common Agricultural Policy (<i>Reply, HC 615</i>) | HC 151 |
| Second Report | Annual Report of the Committee 2002 | HC 269 |
| First Report | Reform of the Common Fisheries Policy (<i>Reply, HC 478</i>) | HC 110 |

Session 2001–02

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| Tenth Report | The Role of Defra (<i>Reply, HC 340, Session 2002-03</i>) | HC 991 |
| Ninth Report | The Future of UK Agriculture in a Changing World (<i>Reply, HC 384, Session 2002-03</i>) | HC 550 |
| Eighth Report | Hazardous Waste (<i>Reply, HC 1225</i>) | HC 919 |
| Seventh Report | Illegal Meat Imports (<i>Reply, HC 1224</i>) | HC 968 |
| Sixth Report | Departmental Annual Report 2002 (<i>Reply, HC 1223</i>) | HC 969 |
| Fifth Report | Genetically Modified Organisms (<i>Reply, HC 1222</i>) | HC 767 |
| Fourth Report | Disposal of Refrigerators (<i>Reply, HC 1226</i>) | HC 673 |
| Third Report | Radioactive Waste: The Government's Consultation Process (<i>Reply, HC 1221</i>) | HC 407 |
| Second Report | The Countryside Agency (<i>Reply, HC 829</i>) | HC 386 |
| First Report | The Impact of Food and Mouth Disease (<i>Reply, HC 856</i>) | HC 323 |

Oral evidence

Taken before the Environment, Food and Rural Affairs Committee: Cetacean By-Catch Sub-committee

on Monday 3 November 2003

Members present:

| | |
|--------------------|----------------|
| Mr Colin Breed | Diana Organ |
| Mr David Drew | Alan Simpson |
| Mr Mark Lazarowicz | Mr Bill Wiggin |
| Mr Austin Mitchell | |

In the absence of the Chairman, Mr Mitchell was called to the Chair

Memorandum submitted by David Muirhead, Chairman of the Cornwall Sea Fisheries Committee (C2)

I have the following observations to make:

1. In my opinion the UK Small Cetacean By-Catch Response Strategy and indeed the recently published proposals for a Council Regulation concentrate on gill and drift nets and pay scant attention to taking immediate action to prevent the continued deaths due to bass pair teams working off the South West of England during the winter months.

2. There is overwhelming evidence that this off shore fishery is the main culprit. Sadly the problem appears to be getting worse not better. During 2002 186 dead cetaceans were washed up on the shores of Cornwall. The bulk of the standings occur whilst the offshore fishery is at its height. To date this year 196 bodies have been found; a dramatic increase. Fishermen working from Looe and Polperro have seen considerable numbers of dead dolphins and pilot whales floating on the surface of the sea. They have also caught dead dolphins in their trawls. These events have always occurred in areas where pair trawlers fishing for bass have been seen working. The recorded deaths are just “the tip of the iceberg”. Many bodies must sink and remain unlocated or are carried off shore by winds and tides.

3. As soon as the off shore fishery ended only a very small number of bodies were found washed up on the shores of Cornwall. In fact during May of this year only seven were located.

4. The response strategy itself has confirmed that the offshore bass fishery is responsible for large numbers of cetacean deaths. It is now well known that observers on these vessels often see large numbers of cetaceans captured by their nets. A BBC Countryfile programme also investigated this problem and reached the same conclusions.

5. Unfortunately the planned trials using the separator grid were delayed until late in the season for the offshore fishery. It appears however that the separator grid was successful. In addition to the offshore bass fishery, fishermen fishing in the English Channel and indeed some more recent evidence have suggested that the industrial trawlers fishing off the South West are also responsible for a numbers of deaths.

6. Current evidence confirms that vessels working with gill nets are responsible for very few deaths particularly smaller vessels working inshore. It is significant that the response strategy states that there should be no regulations relating to these boats. Andrew Pascoe, a prominent Newlyn fisherman, was fishing off Lands End with gill nets for white fish for several months during last winter. During that period he caught no cetaceans. On one occasion dolphins were actually playing around the nets whilst he was laying them. He was very concerned but NO dolphins were caught.

7. Although not directly relevant to the matter of the cetacean deaths, I am extremely concerned at the large numbers of mature bass being caught on the spawning grounds during the offshore bass fishery. Artisanal Fishermen using traditional methods and anglers report a total absence of larger fish in certain areas. It seems that large numbers of some year classes have been wiped out.

8. Fishery Managers are currently being urged to take “the precautionary approach”. As you may know, Cornish vessels, until recently, took part in a gill net fishery for tuna in the South West Approaches. Observers reported a small by-catch of cetaceans. As a result, this profitable fishery was closed. The Fishermen had to scrap their nets with no compensation. As far greater numbers of cetaceans are currently being killed, where is the precautionary approach now?

9. In conclusion, in the light of the evidence set out above, in an ideal world, on strong conservation grounds relating to both cetaceans and the bass stocks there should be a total ban on the whole offshore bass fishery. It appears however that due to pressure from Europe this may not be achievable. A total ban within the 12 mile limit is however achievable under current EU Legislation. This may well afford some protection to both the cetaceans and spawning bass.

Further to this there should be a total ban on all vessels targeting bass with pair trawls save those using the separator grids. Both these measures should be implemented as soon as possible. Observers should be placed on these vessels using the grids to confirm that they are successful. In addition observers should be placed on other pelagic trawlers working within the South West Mackerel Box to ascertain any conservation problems within that fishery.

Regrettably the placing of Observers on the boats currently engaged in the offshore bass fishery as suggested by the proposed new Council Regulations will merely allow the current slaughter to continue until further evidence is given showing what we already know, namely, that the offshore bass fishery is the main cause of the cetacean deaths.

August 2003

Memorandum submitted by The Association of Sea Fisheries Committees of England and Wales (C7)

EXECUTIVE SUMMARY

A. The Association of Sea Fisheries Committees of England and Wales welcomes both the UK Small Cetacean By-Catch Response Strategy and the European Commission's recent proposal concerning incidental catches of cetaceans (COM (2003) 451).

B. It is important that eventual implementation of the measures set out in both these documents is proportionate.

C. The Association therefore could support:

- mandatory observer requirements on offshore pelagic vessels (whilst regretting that more immediate management action has not been proposed by the Commission for the bass fishery);
- further work in the offshore bass fishery on separator grids intended to keep dolphins out of nets; AND
- mandatory use of pingers in the offshore Celtic Sea hake gill net fishery and in the North Sea offshore gill net whitefish fisheries and offshore wreck net fisheries.

D. However, the Association cannot support the imposition of similar and potentially costly measures in the inshore fleet where no problems with cetacean by-catch are known to occur. In particular the proposal by the Commission for pingers to be used in all gill nets is a completely disproportionate response to a problem that does not exist.

E. Consideration should be given to gill nets being made of nylon with a breaking strain that would allow cetaceans to break free but still allow the nets to retain fish.

F. Hauling nets for inspection by Fisheries Patrol Vessels is not practical.

G. Health and Safety considerations must be paramount in any decision to place observers on fishing vessels.

THE ASSOCIATION

1. The Association of Sea Fisheries Committees of England and Wales is a free association of the 12 Sea Fisheries Committees of England and Wales.

THE SEA FISHERIES COMMITTEES

2. The Committees were originally called into being by the Sea Fisheries Regulation Act 1888 and now manage public sea fisheries under powers in the Sea Fisheries Regulation Act 1966 (a consolidation measure) as amended in particular by the Environment Act 1995. This outdated legislation gives powers for the Committees to make byelaws for fisheries management purposes and for environmental purposes. The Committees' responsibilities extend six miles offshore from the points from which baselines are measured. The Committees also maintain a professional and intelligent interest in inshore fisheries and marine environmental matters within the England and Wales Territorial Sea (0–12 miles).

CETACEAN BY-CATCH

General

3. The cetacean by-catch problem off England and Wales seems to be concentrated in the South West and is particularly prominent in Cornwall, Devon and Dorset on whose beaches dead cetaceans—generally dolphins and porpoises—are washed ashore. (Disposal is a matter for the local authorities and not for the Committees.) The usual time for these so-called strandings is late winter and into spring.

The Inshore Fleet

4. Research work has been funded by DEFRA (formerly by MAFF) and usually carried out by the Sea Mammal Research Institute at St Andrew's University (SMRU).

5. When the work was started some 10–12 years ago the presumption was that the Cornish and Devon inshore fleet was to blame. In fact they were found not to be the culprits as far as either porpoise or dolphin deaths were concerned. What was discovered was that the Cornish offshore hake netting fleet working in the Celtic Sea was responsible for a limited number of porpoise casualties but virtually no dolphin deaths.

The Offshore Fleet

6. Other work funded variously by MAFF, DEFRA and the European Commission on UK pelagic vessels fishing for mackerel and other mainstream pelagic species in the Channel found no link between their activities and cetacean casualties.

7. More recent work by SMRU on vessels working in the western channel in the late winter/spring bass pair trawl fishery has identified a cetacean by-catch problem. The fishery is carried out offshore and can be distinguished from other pelagic fisheries by the length of time nets are towed. Unlike other pelagic species bass do not concentrate into dense shoals. They are believed, though, to follow *tracks* to their spawning grounds. Pairs of fishing vessels tow a single net along those tracks for a very considerable length of time. Any dolphins entering the net are likely to be too far down in the net when they need to surface to breathe and so are not able to escape. The majority of vessels engaged in this offshore fishery are French. A few Scottish vessels also take part. No English vessels are believed to have taken part in recent years.

8. Strandings on the Cornish and Devon beaches are most significant in late winter and spring ie at the same approximate time as the fishery takes place.

CETACEAN CASUALTIES AND THE SEA FISHERIES COMMITTEES

9. In the light of these facts there are no direct management implications for the Committees in the South West of England.

10. Elsewhere in England and Wales cetacean by-catch problems with the inshore fleet are virtually unheard of.

THE UK'S SMALL CETACEAN BY-CATCH RESPONSE STRATEGY

11. The Association welcomed the publication of the UK's Small Cetacean By-catch Response Strategy in March 2003, because cetacean casualties of the numbers evinced in strandings in the South West are clearly unacceptable and well judged modifications to fishing gear or practices are very necessary.

THE EUROPEAN COMMISSION'S PROPOSAL FOR A COUNCIL REGULATION CONCERNING INCIDENTAL CATCHES OF CETACEANS (COM (2003) 451)

12. The Association also welcomes the issue by the Commission of a proposal taking the first steps at EU level to address the problem. It is important that the previous Fisheries Minister's concerns have been heard and acted upon by the Commission because no single country can solve the problem on its own. An EU wide approach is essential to ameliorate the problem caused in an EU fishery taking place beyond any coastal states' six mile limit. The Association is disappointed, though, that the Commission has not proposed any restrictive management action on the bass fisheries in the light of what is already known about its conflict with cetaceans.

13. For implementation of both the UK's by-catch strategy and of the EU Regulation, when adopted by the Council, it is important that the solution adopted is proportionate to the problems to be solved.

14. The Association therefore could support:

- mandatory observer requirements on offshore pelagic vessels (whilst regretting that more immediate management action has not been proposed by the Commission for the bass fishery);
- further work in the offshore bass fishery on separator grids intended to keep dolphins out of nets; and
- mandatory use of pingers in the offshore Celtic Sea hake gill net fishery, the North Sea offshore gill net whitefish fisheries and offshore wreck net fisheries.

15. However, the Association cannot support the imposition of similar and potentially costly measures in the inshore fleet where no problems with cetacean by-catch are known to occur. In particular the proposal by the Commission for pingers to be used in all gill nets is a completely disproportionate response to a problem that does not exist. The Association much prefers the proposals outlined in the DEFRA Small Cetacean By-catch Response Strategy.

SUGGESTIONS BY THE ASSOCIATION

16. The Association would like to propose that consideration should be given to requiring gill nets to be manufactured of monofilament nylon—or, indeed, braided nylon if research supported the case—of a breaking strain sufficiently strong to keep fish in the net but also sufficiently weak so as to allow porpoises or dolphins to break free. This solution would be cost neutral—or nearly—as fishermen could re-equip with this “cetacean friendly gear” as existing gear was due for renewal. This would be preferable to the continued on-cost which fishermen would face if pingers had to be used and renewed. For illustrative purposes a vessel working on average eight sets of nets each 600 metres in length, with four pingers per net would need 32 pingers at a cost of Euro 3,200 plus cost of battery replacement and any other maintenance costs. (The cost for pingers is taken from the Impact Assessment with the Commission’s proposal.)

ENFORCEMENT ISSUES AND OBSERVER SCHEMES

17. The following enforcement issues will arise from both the DEFRA Strategy and European Commission Proposals:

- no fisheries protection vessel whether in the RN Fisheries Protection Squadron or belonging to a Sea Fisheries Committee is equipped to haul nets or designed to use net haulers;
- even if nets could be hauled from protection vessels and re-set without damage the enforcement authority would be open to claims from fishermen for loss or damage of gear, loss of catch, loss of potential catch and also claims that the gear had been re-set on the wrong marks etc, etc, and so could not be located without difficulty;
- enforcement officers would need to be issued with a device to test whether pingers were in working order. (This piece of kit could only be used when inspecting nets on a fishing vessel or on shore.); and
- observer schemes need to be considered with care because in addition to very necessary health and safety requirements in a dangerous working environment there will very often be no more room—let alone bunk accommodation—for an extra person on many fishing vessels.

P D Winterbottom
Chief Executive

11 September 2003

Witnesses: Mr Peter Winterbottom, Chief Executive, and Mr David Muirhead, Vice-Chairman Association of Sea Fisheries Committees of England and Wales and Chairman of the Cornwall Sea Fisheries Committee, examined.

Q1 Mr Mitchell: Welcome, gentlemen. This is the very first session of our inquiry into the by-catches and we are grateful to you for coming. Mr Winterbottom, you are the Chief Executive of the Association of Sea Fisheries Committees of England and Wales, and Mr Muirhead you are the Chairman of the Cornwall Sea Fisheries Committee, and we have just been seeing some videos of dolphins in the West Country, so we are prepared to a degree. Thank you very much for coming along to help us. We want you to brief us generally on what is happening and give us the background. What fisheries are associated actually with cetacean by-catches?

Mr Muirhead: In my opinion, the main problem is the bass pair trawling, which is carried on primarily by French boats but a few British trawlers as well. There is also allegedly a problem with gill nets. I would not say that was a major problem, there may be a very incidental by-catch. The other type of fishery is what is called a tangle net. The gill net fisheries is a fairly small-mesh fishery, in old money, up to about five and a half inches mesh across. I am not very good on millimetres, I am afraid. The other type of bottom net fishery is a tangle net fishery, which is a bigger mesh, which is used for monk fish, ray and turbot, and I am aware of occasional by-catch problems with the tangle nets but not on a

large scale. Going back to the gill net, I must make the point that a gill net is a fairly small mesh. To tangle cetacean, in my opinion, you need a fairly big mesh net. If I could draw an analogy, something we all know about, which is a tennis net, if you or I hit a tennis net we could not possibly get tangled up in it, but if it were, say, a cat, it might get its head through and get tangled up in it. By analogy, a dolphin, in my opinion, really can get tangled up only in a net that it can get its head into, because with a small mesh gill net it will hit the net and bounce off again.

Q2 Mr Mitchell: Where is this damage occurring, is it within the six miles or between six and 12? Where is the problem? Are gill nets used within the six-mile limit?

Mr Muirhead: The gill nets are set from the shore right out almost to the 200-mile limit, out right across the Continental Shelf. The hake net boats do work a long, long way out, almost within Irish waters, so that is a vast area. The bass pair trawl fishery is off the South West. I would have thought the main area that is fished is between Start Point and The Lizard, and Land’s End, probably, and probably from our six-mile limit, because the French boats are not allowed inside our six-mile limits, and,

3 November 2003 Mr Peter Winterbottom and Mr David Muirhead

because of Cornish Sea Fisheries by-laws, the British pair trawlers would not be allowed to work within our six-mile limit. So I would have thought it would be between the six-mile limit and the French coast. There have been reports of large numbers of dead cetaceans being washed up on the French coast from time to time, and it is thought that these come from the bass pair trawl teams working off the French coast.

Q3 Mr Mitchell: Where does your writ run, as Sea Fisheries Committees?

Mr Muirhead: Our jurisdiction at the present time goes out to the six-mile limit from the shore.

Q4 Mr Mitchell: So not between the six and the 12?

Mr Muirhead: No. We have no jurisdiction at present between the six and the 12, that is controlled by Defra.

Q5 Mr Mitchell: You say in your evidence, the statement, that the by-catch problem has “no direct management implications for the [Sea Fisheries] Committees in the South West of England.” Therefore, are you saying that this by-catch occurs only outside your area of jurisdiction?

Mr Muirhead: Yes. The bass pair trawl problem is only outside the six-mile limit. A very limited problem may occur within the six-mile limit where people are working tangle nets, but it will be very limited.

Mr Winterbottom: If I may say so, Chairman, that has not been demonstrated. What has been demonstrated is that the bass pair trawl fishery is suspect and the hake fishery in the Celtic Sea, a long way off Cornwall, almost on the Irish side of the Celtic Sea. In that sense, those fisheries are outside the Committees’ jurisdiction.

Q6 Mr Mitchell: It is pursued mainly by foreign, French vessels?

Mr Winterbottom: The bass fishery is predominantly a French fishery. I think last season there were four Scottish vessels, two pairs.

Mr Mitchell: Thank you.

Q7 Alan Simpson: You are opposed to the European Commission’s proposals, because you say that they are disproportionate to the costs and the scale of the problem. Do you not think that there is increased scope for cheating if you have a distinction between the six-mile limit and beyond?

Mr Winterbottom: As far as one knows, there is either no problem or virtually no problem in the nought to six-mile area. That is why we said this approach of pingers in all gill nets is disproportionate. It would be a much better approach if the Commission’s other route, of observers in those inshore waters, ran first, to identify whether or not there is a problem. If there is a problem then, yes, it must be addressed.

Q8 Alan Simpson: The World Wildlife Fund pointed out to us that to draw this distinction risks inviting boats to nip in and out of the six-mile limit.

In that case, if there were scope for being able to evade the role that pingers would play, would there be any merit in imposing restrictions on the length of gill nets to be used within the zone?

Mr Winterbottom: The length of gill net, I believe, in the Commission proposal, is a reference to the Baltic Sea drift-net fishery only. Huge numbers of fishermen—net fishermen, pot fishermen, shellfish pot fishermen—have what they regard as their own ground, that is the ground they fish. There is not necessarily an opportunity for offshore men to come inshore because their brethren would say there was no space for them.

Q9 Alan Simpson: Would it make sense then to talk about restrictions targeted at particular types of fishing, rather than the distance that the fishing takes place from the coast? If we are trying to take an effective mechanism that deals with by-catches, if you are saying, “Well, it’s a particular type of fishing,” should we target the types of fishing?

Mr Muirhead: We should be targeting the bass pair trawling, immediately. Unfortunately, the EU proposals suggest that the observer scheme should start in the winter of 2004–05. There is ample evidence that the bass pair trawlers are causing the major problem. They are catching hundreds of cetaceans during the winter season. The Defra trials, last winter, using a separator grid, seemed to be fairly successful. As I have put in my written submission, all boats targeting the bass fishery should be using the separator grid immediately, observers should be put on those boats and they should work out then whether or not the separator grid is working. If we let this fishery go on for another two winters, there will be hundreds, perhaps thousands, more deaths of cetaceans, and at the end of the day the observers will tell us only what we know already. It is as simple as that.

Q10 Alan Simpson: Do you consider that bottom-set gill nets present any particular danger to harbour porpoise?

Mr Muirhead: The gill nets, I think, do not. As I said in my written submission, one of our local skippers works gill nets through the winter, and he did work them through last winter, and on one occasion the dolphins, or porpoises, or both, were playing around the nets as he was shooting them away. He was very concerned, and when he came to pull the nets he did not catch one. There is a report in last week’s *Fishing News*, from a Devon skipper who has worked hundreds of miles of gill nets over the years, and in his written report he says that he has not caught one.

Q11 Mr Mitchell: The trouble is, of course, if we want to accelerate action we have to do so on the basis of evidence. When you are saying, “We don’t need observers, we already know,” is that folklore or is that an observable fact?

Mr Muirhead: There is evidence. Dr Tregenza will have the facts and figures. I can dig it out of my information. There is evidence that these trawlers do catch cetaceans. The BBC produced a programme called *Countryfile*, which demonstrated this.

3 November 2003 Mr Peter Winterbottom and Mr David Muirhead

Unfortunately, I did not see it, but I gather that was pretty conclusive evidence, and earlier trials by both our Ministry and the Irish Ministry into pair trawling have proved conclusively that it is a problem. The Wildlife Trust's briefing to MEPs gives quite a lot of useful information about the actual figures concerned, and, if you can get hold of that, that will be well worth reading, if you have not got it already.

Q12 Diana Organ: I understand your desire to make sure that when you are fishing you are not taking on cetaceans, and you have said already that you do not think it is a major problem from gill nets. I just wonder, because you are concerned about the cost of putting pingers on every net, but you have come up with an alternative. The Association suggested having a net that is strong enough to keep fish in it while being weak enough to allow the porpoise or dolphin to break free. Do such nets exist currently and, if they do not, how long do you think it is going to be before they will be available for fishermen to use?

Mr Winterbottom: I think I am right in saying that either Defra have just commissioned or they are minded to commission research work on this point. Once facts as to breaking strain and gauge of nylon, and so forth, are determined, I would have thought there would be no difficulty at all in manufacturing to those tolerances very quickly.

Q13 Diana Organ: The other thing about that is, of course, you would not have the expense of the pinger, but the new nets would be taken on as the fishermen replaced their old ones. How long would that take? Obviously, nets have a certain life and they are not all going to rush out and buy the newly-developed Defra net, with its new breaking strength, just because it is a good idea, they are going to take their time on a cost basis of when their old ones run out. How long do you think it is going to be before we get a fishery in the South West that will have nets friendly for dolphins and porpoises?

Mr Muirhead: It depends on how long the nets are worked. If I can take just one fishery in the winter in the South West, it is a cod fishery, I would have thought that the current nets have a life expectancy of probably two years. Actually, it is not quite as devastating as it sounds, because you have a head-rope, which is quite a thick rope with floats on it, and a bottom-rope, which is a leaded rope, and you do not replace the whole net, you cut the middle, or the net, off from the ropes and replace it with new net. The actual sheet netting is produced in the Far East and it is relatively inexpensive. It could be done within a couple of years.

Q14 Diana Organ: Within a couple of years, it could be that all the fisheries in the South West would have this kind of friendly netting?

Mr Muirhead: Yes.

Mr Mitchell: If we started now.

Q15 Diana Organ: If we started now, because Defra has not even developed it yet?

Mr Muirhead: That is right. With respect, it would not need to be developed because already you can buy a wide variety of different strengths of net. Some fishermen do like to work a thinner twine, or monofilament twine, because it catches fish better anyhow, because the lighter the net the more efficient it is at catching fish. You have got to strike a balance between having a net that is strong enough to withstand the rigours of fishing and being caught on the bottom and having a net that will catch fish successfully.

Q16 Mr Mitchell: Presumably, the escape-friendly nets would not last as long?

Mr Muirhead: They would not, no.

Q17 Diana Organ: There is a cost on that, the cost of replacing them?

Mr Muirhead: Yes.

Q18 Mr Breed: We were discussing a little while ago the necessity of having observers on boats, and so on. Defra is indicating at the moment that it will be done on a voluntary basis that observers may go onto the boats. What practical difficulties do you think they may encounter in putting observers onboard boats?

Mr Muirhead: I am sorry to be nationalistic but I think the British fishermen probably will not have a problem with that, in fact they have gone along with that already, but I fear there may be some resistance from the French trawlermen. If I can diversify slightly, the EEC proposal suggests that there are observers on five per cent of the boats, and that will be mandatory, that the Member State puts observers on five per cent of the boats. I think that is rather a low figure and I would have thought, particularly in the height of the bass trawling season, the figure should be more like 50% than 5%.

Q19 Mr Breed: As a mandatory legal requirement?

Mr Muirhead: Within the Defra proposal, it is a mandatory requirement, that the Member State puts observers on five per cent of the vessels.

Q20 Mr Breed: Presumably, that has got to be agreed by the European Commission and the Parliament?

Mr Muirhead: Yes, that is right.

Q21 Mr Breed: You do not know where they are, in that process, at the moment?

Mr Muirhead: I do not, I am afraid.

Mr Winterbottom: I think negotiations started only at the beginning of September, at official level.

Q22 Mr Breed: What role do you think the Sea Fisheries Committees themselves could play in enforcing Defra's proposals?

Mr Winterbottom: The resulting UK regulations, to implement what I assume will end up as an EC Regulation, habitually give Sea Fisheries Committee officers powers to enforce, so, as is usual, Sea Fisheries Committees would play their part in enforcing this legislation. Of course, also, the

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Committees have patrol boats, and one of the suggestions in the Commission's proposal is that, in the cases where fishing boats are too small to take an observer, and, if I may say, that is very often the case on inshore boats, which are still surprisingly small, it is a possibility that those Sea Fisheries Committees' patrol boats could be used as a platform for an observer.

Q23 Mr Breed: There is no practical difficulty in having somebody on board, in that sense?

Mr Winterbottom: A three-man boat may not get a fourth on. Some of the boats working are surprisingly small.

Q24 Mr Breed: At the present time, if an enforcement officer goes on a boat, does he wait until the nets are hauled in before he checks what is going on, or does he insist that they are hauled straightaway, or what?

Mr Winterbottom: He requires the skipper to haul. That is the practice for trawl fisheries. For a net fishery, the boat will be here, the nets may be there, and there and there, so he would have to wait whilst the vessel steamed round the fleet of nets and hauled them.

Q25 Mr Breed: On a pair trawling one, do they put observers on both of the boats?

Mr Winterbottom: I am not sure. I would have thought, just on one of the pair.

Mr Muirhead: Usually, it is one of the boats will take the net, the net will go on one boat, and, I suppose, in an ideal world, they would be on the boat which took in the net.

Q26 Mr Breed: What about the sheer numbers of personnel? Would this require a significant increase in the number of enforcement officers and observers, and everything else, and, if that were the case, where would these people come from?

Mr Muirhead: I understand, when they were examining the tuna drift-net fishery, in the South West Approaches, they were using their own personnel at the time. I do know that the EU has employed fishermen, not current members of Defra or other Member States' Ministries, to take part in observation trips on other vessels, particularly vessels working further afield, on the other side of the Atlantic, from time to time. I think they would employ either their own officials or fishermen, or redundant fishermen or retired fishermen, to do it.

Q27 Mr Breed: It would not be a particular problem, in the training, and everything else?

Mr Muirhead: It should not be, no.

Q28 Mr Breed: Can you expand on the suggestion that Defra's proposals would result in enforcement authorities being open to claims from fishermen for loss or damage resulting from enforcement officers carrying out vessel inspections? Would that be a problem, in what they are being required to do, and

what then happens to the nets, perhaps the loss of income because they are being made to haul straightaway, and all that sort of thing?

Mr Muirhead: I think, an observer on a gill net boat would be on the boat for the whole length of the trip, and I would not have thought that the fishermen would have to do anything out of the ordinary. However, if it got to the stage, and I think this would be virtually impossible, where the Sea Fisheries' patrol boats were hauling gear to check whether it had pingers on it, I think, firstly, that would be impossible because the boats are not equipped to do it, and, secondly, it could be open to challenge because it could damage the nets. I think it is unlikely. People observing, in the ordinary course of the fishing boats' operation, should not be a problem.

Q29 Mr Breed: You were saying that you felt there might be a difficulty with some of the French boats accepting observers, and so on. By implication, therefore, are you saying there would not be a particular objection to observers, either voluntarily, enforced, or whatever, on British boats?

Mr Muirhead: I am very sure that there would not be a problem with observers on the gill net boats. I do not think there would be a problem on the pair trawl boats. I have to say that one of the reasons, I think, that we have not got any proper management of this problem to date is because certain of the French politicians and fishermen refuse to accept that there is a problem.

Q30 Mr Mitchell: Even though they are being washed up on their shores. What are the enforcement resources of the Sea Fisheries Committees? If you have a problem, like French vessels wandering into the six-mile limit, what do you do, can you call up a gun-boat and bring in the Fisheries Protection vessels? I get the impression, on the East Coast, they send out a man in a rowing-boat. What are your enforcement powers and role?

Mr Muirhead: I have to say that the 12 Sea Fisheries Committees around the coasts have all got very good vessels now. We have got an extremely good vessel in Cornwall, which is about 25 metres long. It is well capable of going out to the 12-mile limit, although at the current time we have jurisdiction out to only six. It patrols the edge of the six-mile limit frequently, often at night, to check that there are no offences being committed. It would not be a problem to patrol beyond that if it became necessary.

Q31 Mr Lazarowicz: You have told us that the vessels responsible are mainly from France, with this year, I think, four from Scotland. What kind of monitoring do you carry out to enable you to reach this conclusion?

Mr Muirhead: There have been observers on these vessels. There is evidence of the problem. It will take me time to go through the paperwork I have got, but I think you will find, in the *cetacean by-catch response*, there are figures saying how many cetaceans were caught by pair trawl vessels. Our fishermen, in fact, in Mr Breed's area, off Looe, the

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mackerel fleet, when they have been out fishing, they have gone out in the morning and steamed into areas where the bass pair trawlers have been working the night before and found dead fish floating on the surface of the sea. The bottom trawlers have caught bodies of dead cetaceans in the areas in which they have been working, and in the winter months large numbers of bodies, I think it was 267, were washed ashore around the South West, up till the end of April. I know, in Cornwall, in May, after the fishery had ended, there were only seven, so it is pretty conclusive that this is the problem. As I said, if you study the *UK response*, produced by Defra, that gives figures as to the amount of cetaceans that have been caught over various trial periods.

Q32 Mr Lazarowicz: The boats involved in this fishery, is the pattern of the last year, which you were telling us about in terms mostly of French and four from Scotland, a pattern which has existed over a few years, or how much variation has there been from year to year?

Mr Muirhead: I am afraid, I cannot tell you that exactly, but I am aware that it is a problem which has been developing over the last 10 years, and as fishing boats become more efficient at catching their fish they become more efficient at catching other things as well.

Q33 Mr Mitchell: Gentlemen, thank you very much indeed. We are very grateful. That is interesting evidence, and it was good to hear it from the people on the spot and most intimately involved. Did I detect a preference, when you said your vessel could operate between the six and 12, would it be logical to extend the writ of the Sea Fisheries Committees from six to 12?

Mr Muirhead: This is something for which we have been pressing for some time, and we feel that the Sea Fisheries Committees could well police that area, which is our territory, and, in fact, Mr Winterbottom might enlarge on that perhaps.

Mr Winterbottom: As I am sure you know, Chairman, Defra are conducting a review of enforcement at present. We have said previously, as an Association, that we could deliver an enforcement service out to 12 miles, and I am sure my Association will repeat that bid this time round.

Mr Mitchell: Thank you very much. I am absolutely impartial, as the Chairman, but, of course, you are dead right, in that. If there is anything else that occurs to you afterwards that you would like us to consider, or add to your evidence, please do not hesitate to drop us a line, but we are grateful for the reinforcement of the evidence that you gave us. Now God speed you back to the West Country. Thank you.

Supplementary memorandum submitted by David Muirhead, Association of Sea Fisheries Committees of England and Wales (C7a)

Having had the evidence submitted by Dr Nick Tregenza, I think it may be helpful if I write to the Committee to clarify the position relating to gill nets.

Gill nets are worked for a large variety of different species of fish. The mesh size varies according to the type of species being caught. Further to this, some nets are worked as drift nets, others are set along the seabed where, basically, they form a wall of nets along on the bottom of the sea.

The nets are called gill nets because the fish push their heads through the meshes and become caught by the gills. The mesh size therefore depends on the size of the fish being caught, in particular the head. On the one hand therefore you have very small mesh nets to catch fish like pilchards and herring, with a mesh size of say two inches. You then have slightly larger mesh nets to catch fish such as bass and Pollock (4½ inches), slightly larger again for cod, culminating in mesh size as high as 12 or 14 inches, which are worked for species such as angler fish (monk), turbot and ray. These larger mesh nets are commonly called tangle nets and do not stand particularly high off the seabed.

As I explained to the Committee, in order to catch a fish it will have to be able to get its head caught in the net. Cetaceans have large heads. You will therefore need a large mesh net to catch any of these species. I have spoken to fishermen who have worked nets for pilchard and herring. In a lifetime of fishing they have never caught a cetacean of any kind. The mesh size is just not big enough. If there is a problem it has to be with the larger mesh nets. There is however very little evidence that they are a problem.

As explained to you, the “pingers” are very expensive to buy (£60 was suggested). It was suggested by Mr Winterbottom that nets made of weaker material might be a way of solving any problems which are found.

I therefore suggest that it is necessary to ascertain which mesh sizes cause a problem, if any. The vessel owner should then be given the option of either fitting pingers or using a weaker mesh. I do not think that there will be any problems with the smaller mesh sizes. It should therefore not be necessary for any restrictions to be imposed on these types of nets.

As I stated in my evidence, the major problem is with the bass pair trawlers. There is ample evidence of this. There is no need for observers to be put on boats to find out what we already know. Any boat wishing to fish with this method should be allowed to continue, only using nets with separator grids. Observers should ascertain whether these are successful.

Memorandum submitted by Nicholas Tregenza (C3)

Regarding the number and causes of by-catches, and what research into the matter has been carried out—

I ran the first three observer programs on UK fisheries (offshore netters, pelagic trawlers, tuna drift netters) and have been involved in subsequent research on mitigation and monitoring methods, and declare an interest in these areas. I have represented or been contracted to the Wildlife Trusts and the Sea Mammal Research Unit, but represent only myself in this.

I consider that the species at greatest risk at a population level is the inshore bottlenose dolphin in the south-west of the UK, and that it is necessary to include inshore gill nets in the requirement to use pingers. Evidence from around the world shows that this species is subject to by-catch in these nets, but their numbers are too low here for this to be measured or even detected, although they are our best known dolphins because they spend so much time very close to the coast. The mean reported group size of this species has declined since their return to this area in 1990.

Regarding the likely effectiveness of the Government's UK Small Cetacean By-catch Response Strategy—

I consider this is likely to be:

- effective in reducing porpoise by-catch and in enabling or, more probably, accelerating, the recovery of this species.
- ineffective in protecting inshore bottlenose dolphins.
- useful in promoting movement towards some solution dolphin by-catch in pelagic trawls.

I am doubtful about some of the monitoring proposals and research proposals.

What further steps should be taken either by the Government or by the European Union to address the problem.

The UK government should support the proposal in the recent EC proposal (2003/0163) for a Council regulation on by-catch that pingers be used on all gill nets.

The international politics are a worry and beyond me.

Monitoring of populations should be seen as an opportunity to acquire valuable ecosystem monitoring data through the status of a top predator. Acoustic monitoring of porpoises is particularly suitable in this role.

August 2003

Supplementary memorandum submitted by Nick Tregenza (C3a)

NOTES ON CETACEAN BY-CATCH

POPULATIONS

There is evidence of big declines in porpoises and bottlenose dolphins as seen from the coast of Cornwall and from other locations, but no evidence on common dolphins or other species which are seen too rarely. Bottlenose dolphins disappeared for about 20 years, but returned in 1991. (Tregenza, 1992)

Cause of decline

The timing of the decline of these species is imprecise, but it appears to be between the '40s and '60s so it pre-dates gill netting and pelagic trawling. It would be consistent with organo-chlorine pollution which is known to have affected otters, peregrine falcons etc and there is supporting evidence from cetaceans (Jepson *et al* 1999). Populations of porpoises remained strong in relatively unpolluted areas like the Hebrides. It now looks as though we may be seeing a shift from pollution to by-catch as the biggest impact on cetaceans, with by-catch showing as the major cause of mortality among stranded cetaceans (Kirkwood *et al* 1997).

Could numbers of porpoises rise despite by-catch levels above 1.75%?

Yes. The figure of 1.75% as a target should allow a stable population to remain close to its full numbers. A population that has been shrunk by pollution impacts and is then freed from pollution might be able to grow much faster as competition between individuals would be much reduced. The same effect is thought to explain the finding of humpback whale populations east of Australia growing at 7% per annum following the cessation of commercial whaling.

Present status of these populations

Trends in their numbers are not known. Some weak evidence suggests that porpoise populations in the southern North Sea are rising (Witte *et al* 1998), and possibly also in the south-west of England.

Assessment of population trends: the key to management

If the trend in population of cetaceans were known management measures could be focussed more accurately. At present porpoises and common dolphins populations are assessed very infrequently by very expensive visual surveys that give figures for large areas of sea. Bottlenose dolphins are assessed by similar but localised surveys in parts of Wales and Scotland, and by photographic methods that are based on the recognition of individual animals.

Porpoises—Trends in numbers of porpoises could possibly be assessed more cheaply, and continuously, using acoustic methods. (Kilian, *et al* 2003, Diederichs *et al* 2003). A pilot study of acoustic monitoring of inshore and estuarine levels of porpoise activity would be useful as this might provide much cheaper and more frequent assessment of trends, and the identification of impacts.

Common dolphins—little is known of the geographical extent of the population from which “our” common dolphins come. They are subject to by-catch in numerous fisheries and the total “take” is unknown. (Tregenza & Collet, 1998, Tregenza, *et al* 1997 x 2, Morizur *et al* 2009)

Bottlenose dolphins—two distinct forms are suspected, one living close to the coast and one offshore. No formal assessment of this species around the south-west of England is being undertaken.

PINGERS

Porpoise by-catch mitigation

Cost: the cost is often claimed to be unsupportable, and this may sometimes be true because with high levels of effort and low stocks of fish the profitability of fishing is low, and in some circumstances fishing is a peasant economy in which refinements are too costly. If effort was greatly reduced the profitability would, after some years, be much higher for the smaller numbers of boats. More advanced policies on gear and access would be supportable. New jobs would arise in the fish processing, angling and even tourism sectors and the ecosystem and biodiversity would benefit.

Monitoring: this is difficult. Some pingers cannot be heard without use of a bat detector. All might have been working only hours before inspection.

An alternative: preliminary work has been undertaken on an alternative pinger (the “TAD”) which would have a much longer life before exhaustion of the battery (Tregenza 1999). The Wildlife Trusts are hopeful of finding funding for this. If successful it would allow the manufacture of date-stamped pingers that could be used up to the stamped date without testing but not beyond that date. The success of this device depends on the main cause of porpoise entanglement being the non-use by the porpoise of its own sonar. There is little evidence on this, but what exists is favourable.

Implication: any regulation requiring pingers should allow for exemptions for research purposes, and for subsequent changes in the way pingers are specified or monitored.

Habitat exclusion by pingers

Pingers are known to be “aversive”—they drive porpoises away (Culik *et al* 2001, Cox *et al*, 2001). Recent research has shown that pingers drive porpoises much further away from the net line than was previously known or expected (Berggren *et al* 2002). This excludes them from using an area of sea that would, over a year be less than 10% in the case of the Celtic or North Seas. I think it is unlikely that this temporary redistribution is significant except in the case of coastal inlets—estuaries, deep bays, fjords etc where it may be highly significant. In other locations they resume occupancy soon after the pingers are removed. (Bystedt *et al* 2002)

Dolphins: Pingers inshore

There is evidence that bottlenose dolphins both spend much of their time inshore and do suffer entanglements. Their small population could be critically endangered by less than one by-catch per year around the southwest of England.

PELAGIC TRAWLING: DOLPHIN BY-CATCH

Is it just the bass fishery?

No. Dolphin catches were seen in tows catching mackerel in the Morizur *et al* study (1995), and because of the variable and clumped distribution of the fish and the cetaceans it is to be expected that years will differ greatly in their catch rates in different fisheries. The current generalisation, from a small data set, that it is only the bass fishery is unreliable.

But the mackerel boats don't see any by-catch!

They do sometimes (Morizur *et al* 1995). Perhaps more often by-catch is overlooked by boats that pump their catch aboard, as most mackerel boats do. Dolphins are too big to come through the pump and are hard or impossible to see in the net. They are finally discharged well astern of the boat where they still cannot be seen.

Will grids work?

Possibly, but the evidence so far released is well short of conclusive, and the injuries on some animals suggest they died further forwards in the net than the grid, which would not have helped them. These points are all uncertain and underline the need for continued monitoring.

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October 2003

Further supplementary memorandum submitted by Nick Tregenza (C3a)

THE EXEMPTION OF INSHORE NETS FROM A PINGER REQUIREMENT

An offshore-only pinger requirement would cause a redistribution of netting effort into the inshore zone, which is the principal area of residence of the small but very valuable population of inshore bottlenose dolphins. It is thought that their are inshore and offshore forms of this species here as in other areas of the world. Net by-catch of bottlenose dolphins is known from Scotland, Wales, Ireland but not England. This does not mean that bottlenose dolphin by-catch does not occur in England, as six factors make its identification unlikely—

1. The population at risk is very small—a few tens of animals.
2. Mistaken or vague species identifications are common.
3. There is a very low rate of spontaneous reporting of all known forms of by-catch (MAFF obtained only nine reports over two years when the true number was many hundreds.)
4. These heavy dolphins would rarely come on board a boat. Due to their weight they would drop out of the net, or be cut out, outboard.
5. A serious by-catch rate would be less than one animal per year for the whole English coast.
6. The evidence of inshore by-catch is more widespread than we covered in the hearing e.g. a study of effects of nets in Wales, done by the RSPB, documented several porpoises caught in inshore nets in a single trip along the coast interviewing fishers.

If there is no use of pingers to protect the inshore bottlenose dolphins, a net-free zone within one mile of the coast would provide very valuable protection.

The bottlenose dolphins are of huge value to the tourist industry as they are often seen by visitors and are the highlight of many holidays in Cornwall and Devon. Wherever solitary bottlenose dolphins take up residence a local upsurge in tourism, cafes, boat trips etc. rapidly develops.

THE MONITORING OF MIDWATER (PELAGIC) TRAWLING

The trend is towards larger pelagic boats. There is a strong case for moving, at a European level, towards 100% observer cover of these boats in all waters. The cost of observers should be borne by the industry, as this industry has access to a bountiful resource and makes large profits. Its compliance with the requirements placed on it can only be assured by observers on boats whose role would include catch as well as by-catch monitoring. These observers need to be managed independently and proper observation should be a condition of fishing for these boats.

11 November 2003

Witness: **Mr Nicholas Tregenza**, Academic, examined.

Q34 Mr Mitchell: Mr Tregenza, welcome back. To launch in straightaway, in your view, is Defra's strategy going to be effective in reducing the by-catch, if it does not include inshore gill nets in any requirement to use pingers?

Mr Tregenza: I think it would be seriously weakened if it did not include inshore gill nets, for a number of reasons. One is, I think, the by-catch of porpoises in those nets is quite significant. It has not been measured specifically by observers in the UK. The reason that is not done is because it is really hard to organise, you have to put a lot of people on a lot of trips which do not haul a great deal of net, so you do not build up a picture very quickly. It has not been

done here but it has been done in other countries, and the finding basically is that inshore nets catch porpoises just as effectively as do offshore nets, so it will be weakened in that respect. Even worse would be the problem that one of your Committee referred to, that you would have great difficulty in devising a pinger regulation that you could actually enforce, if you have got this area inside six miles where you do not have to have them. Really, it means you can only test for compliance at sea, because anywhere else the fishermen can say, "Well, yes, I knew my pingers weren't quite right at the moment and I was only going to work inside six miles, I have only been working inside six miles," and you have no way of

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disputing it. So no conviction would ever be secure and it would be an enormous loophole in the regulation. Checking them at sea is a really difficult task, and the whole monitoring task with pingers is a serious one, on which I am sure you will need to focus. Basically, you will have a few failures, so if you put your officer on a boat and they haul net and he tests the pingers and one out of five is not working, what do you do? One out of five, probably the pingers will still be working okay as a means of reducing porpoise by-catch, so nobody will accept a regulation which requires every pinger to work. So you will have to have the chap sitting there, watching an enormous number of pingers come in, to show that this boat is not using its pingers properly. I think this "no pingers inside six miles" will make it much more difficult to monitor compliance. The other inshore/offshore thing was about bottlenose dolphins.

Q35 Mr Mitchell: Let us continue with the pingers. What is the problem with pingers, are they delicate things which get crushed in the machinery and bashed about, or what?

Mr Tregenza: They were. They are getting very much better, and the Seafish Authority is just doing a study on how well they stand the bashing, basically. It looks as though there are one or two designs probably which will be durable and practical, so we are hopeful that they will carry on working for a long time after they are put in place.

Q36 Mr Mitchell: Are they battery-operated?

Mr Tregenza: Yes.

Q37 Mr Mitchell: That has to be replaced each trip, does it?

Mr Tregenza: No. The best one would require a new battery every two years, but, changing all the batteries, if you have got eight miles of net in the back of the boat, it is a stack this thick, it takes hours to pull it all out and change the pingers. You can do it at sea, but, as you saw in the video, it is a very congested, busy work area and everything is wet with sea-water, it is not the best place to be trying to change batteries.

Q38 Mr Mitchell: How many are attached to a particular net? You say a failure rate of one in five?

Mr Tregenza: There are two designs at the moment. One of them would require a pinger every 100 metres and the other would require a pinger every 200 metres, and, in both cases, if one pinger failed the ones either side would cover for it, basically.

Q39 Mr Mitchell: If it were either 200 metres or 100 metres?

Mr Tregenza: Yes. They scare the porpoises a long way off, typically 500 metres away, so single pinger failures do not result in the system starting to catch a lot of porpoises.

Q40 Mr Mitchell: Pingers should be universally required, this is what you are saying?

Mr Tregenza: Yes.

Q41 Mr Wiggin: Is not there a problem? If you have got an eight-mile net, pinging all the way along, you are going to interfere seriously with the habits of the porpoises. That is a long way to drive an animal away from its food?

Mr Tregenza: It is, but they never set at eight miles, they would set eight nets of one mile. It is true, you are excluding the porpoise from an area that is a kilometre wide with a net down the centre of it, but that is not the only fish and chip shop in town, as it were, the porpoise can go somewhere else. You are displacing them. They seem to come back fairly quickly, within about three hours. People have tried to assess the extent of this habitat exclusion, and it comes out at a few per cent. I estimate, in the Celtic Sea, it is under 1%. Where it is worrying is if you started having pingers in estuaries or fjords or places like that, because then you would trap any animals that were in there, or block any that wanted to come in, and really you would disturb their ability to move round their habitat.

Q42 Mr Wiggin: Then you have got the problem with bottlenose dolphins which can be inshore or offshore, have you not?

Mr Tregenza: Yes. We think there are two kinds of bottlenose dolphins. One live mainly offshore, and we are not quite so worried about them as the ones that live inshore, which you saw in the video, and they live very close to the coast.

Q43 Diana Organ: Following on from what Mr Wiggin has been asking, it is all a matter of balance, and whatever. How much are fishermen tending to set gill nets near the coastal inlets, so that it is trapping porpoises into those estuaries? Is there a real problem with that, or is it something that might happen?

Mr Tregenza: It is not as bad as it might be because in a lot of those estuaries they are not allowed to set gill nets anyway, because of regulations under the Bass Act. Mr Muirhead would know more about that than I do, but most of those estuaries already are net-free.

Q44 Diana Organ: Given that, the question about the balance between what might be causing a displacement of porpoises, that they are not setting their nets in those inlets so we do not have to worry too much about that, and actually being able to do it, therefore should we not make pingers compulsory possibly in some inshore fisheries, and we pick and choose where they are, depending on the distribution of, say, bottlenose dolphins?

Mr Tregenza: The bottlenose dolphins constantly motor around the coast of Cornwall and Devon and up into Dorset. There is no clear pattern.

Q45 Diana Organ: You are saying that there is an obvious thing, that the pingers cause porpoises to displace, and we would be worried about it if they got trapped in inlets, and then we said that fishermen are not allowed to set their gill nets near coastal

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inlets. Given that is the case, cannot we say then it is compulsory in certain areas where we are worried about the bottlenose dolphin population?

Mr Tregenza: I am not worried about the displacement issue.

Q46 Diana Organ: Are you not?

Mr Tregenza: Not really, no, because I think it is much less serious than the by-catch issue, and it does not cover a very large percentage of the seabed, and the inlets are being dealt with already mostly by the Bass Act.

Q47 Diana Organ: You are looking to see that they are compulsory on all inshore UK fisheries?

Mr Tregenza: Yes.

Q48 Mr Drew: Just to pursue Diana's line of inquiry, do you not think your approach is a bit blunt, to put it mildly, in the sense that we have a specific problem with a relatively small number of the cetacean species? If I were a fisherman, could this not be seen, in a sense, as a sort of slippery slope, that you start with a six-mile limit and you walk it onwards from that? Clearly, this is the EU intending to impose their will. Is there any compromise here, or is there going to be a major falling-out?

Mr Tregenza: Overall, I do not think this is a slippery slope, I think it is a serious issue. The porpoise by-catch in the Celtic Sea, for instance, when we measured it, was 6% per annum. That is more than the population is likely to be able to sustain. Common dolphins, the ones that get caught in the mid-water trawls, we cannot really assess the total take because they get caught in a lot of different fisheries, the same population of common dolphins. For bottlenose dolphins, again, we cannot really assess the level of take. For all these, we do have good evidence of really serious declines. Porpoises used to be in our harbours. Virginia Woolf used to see porpoises up the Ouse, in Sussex, four miles from the coast, they are never seen there now. They used to be fished in the Fal, they are never seen there now. People were employed to shoot them in Cornwall's estuaries in the 1930s, they have disappeared, so they are in trouble. Bottlenose dolphins disappeared from Cornwall for 20 years, or so. Common dolphins, we really could not say what has happened to the numbers there, but in the Mediterranean they have absolutely crashed. These animals are in trouble, and we do have to take a precautionary view.

Q49 Diana Organ: Their numbers have crashed not because of fishing, have not they crashed because of the pollution?

Mr Tregenza: Yes, I think you are right. We interviewed 1,000 people in Cornwall for their memories of these animals and it was clear the decline preceded gill nets, and really it seemed best to fit organochlorine pollution, which was what decimated otters, peregrine falcons, sparrow-hawks, and so on. Otters are coming back magnificently now that has been controlled. Everything that is known about the chemistry and the biology fits with

it hitting these animals hard, so they are out of the frying-pan into the fire. The pollution issue is improving, but in the meantime the gill net issue has come along.

Q50 Diana Organ: If we could get, say, the water and sewage companies to clean up their act, so that the inshore and coastal inlets waters were cleaner than they are now, the numbers of all of these animals, which we would wish to see swimming around in our waters, would rise, and there would not be the problem that we are faced with. It is not a fishery effort that is causing their numbers to deplete?

Mr Tregenza: It is not what caused it to deplete initially, but it may be causing it to stay low, continue to fall, or maybe it is creeping back up. We cannot really tell you which of those three is happening at the moment.

Q51 Diana Organ: It just seems a bit unfair to put all the cost on the fishermen when actually there is a real responsibility from other organisations, notably water companies, to do something about decreasing the pollution?

Mr Tregenza: Water companies were never involved in controlling organochlorine pollution, that was restriction of pesticides and PCB chemicals used in industry.

Mr Mitchell: One is the enemy of the other. Here are two problems which are killing them.

Q52 Mr Breed: You will be aware that in recent years we have put more and more regulation, more and more cost, on our fishermen, and their ability to function as a profitable business has been reduced considerably. If we were to introduce compulsory pingers, and judging by the examples you have shown us they do not exactly seem to have been subject to nanotechnology, quite yet, what would be the impact of those additional costs on fishermen generally, if we were to say they should be used compulsorily?

Mr Tregenza: I know roughly what the costs are, what the actual impact will be I am not so sure about. For some small inshore fishermen, that would be the last straw. In a way, another view is that this is an abundant natural resource that is chronically overfished, so the fishing industry staggers along as a kind of peasant economy, with everybody saying, "We can only just make a living." If it were downsized substantially, fish stocks would rise, individual fishermen would be relatively wealthy, they would be able to afford these things, and most of the negative impacts of fishing would be diminished, enforcement costs would go down. There is always a confusion of fisheries policy, as to whether it is a kind of job management scheme or a fish production management scheme, and mostly the science is always focused on the fish stock when maybe it should have been focused on how do you get jobs by spending this amount of money?

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Q53 Mr Breed: You are heading into interesting and deep waters, I think. Effectively, what you are saying is it might be desirable to lay the whole load of cost on the fishermen, reduce the number of fishing vessels, who would then be profitable because they could afford all the measures to do that. Then we would protect fish, and overall we would see fish stocks rise again perhaps, and there would be new opportunities, but getting from where we are to there might be a painful process?

Mr Tregenza: Yes, and I do not think you can get there just by piling costs on them, I think you have to decommission the industry and hold down its size, so that then you have a small and very profitable, happy industry.

Q54 Mr Breed: Just supposing that if pingers do not prove wholly effective, and perhaps some of the other measures, and we still see continuing problems, what action do you consider should be taken then to protect the cetacean population?

Mr Tregenza: Pingers have worked very well in porpoise populations, the porpoise by-catch in gill nets, but if they did turn out not to be working so well, my next best choice would be the breakable nets, as it were, that might be a good one. After that, I do not know really, it would be a difficult situation. The gill nets have a lot of good features actually, they are very selective on fish size.

Q55 Mr Breed: There is not an exhaustible number of options, if we are going to take this matter seriously?

Mr Tregenza: No. People talk about alternative fishing techniques, but they are not easily come by.

Q56 Mr Mitchell: That brings us right to the nub of the Common Fisheries Policy argument. If extra costs are imposed on our industry it is usually asked to bear it, if they are imposed on other industries it is usually subsidised by the government, and from what we heard earlier the problem is largely one of French vessels?

Mr Tregenza: That is the common dolphin by-catch in mid-water trawls, yes. I agree, largely that is French vessels.

Q57 Alan Simpson: You mentioned in some of your earlier comments the difficulties of monitoring, and I think you set out quite a clear picture of the complexities of doing that, and, say, what are we going to do if there is one in five of the pingers that are defective? Just trying to think that through, it struck me that, in practice, we would have something like the tolerances that the police use in terms of speeding, so that if we were able to set up effective monitoring, if one in five were defective you would be told to get it repaired or replaced, if two in five you would be in breach. That would be the rule of thumb. This depends upon there being a set of mechanisms that work. You are doing some work on the effectiveness of pingers as they stand. Just on your TAD pinger, how does that differ from what we have currently?

Mr Tregenza: These pingers scare the animals away, they are very loud in the water. The thing I am working on is much quieter, actually it sounds like a porpoise using its sonar, and porpoises respond by using their sonar back to investigate what it is. We have some evidence, from the work I have done with the Newlyn fishermen, that the animals get entangled when they are going round not using their sonar. All these cetaceans have sonar, like bats, they send out pulses and listen for the echoes, and it may be the silent porpoise that is the problem, and this little device might make the silent porpoise switch on its sonar, spot the net and behave accordingly. We have established with the Newlyn fishermen that porpoises are frequently around their nets without getting caught. Fifteen years ago, or 10 years ago, we thought they just could not see the nets, blundered into them and got caught. Now we know that mostly they manage to avoid them, but just occasionally they do not. This device would make them turn on their sonar and spot the net, and its batteries will run for so long you could build them, date-stamp them and then just look at the pinger on the net and say it is out of date, no argument, you knew, everybody knew, it would be much easier as an enforcement thing. I do not want to say anybody should start waiting for this, because it is a long process, it may not work at all, it may not be the correct diagnosis of the problem.

Q58 Alan Simpson: Are you the only ones looking at new types of pingers?

Mr Tregenza: Other people are looking at more complicated pingers that save batteries by pinging only if there is a porpoise around, but, basically, there is only me and somebody in Denmark, yes.

Q59 Alan Simpson: At some point, questions will be thrown up about the economics of this, what you describe as the peasant industry, whether the economics of this sort of approach are sustainable for the industry at all, and we would need to understand where the costs are coming, as well as who is going to be picking up the bill for them. Have you got very far with this, given it is just you and this other person in Denmark?

Mr Tregenza: I do not think you should even think about these things in the future as something. . . They are very speculative. We know that these pingers cost about £60 each, you have one every 100 metres on your net. If you are a boat like the one you saw in the BBC footage, that is £9,600 to pinger-up his nets and it is about £500 for batteries every year, and it is the time to do the battery change every two years, which is probably about four man days of work.

Q60 Alan Simpson: In terms of cost-effectiveness on this, and given there is a great deal of uncertainty as to what it is that causes cetaceans to be able to swim comfortably without getting caught and other cetaceans to get caught, if we do not know the answer to that, are you confident in your own mind

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at this stage, in terms of what we need to do, that there is a compelling case for pingers, as opposed to different types of break netting?

Mr Tregenza: That idea of lower-strength net has not really been researched yet. You might find it worked for the animals but the fish catch went down or the nets had to be replaced every six months, so really it has to go through the whole cycle of build them and put them into fishery trials, which is quite a slow process. I think at the moment pingers are the only thing we can see that can reduce the by-catch.

Q61 Mr Wiggin: We have talked all about netting, and I buy dolphin-friendly tuna, which is hook-caught, as I understand it. We do not have any of that in the UK, do we, and are there any casualties that come from hook-caught fish, particularly tuna, of cetaceans?

Mr Tregenza: Very few. Line-catching methods generally are much more cetacean-friendly. It is not true the other way round. In different parts of the world, dolphins are stealing off lines, and that is becoming a major problem and then fishermen start shooting them, and so on.

Q62 Mr Mitchell: Did I hear you say that the cetacean switches off its own sonar?

Mr Tregenza: Yes.

Q63 Mr Mitchell: What is it doing, is it just having a nap?

Mr Tregenza: No, it is going around just listening to all the sounds, instead of listening to the echoes.

Q64 Mr Mitchell: It is receiving, not transmitting?

Mr Tregenza: Yes.

Q65 Mr Mitchell: Is this for long periods?

Mr Tregenza: We do not know, because the sound is in a very narrow beam. You put something in the water, if you cannot hear them you think, "This beam is probably shining just past my equipment." We have very little idea about how much time they have their own sonar off.

Q66 Mr Mitchell: It is not running down its own internal batteries, or wasting them?

Mr Tregenza: Yes, it is energy-costly for the animal to use its sonar, so it has got an incentive to go silent at times.

Q67 Mr Lazarowicz: In your written evidence, you emphasise that, to quote you: "The current generalisation, from a small data set, that it is only the bass fishery [that is responsible for dolphin by-catch] is unreliable." I think you are of the view that the cause of cetacean by-catch will differ from year to year, depending upon a number of circumstances. Am I correct in thinking that is your view?

Mr Tregenza: Yes.

Q68 Mr Lazarowicz: The information from the observers that Defra put on the UK vessels, from a total of 190 days at sea, covering a large range of fisheries, came up with the conclusion that it was

only the bass fishery that had a problem with the cetacean by-catch. How is it that you have a different view of the cause of the problem?

Mr Tregenza: I do not think they have got it wrong. I think they are right in those few years, but this by-catch in the mid-water trawl fisheries varies a lot from year to year, and [referring to a graph] that is the sort of annual dolphin strandings, and this big peak in 1991–92 a lot of those had autopsies and they had mackerel in their stomachs. I think, at that time, they were feeding mainly on mackerel. In the study that I ran with French, Dutch and Irish colleagues on mid-water trawls, we had by-catch in trawls that were catching mackerel, they were set for horse mackerel, actually they were catching mackerel. In fact, those Dutch boats, whenever they were seeing dolphins and catching mackerel they were also catching dolphins. One of the things I have learned, studying this, is one year is not the same as the next, and in the pelagic trawl fishery is particularly true. I think it is essential that observers go on more than just the bass fishery, because they will find a different pattern in some years.

Q69 Mr Lazarowicz: Do you think we have the evidence to suggest which particular range of fisheries might be responsible for by-catch on a more longer-term basis than on the evidence of recent years?

Mr Tregenza: We have got some. In the study that I referred to, the bio-eco study, there were quite a lot of mid-water trawl fisheries west of Brittany that were catching dolphins, and they have had huge strandings there, 600 or 700 animals coming in, in two or three weeks, twice since 1989, and these do seem to be mid-water trawl strandings. Really, this problem exists all the way up the west coast of Europe, it is not just the bass fishery here.

Q70 Mr Lazarowicz: I was going to ask on that point, because some of the other evidence we have had certainly points to historic problems in the North Sea fishery, off the Western Isles of Scotland, for example. Within the UK's waters, which particular areas do you think should be regarded as the main source of the problem at the moment?

Mr Tregenza: The bass fishery definitely has got to be top of the list.

Q71 Mr Lazarowicz: It is right to focus on the South West of England fishery, as the main source of the problem at the moment?

Mr Tregenza: For common dolphins, yes. For porpoises, it is both really, the Celtic and North Seas.

Q72 Mr Lazarowicz: You were suggesting, if I heard you correctly, earlier on, that the use of pingers will be compulsory on all UK inshore and midshore fisheries, is that correct?

Mr Tregenza: Yes. That is to deal with the porpoise by-catch, that is a much more widespread problem. It produces far fewer animals on the beaches and

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does not attract so much media attention, but it is probably rather more serious than the common dolphin by-catch in mid-water trawls.

Q73 Mr Lazarowicz: Which fishery would you consider to be responsible for the by-catch when it comes to the porpoise species?

Mr Tregenza: Really, all the fisheries that use nylon, whether it is hake nets or tangle nets, they do catch them. Mr Muirhead's idea of a net that the animal bounces off does not actually work terribly well in practice, and really they all do seem to catch them.

Q74 Mr Lazarowicz: From a policy point of view, do you want to concentrate on the dolphin, that we should be looking at the by-catch much more widely?

Mr Tregenza: Yes, but the measures required are so different. Pingers do not work on the trawl fisheries, they work only for the porpoise by-catch in nets, so I think separate measures have to be introduced to deal with those problems.

Q75 Mr Mitchell: Just a final word about separator grids, in the Defra strategy document; can you explain briefly how it works? Is there a kind of hole in the net that they can escape from, or is it not a powerful net?

Mr Tregenza: This is in the mid-water trawl fishery, so they are towing an enormous cone of net to concentrate the fish, then they have a cylindrical net in which the fish are finally captured. In the front of that cylinder they put this sloping grid, with a flap over the top, so the dolphin can go up the grid and out through the top of the net.

Q76 Mr Mitchell: Right; so can the fish, of course?

Mr Tregenza: They can, but they do not.

Q77 Diana Organ: How does the dolphin know that is the flap that lets him out? I am looking at this diagram, and I could not work out why all the fish could not escape, and who had taught the dolphin that you have to go in and then you come up and you go out that way?

Mr Tregenza: It is searching. The flap actually is weighted down slightly, so it does stay closed and the fish cannot really push it open, but the presumption is that the dolphin does push it open. I was very sceptical that this would work.

Q78 Mr Wiggin: Is this not to do with the fact that the dolphin has to breathe air, and therefore the dolphin needs to go up whereas other fish do not need to escape?

Mr Tregenza: Yes, that is a good point. The dolphin has a bias towards going up because that is where the air is. Thank you.

Q79 Mr Mitchell: You are not enthusiastic about them?

Mr Tregenza: I think the initial results are very encouraging, but every gambler is encouraged by the first break in a run of bad luck.

Q80 Mr Mitchell: I thought you were arguing that the evidence so far is far from conclusive?

Mr Tregenza: Yes. It is far from conclusive, but it is encouraging.

Q81 Mr Mitchell: The fact that Defra is banging on about Scottish fishermen keeping them, having tried them out, and that far fewer dolphins are caught, this is not the end of the story, we need still more research?

Mr Tregenza: We do, because the fishermen do have an interest in saying, "Okay, chaps, problem solved, we've all got the grid, you can all go home." It may not be solved. It may be working because the noises associated with it scare the dolphins away from the net anyway, and, if so, they might stop being scared after a year or two.

Q82 Mr Mitchell: Are the noises the clanking of the grid, or what?

Mr Tregenza: The clanking of the grid and the sort of electronic surveillance equipment on it transmitting information back to the boat, at very loud intensities that make these pingers seem very quiet, so it is a very, very noisy system. If it is just noise that is doing it, they may habituate to it, whereas if the grid works it probably carries on working.

Q83 Mr Mitchell: Your concern is that they do not work, or they kill animals, or what?

Mr Tregenza: I think it is very promising, but it does have to be observed over a period to check that it delivers its early promise. I do not have any objection to it.

Q84 Mr Mitchell: Thank you very much. We are very grateful to you for coming along and sharing your expertise, which is very impressive. If anything else occurs to you that you might like to put to us, given the fact that you have now seen the pattern of questioning and thinking on the Committee, please do not hesitate to do so, because we are just starting out on the area and any help is very useful?

Mr Tregenza: I appreciate your work on it. I think this was an exceptionally good document, it had integrity and depth and was much appreciated.

Mr Mitchell: Thank you very much.

Monday 10 November 2003

Members present:

Mr David Drew
Mr Mark Lazarowicz

Mr Austin Mitchell
Diana Organ

In the absence of the Chairman, Mr Austin Mitchell was called to the Chair

Memorandum submitted by The Wildlife Trusts (C6)

Our response is split into four sections focusing on: The Wildlife Trusts unique experience and understanding of By-Catch and fisheries issues; The Wildlife Trusts response to the UK By-Catch response strategy; The Bass Pelagic Trawl By-Catch problem; and finally The Wildlife Trusts initial views on the CFP proposal for a regulation laying down measures concerning incidental catches of cetaceans in fisheries. A full response is attached.

The Wildlife Trusts are a unique partnership of 47 local Wildlife Trusts covering the whole of the UK and the Isle of Man and Alderney. The partnership campaigns for the protection of wildlife and invests in the future by helping people of all ages to gain a greater appreciation and understanding of nature. Collectively The Wildlife Trusts have approximately 413,000 members and manage almost 2,550 nature reserves covering more than 80,000 hectares of land, ranging from inner city urban sites to the UK's finest wildlife areas on the coast.

Central to the marine conservation work of The Wildlife Trusts is a vision of healthy marine habitats supporting a natural diversity of species. However, we also recognise the social and economic value placed on marine resources and this vision includes the sustainable management of these resources, believing that balancing the needs of wildlife and people is essential for the future of both.

The Wildlife Trusts campaign to bring about changes that will benefit our marine environment and the biodiversity it supports. By working with decision makers, industry and regulators, we can raise our concerns about the need for the sustainable management of the marine environment to benefit people and marine wildlife.

The Wildlife Trusts initiate and contribute to scientific research in order to develop a broader understanding of the UK's marine environment and the ecology of important and threatened species. We help to develop best practice and solutions to conflict with nature conservation.

The Wildlife Trusts are happy for this response to be made available for public inspection in the Department's library. This response is made on the behalf of The Wildlife Trust Partnership, which consists of 47 individual charities with an overall membership of 413,000 members of the public.

SECTION 1: THE WILDLIFE TRUSTS AND BY-CATCH AND FISHERIES ISSUES

1.1 The Wildlife Trusts have been monitoring and carrying out research into By-Catch for over 10 years. We were involved in the development of the first observer schemes in the hake fishery, which is implicated with serious porpoise By-Catch levels. Research carried out by Cornwall Wildlife Trust volunteers aboard fishing vessels helped to establish the extent of the By-Catch of our smallest cetacean, the harbour porpoise in the deep-water gill net fishery for hake. At an estimated 6.2% annual mortality, this is greater than any regional cetacean population can withstand.

1.2 Since the first results of this study were released in 1992, the UK Government and European Union have consistently agreed at international and EU levels to take action to reduce By-Catch—even as recently as the North Sea Conference in March 2002. But no genuine action has been seen, and the death toll continues unabated.

1.3 Nick Tregenza of Cornwall Wildlife Trust working with SMRU have been involved in work to reduce these deaths, through trialling acoustic porpoise deterrents known as “pingers”. These devices can be attached to nets to help the animals to detect them. The Wildlife Trusts have also supported the development of an automated porpoise detection device (the POD) that can be attached to nets to establish whether “pingers” are effective. More recently our researchers have been considering the development of an alternative device to pingers which may have more ecological and practical advantages (see Appendix 1).

1.4 In recent years Wildlife Trusts volunteers and our local record centres have been working with the Natural History Museum ensuring that By-Catch victims are recorded, so that we have a better understanding of the numbers of cetaceans that are stranded on our beaches and that information is correctly recorded so that we also understand what might have been the cause of death.

The Wildlife Trusts' position on cetacean By-Catch and fisheries management

1.5 The Wildlife Trusts believe that the problem of cetacean By-Catch is a problem of fisheries management. As well as failing to conserve fish stocks for the future, current regulatory frameworks, both national and international, are failing to provide fisheries managers with the means to tackle the serious threat to cetacean populations from By-Catch.

1.6 There is no single answer to the problem. For example, technical measures have a part to play, but they cannot succeed on their own. What fisheries managers need is a “toolkit” of measures that will provide them with the information to make decisions and the means to take action. The Wildlife Trusts believe that such a toolkit¹ should include:

- **technical measures** to provide a “background” level of protection, especially where the extent and scale of the problem cannot be fully quantified
- **monitoring schemes** that provide a “real time” picture of By-Catch incidents, which will, if levels exceed a threshold, trigger. . .
- . . . **responsive management measures**, including time and area based closure of fisheries.

1.7 It is likely that elements of this toolkit may not prove popular with some sectors of the fishing industry, particularly the concept of time and area based closures. However, the Wildlife Trusts believe that the ability to make short-term closures in key areas of cetacean activity will be far less painful than alternatives, which would have to include the full-scale closure of specific fisheries as a precautionary measure.

1.8 We also believe that none of these measures will work in isolation and that all three elements will have to be in place and available to fisheries managers if the threat to cetacean populations from By-Catch is to be removed, and international commitments met.

1.9 The Wildlife Trusts believes that fisheries managers must be given the means to put in place technical, monitoring and responsive management measures in order to remove the threat to cetacean populations.

1.10 The rest of our evidence on cetacean By-Catch is set against this context.

SECTION 2: THE UK BYCATCH RESPONSE STRATEGY

The Wildlife Trusts' General Response

2.1 The Wildlife Trusts welcomed the publication of the UK small cetacean By-Catch response strategy and the fact that it clearly acknowledges the seriousness of the problems of cetacean By-Catch in fisheries in UK waters and beyond. We are also very pleased to see that the UK Government has made a firm commitment to take action and provides a list of proposals for where action should be considered.

2.2 In general, The Wildlife Trusts welcome the recommendations made for a greater commitment to By-Catch monitoring and research on cetacean populations and status. We also acknowledge that this government has been instrumental in gaining approval at ASCOBANS that By-Catch levels above 1.7% are unacceptable. The issue now is: how will the UK Government swiftly reduce levels of By-Catch to less than 1.7% in UK Waters?

2.3 The UK small cetacean By-Catch strategy fails to set this sort of target, preferring to look at action over the next three years. We are therefore very concerned that the UK Government is failing to abide by the policy it has been advocating within the ASCOBANS framework. The UK Government committed itself to reduce By-Catch levels to less than 1.7% three years ago. There is no excuse to delay action for a further three years. Indeed, we would argue that this is another failure of the UK government to implement international commitments in UK waters. We have known about the unsustainable levels of harbour porpoise By-Catch in the Celtic Sea and North Sea for over 10 years. In 1992, Nick Tregenza working on behalf of The Wildlife Trusts provided evidence of By-Catch level of over 6.2% in the Celtic Sea hake fishery².

2.4 With this in mind, the aims of the strategy are by no means as robust as we would have liked. We are particularly disappointed with paragraph 4 of section 1:

“to identify what measures can be taken to work towards reducing small cetacean By-Catch to below the 1.7% target set by the third Meeting of the Parties to ASCOBANS in 2000. Where practicable, the strategy should also work towards the reduction of By-Catch to the lowest possible level.”

¹ Although in this evidence we are setting out a fisheries management toolkit for addressing cetacean By-Catch, the same model of technical measures, real time monitoring and responsive management measures could also prove useful in wider fisheries management.

² Nick Tregenza. 2001. Impacts of gill nets on inshore megafauna in Cornwall. A report to the Cornwall Sea Fisheries Committee.

2.5 This sort of language does not reassure us that all efforts are being made to address the problems of cetacean By-Catch and so meet international commitments in UK waters. As an alternative, we believe that the clear and absolute aim should be set:

“to identify what measures can be taken to reduce By-Catch to below the 1.7% target swiftly and to put these measures in place as soon as possible.”

2.6 The Wildlife Trusts believe that the UK Government must strengthen the aims of the UK small cetacean By-Catch strategy to swiftly bring By-Catch levels to below the 1.7% target set by the third Meeting of the Parties to ASCOBANS in 2000.

2.7 The strategy needs to give a clear indication to the fishing industry that existing levels of By-Catch will not be tolerated and that mitigation measures will have to be put into place. The strategy must also suggest that if the mitigation measures are not accepted or fail then closure of some fisheries will be considered.

Pingers and the UK By-Catch response strategy

2.8 We acknowledge the potential for pingers to substantially reduce harbour porpoise By-Catch in certain fisheries and therefore give qualified support to their mandatory use in gillnet fisheries identified.

2.9 However, we consider that given the broad uncertainties regarding their effectiveness and impacts on distribution of cetaceans, the use of pingers should be regarded at this stage as a short-term mitigation measure. It is extremely important that the deployment of pingers is conducted only in association with appropriate observer schemes and is subject to thorough monitoring and evaluation.

2.10 The Wildlife Trusts are concerned that the current proposal relies too heavily on the use of pingers and does not consider other potential mitigation measures such as more selective fishing measures or technical (non acoustic) alternatives.

2.11 We are concerned that the UK By-Catch response strategy suggests that gill nets used within 6 nm of the coast will be excluded from the requirement to use pingers. Small groups of Bottlenose dolphins and porpoises are found in inshore waters and are vulnerable to a developing gill net fishery within 6 nms particularly in the south west of England and off Kent.

New fisheries

2.12 Finally, we are concerned that the document gives no attention to the assessment of the possible effects of new fisheries. We believe that all new fisheries or significant changes in practice should require an environmental impact assessment.

2.13 In 1999 a commitment to the mandatory application of EIAs to new fisheries was made by the UK Government in response to the House of Commons Agriculture Select Committee.

“We believe that it should be part of the work of CEFAS and FRS to assist in the development of new fishing grounds through proper stock assessments. We also believe that as part of that research the scientists should ensure that the environmental impact of fishing for new species or in new grounds should be fully taken into account.”

The Government response was:

“The Government agrees that the development of new fisheries can raise environmental issues which need to be properly assessed by scientists.” Eighth Report from the House of Commons Agriculture Committee Session 1998–99, “Sea Fishing” (HC141-I).

2.14 The Wildlife Trusts believe that all new fisheries or significant changes in practice require an environmental impact assessment.

SECTION 3: THE BASS PELAGIC TRAWL BY-CATCH PROBLEM

3.1 Every winter, since the late 1980s, scores of dead dolphins are being washed up on the shores of England and France, most showing clear evidence of having died in fishing nets. Nick Tregenza of Cornwall Wildlife Trust published a paper highlighting this issue back in 1998³.

³ Common dolphin *Delphinus delphis* By-Catch in pelagic trawl and other fisheries in the North East Atlantic. N.J.C. Tregenza. Institute of Marine Studies, University of Plymouth, Drake Circus, Plymouth PL4 8AA, UK. Anne Collet. Centre de Recherche sur les Mammifères Marins Institut de la Mer et du Littoral, Port des Minimes, 17000 La Rochelle, France—(published REP.INT WHAL. COMMN 48, 1998 453–459).

3.2 In recent years, the problem has dramatically increased and the numbers of dead dolphins have risen to unprecedented levels. Between 1 January and 31 March of 2003, 265⁴ dead dolphins and harbour porpoise were discovered on the shores of south west England. This is 149 more than the previous year and the highest number of dead dolphins ever recorded in the UK for that time of year. Tragic as it is, even this number pales into insignificance next to the hundreds that are washed up on French shores at the same time⁵.

3.3 In 2002, and over a period of just 10 days, more than 300 dolphin and porpoise stranded along the Atlantic coast of France. The majority of these animals showed signs of being caught in fishing nets, such as broken beaks and torn fins. But this figure is only the tip of the iceberg. Scientists believe that the number of dolphins that come ashore could be less than 10% of the actual number that are killed⁶. This means that over 2,650 (based on UK figures) may have been killed during the winter of 2003.

3.4 Evidence suggests that the main reason for this catastrophic death toll is the pelagic pair trawlers who target the bass fishery during the winter months in the English Channel and Western Approaches. Recorded strandings of dolphins and porpoise in Cornwall and Devon have risen steeply since 1970⁷. While a small percentage may be attributed to improved reporting, the very marked increase in numbers of common dolphins stranded in the late winter months coincides with the fishing season of the bass fishery.

3.5 In 2001 observers placed on UK pair trawlers targeting the winter bass fishery in the channel recorded a catch of 53 common dolphins in 11 tows⁸. The following year, UK Fisheries Minister Eliot Morley stated that he believed over 50 dolphins were being killed every day in this fishery⁹.

3.6 The fishery has been active for over 15 years during an annual 3-month period and an estimate based on the fisheries minister's statement suggests that during this period over 45,000 dolphins may have been killed in the bass fishery.

3.7 During the summer months bass is caught commercially using rod and line, longlines, gill nets trawls etc. From January to March spawning bass are targeted offshore. The bass fishing fleet is made up of a group of trawlers working in pairs, hauling a large net between them to catch as many fish as possible as quickly as possible. These trawlers are often referred to as midwater or pelagic trawlers.

3.8 The EU pelagic pair trawling fleet consists of vessels from various nations, the relative numbers of which vary slightly from year to year. As a rule, there are around 40 vessels from the French Biscay ports, six to eight Scottish vessels and around 15 Dutch and Danish.

3.9 The bass fishery is largely unregulated and there are no restrictions on the quantity of fish caught offshore. This lack of control, and especially, of an upper limit makes it an attractive proposition. In addition to this, bass is high in value, currently selling at between £4 and £7 per kilo.

3.10 Sample surveys by CEFAS in 2000 and by the Sea Mammal Research Unit (SMRU) in 2001, produced compelling evidence of a significant By-Catch problem in the bass fishery off south west England. The pair trawling teams monitored caught dolphins at a rate a little in excess of one every two hauls. The research did not find a similar pattern in other pelagic fisheries. DEFRA fishery officers have stated that CEFAS collected video recording of dolphins being caught in the nets of bass pair trawlers (pers comm).

The Common Dolphin population size

3.11 The available information on dolphin populations in the north eastern Atlantic is not reliable. The locations of distinct populations are very indistinct and the life history of common dolphins makes them very difficult to accurately assess. Two separate studies of common dolphins in the north eastern Atlantic have produced varying population estimates.

3.12 Two formal line transect estimates of cetacean abundance have been made in the north east Atlantic. The first, the MICA survey in 1993¹⁰, covered the area of the French tuna fishery and estimated a local summer population of 61,888 common dolphins (95% CI 35,461-108,010). The second, known as the SCANS survey, was carried out in 1994¹¹ in the Celtic Sea estimated a local summer population of 75,449 common dolphins.

3.13 On the basis of these studies then there may be as few as 75,449 dolphins in the area being targeted by the bass fishery or as many as 137,337—the sum of both surveys. Based on these estimates and the number of animals stranded in the winter of 2002–03 it is possible to make a rough estimate of the total mortality

⁴ *Data source:* The National Cetacean Stranding Programme at the Natural History Museum, London. Research funded by DEFRA.

⁵ The Wildlife Trusts are currently trying to find an accurate report of the number of dolphins that were washed up in France this winter.

⁶ Tregenza, N.J.C., Berrow, S., Leaper, R., Hammond, P.S. (1997) Harbour Porpoise, *Phocoena phocoena* L., by-catch in set gill nets in the Celtic Sea. *ICES J. of Mar. Sci.*, 54, 896–904.

⁷ *Data source:* ERCCIS—The environmental records centre for Cornwall and the Isles of Scilly.

⁸ Incidental catches of small cetaceans. Report of the second meeting of the Subgroup on Fishery and Environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF). Brussels, June 2002.

⁹ Department for the Environment, Food and Rural Affairs. Statement by Mr Morley fisheries minister 26 February 2002.

¹⁰ (Goujon *et al.*, 1993. *Mesure de l'Impact des Captures Accessoires*).

¹¹ (Hammond, *et al.* 1994. *Small Cetacean Abundance in the North Sea*).

of the population based on the actual number of dolphins that were washed ashore in England. This figure would increase significantly if we had access to the number of dolphins that came ashore this winter in France

3.14 The total of English strandings this year was 265, which, assuming that shoreline strandings represent 10% of total By-Catch deaths, means that approximately 2,650 animals were killed in the fishery this year. An estimate for the percentage of the population that might have been caught in the pelagic fishery therefore lies between 2 and 3.5%.

3.15 The European Commission guideline for sustainable By-Catch for common dolphins is set at 1.7% of the population annually. However, this figure is almost twice the 1% figure recommended by the International Whaling Commission (IWC).

3.16 Whichever figure is used to indicate sustainable By-Catch, the fact that population sizes are so poorly understood means that we could have already exceeded even the most conservative limits every year since the bass fishery began.

3.17 The International Committee for the Exploration of the Seas has repeatedly identified By-Catch as the single biggest threat to dolphins and porpoise. All sectors of the fishing industry have some form of By-Catch, which may include sea birds, turtles and even other fish. The European Commission has accepted that there is a serious threat to porpoise populations from the various gillnet fisheries, but despite a wealth of empirical evidence, the European Commission and some member states still demand more scientific proof of the problem in the pelagic sector.

3.18 The mass strandings all happen at the height of the midwater bass trawling season in northern Europe (January to April) and in areas where the bass fishery in particular is active. These fisheries are operated by several countries in international waters and therefore they need to be regulated at European Commission level.

3.19 The Wildlife Trusts believe that the midwater bass fishery may already be exceeding the most conservative estimates of sustainable By-Catch for common dolphin each year in the Western Approaches and that this fishery needs to be regulated by the European Commission as a matter of urgency.

SECTION 4: THE WILDLIFE TRUSTS' INITIAL VIEWS ON THE CFP PROPOSAL FOR A REGULATION LAYING DOWN MEASURES CONCERNING INCIDENTAL CATCHES OF CETACEANS IN FISHERIES

4.1 The Wildlife Trusts have recently welcomed the opportunity to comment on the Commission's Proposal for a council regulation laying down measures concerning incidental catches of cetaceans in fisheries (EC) No 88/98. The Wildlife Trusts are pleased at last that the EU is taking some action to fulfil part of the commitment made by the Commission in its reform of the CFP to introduce "new set of technical conservation measures designed to reduce By-Catch of cetaceans to levels guaranteeing favourable conservation status of cetacean populations before 31 December 2002" (Annex to the Community Action Plan to integrate environmental protection requirements: COM(2002)186 final).

4.2 We welcome the Commission's acceptance of the importance of fisheries By-Catch and the acknowledgement that some fishery operations are a major threat to small cetaceans in European waters.

4.3 While The Wildlife Trusts welcomes the EU proposal as a sign of a commitment to addressing the issue of cetacean By-Catch, we have a number of reservations about the process being put forward.

4.4 We have five main areas of concern:

4.5 Issue 1—The limitations of the current proposed council regulation

4.5.1 The Wildlife Trusts believe that neither the CFP nor the current proposed regulation are not adequately addressing the problem of cetacean By-Catch.

4.5.2 The current EU proposal focuses on the use of technical measures such as pingers and monitoring programmes. These may play a role in reducing some By-Catch and will provide us with more information on what some cetaceans are being caught by specific fisheries. They perhaps can be considered as an important first step, but one that will not solve the EU's By-Catch problems. We believe the European Commission should be taking a much more holistic approach to the management of fisheries and the significant reduction of By-Catch in certain fisheries. We believe that technical measures have a part to play, but they cannot succeed on their own. What fisheries managers need is a "toolkit" of measures. Refer to section 1 of this response.

4.6 Issue 2—Monitoring of the pelagic fishery alone is not enough

4.6.1 The current proposal concentrates on monitoring and gathering information. This alone will not prevent thousands of dolphins being killed yet again during the winter pelagic trawl season. It is important that the measures themselves are effective in gathering information and informing the wider By-Catch reduction measures. The information collected should be seen as a tool, which drives adaptive and flexible management schemes. If levels of By-Catch in a particular fishery hit a significant level then the EU must

use this information to apply emergency measures, which may include closing a fishery¹². For this to be achieved, a wider framework is required, to put monitoring measures such as these in the context of strategies for reducing By-Catch. This would include the setting of specific conservation objectives, an action plan for meeting them and a review process against delivery.

1. *If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall not last for no more than six months.*
2. *The Member State shall communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned. They may submit their written comments to the Commission within five working days of receipt of the request.*
3. *The emergency measures will have immediate effect. They shall be notified to the Member States concerned, and published in the Official Journal.*
4. *The Member States concerned may refer the Commission decision to the Council within 10 working days of receipt of the notification.*
5. *The Council, acting by qualifying majority, may take a different decision within one month of the date of receipt of the referral.*

4.6.2 The Wildlife Trusts recommend that work on the drawing up of a wider framework for the development and implementation of By-Catch reduction strategies is started in parallel with consideration of existing proposals, this framework to include conservation objectives, actions plans and a review process.

4.6.3 Within this framework levels of acceptable By-Catch for each fishery must be agreed according to levels agreed at the IWC and ASCOBANS. If the number of dolphins and other cetaceans caught exceeds 1%¹³ then the fishery must be closed immediately. Agreement on the 1% level must be agreed prior to the 2004–05 fishery season. This is a similar approach to the USA Take reduction plans.

4.6.4 However, unlike the US we have a very poor understanding of common dolphin stock boundaries or sizes to know if and when the sustainable limit might be reached. We must therefore ensure that we take a very precautionary approach to setting the numbers of human-caused deaths the marine animals can withstand and still reach and maintain an optimum population size. Scientific judgement must not be over ridden by political sway.

4.6.5 In the USA, the federal government is responsible for the protection of any marine mammal stock in which the potential biological removal level is being exceeded. This level is defined as the number of human-caused deaths the marine animals can withstand annually and still reach and maintain an optimum population level. The figure for East Coast harbour porpoises is 483 individuals.

4.6.6 Within the management framework, which will need to be implemented at both an EU and other appropriate levels a management objective will need to be set. The Wildlife Trusts endorse the general aims identified by ASCOBANS:

“to restore and/or maintain populations to 80% or more of the carrying capacity and to minimise (ie to ultimately reduce to zero) anthropogenic removals”

and the intermediate precautionary objective agreed by ASCOBANS:

“to reduce By-Catches to less than 1% of the best available population estimate”.

4.6.7 We strongly support the requirement of a By-Catch reduction plan for each individual By-Catch problem, drawn up and implemented with the involvement of stakeholders and agreed between all relevant countries. In particular, we endorse the recommendation that such plans define objectives, targets, timeframes and responsible parties and also address enforcement and ongoing surveillance of the mitigation measures. We also support the proposed timetabled default management options in the absence of effective implementation of mitigation measures. This process has already been supported by the SFGN¹⁴.

¹² Article 7 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries under the Common Fisheries Policy states that:

1. *If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last for more than six months.*

2. *The Member State shall communicate the request simultaneously to the Commission, to the other Member states and to the Regional Advisory Councils concerned. They may submit their written comments to the Commission within five working days of receipt of the request.*

3. *The emergency measures will have immediate effect. They shall be notified to the Member states concerned, and published in the Official Journal.*

4. *The Member States concerned may refer the Commission decision to the Council within 10 working days of receipt of the notification.*

5. *The Council, acting by qualifying majority, may take a different decision within one month of the date of receipt of the referral.*

¹³ ASCOBANS 2000. Resolution on incidental take of small cetaceans. Annex 9c of Proceedings of the Third Meeting of the parties, Bristol UK.

¹⁴ Incidental catches of small cetaceans. Report of the second meeting of the Subgroup on Fishery and Environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF). Brussels, June 2002.

4.6.8 The Wildlife Trusts believe that the management objectives set by the EU By-Catch reduction measures should include the general aims identified by ASCOBANS:

“to restore and/or maintain populations to 80% or more of the carrying capacity and to minimise (ie to ultimately reduce to zero) anthropogenic removals”

and the intermediate precautionary objective agreed by ASCOBANS:

“to reduce By-Catches to less than 1% of the best available population estimate.”

4.7 Issue 3—On-board observer schemes

4.7.1 The current regulation will not be ratified until July 2004. We believe the UK government should be calling for the mandatory observer schemes to be brought forward in time for the Bass pelagic fishery of 2004.

4.7.2 The schemes adopted by each member state must be developed in order that we have a common approach to the collection and reporting of data. This system must be transparent and records should be sent to the commission throughout the fishery season, not just annually. It is only this sort of rapid dissemination of results that will allow adaptive and flexible management schemes to be put into place. We do not want a situation of waiting for a three year survey to be published before any action is taken. There is sufficient evidence to suggest that there is a significant By-Catch issue within the English Channel during the winter months.

4.7.3 We are also disappointed that the EU proposal calls for a 5–10% coverage for the pelagic fleet. The Wildlife Trusts believe that the compelling evidence of mass By-Catch fatalities during the December to March season warrants much higher levels of observers—a view that was supported by the SGFEN.

4.8 Issue 4—The need for further research on mitigation measures

4.8.1 The regulation currently fails to recommend the development of technical alternatives (other than other acoustic devices) and The Wildlife Trusts believe that the regulation should place a duty upon Member States to finance the development and implementation of alternatives in order to secure long term solutions to the incidental capture of small cetaceans in fishing gear.

4.9 Issue 5—The deployment of pingers in specified fisheries

4.9.1 We acknowledge the potential for pingers to substantially reduce harbour porpoise By-Catch in and therefore give qualified support to their mandatory use in gillnet fisheries.

4.9.2 However, we consider that given the broad uncertainties regarding their effectiveness and impacts on distribution of cetaceans, the use of pingers should be regarded at this stage as a short-term mitigation measure. It is extremely important that the deployment of pingers is conducted only in association with appropriate observer schemes and is subject to thorough monitoring and evaluation.

5. SUMMARY OF WRITTEN EVIDENCE FROM THE WILDLIFE TRUSTS

5.1 The Wildlife Trusts believe that the problem of cetacean By-Catch is a problem of fisheries management and that fisheries managers must be given the means to put in place technical, monitoring and responsive management measures in order to remove the threat to cetacean populations.

5.2 The Wildlife Trusts believe that the UK Government must strengthen the aims of the UK Small Cetacean Bycatch Strategy to swiftly bring By-Catch levels to below the 1.7% target set by the third Meeting of the Parties to ASCOBANS in 2000.

5.3 The Wildlife Trusts recommend that pingers should be deployed on all inshore nets in areas, such as the southwest approaches and Kent, where there is evidence of By-Catch in inshore gill nets.

5.4 The Wildlife Trusts believe that action needs to be taken immediately to bring down the unsustainable levels of By-Catch taking place in UK waters. The UK Small Cetacean Bycatch Response Strategy needs to give a clear indication to the fishing industry that existing levels of By-Catch will not be tolerated and that mitigation measures will have to be put into place.

5.5 The Wildlife Trusts believe that the strategy needs to take into account that harbour porpoise populations in the English Channel are already much depleted with respect to historical levels and that as a result even low levels of By-Catch pose a threat. A suite of measures to reduce By-Catch should be put in place with the aim of bringing this population back to a favourable conservation status.

5.6 The Wildlife Trusts believe that all new fisheries or significant changes in practice require an environmental impact assessment.

5.7 The Wildlife Trust believes that the midwater bass fishery may already be exceeding the most conservative estimates of sustainable By-Catch for common dolphin each year in the Western Approaches and that this fishery needs to be regulated by the European Commission as a matter of urgency.

5.8 The Wildlife Trusts recommend that work on the drawing up of a wider framework for the development and implementation of By-Catch reduction strategies is started in parallel with consideration of existing proposals, this framework to include conservation objectives, actions plans and a review process.

5.9 The Wildlife Trusts believe that the management objectives set by the EU By-Catch reduction measures should include the general aims identified by ASCOBANS:

“to restore and/or maintain populations to 80% or more of the carrying capacity and to minimise (ie to ultimately reduce to zero) anthropogenic removals”

and the intermediate precautionary objective agreed by ASCOBANS:

“to reduce By-Catches to less than 1% of the best available population estimate.”

5.10 The Wildlife Trusts believe that on-board observer schemes need to be in place by the winter of 2004–05. Reporting must be transparent and records need to be sent to the European Commission throughout the period that the fishery is being prosecuted—not on an annual basis. We also believe that the compelling evidence of mass By-Catch fatalities between December and March season warrants much higher levels of observers than the proposed 5–10%.

5.11 The Wildlife Trusts believe that further thought and research into possible mitigation methods is required. It is important that these are developed jointly by cetacean scientists and the fishing industry.

5.12 The Wildlife Trusts believe that the deployment of pingers is conducted only in association with appropriate observer schemes and is subject to thorough monitoring and evaluation.

September 2003

Memorandum submitted by the Whale and Dolphin Conservation Society (WDCS) (C13)

SUMMARY

- (i) WDCS welcomes the EFRA Sub-committee’s enquiry into cetacean By-Catches. We also welcome the production of the UK small cetacean By-Catch response strategy and the European Commission’s proposed Regulation on cetacean By-Catch.
- (ii) These initiatives acknowledge the importance of fisheries By-Catch as a threat to cetaceans and identify some immediate remedial measures that can be taken. We strongly welcome some of the measures and give qualified support to others, but consider that further measures will be needed to address the problem effectively.
- (iii) Fisheries By-Catch is recognised to be the major threat to small cetacean populations in many regions. There are numerous examples of unsustainable and unacceptable levels of By-Catch in fisheries in UK and neighbouring EU waters.
- (iv) WDCS acknowledges the potential for properly deployed acoustic deterrent devices (pingers) to significantly reduce porpoise By-Catches but supports this proposal only as a short-term measure, with comprehensive monitoring for efficacy and impacts, and the active development of alternative mitigation measures and fishing methods.
- (v) WDCS strongly supports the Commission’s proposal for mandatory observer schemes. However, the levels of observer coverage proposed, represent only the minimum recommended levels or even lower.
- (vi) WDCS welcomes the Commission’s proposed restriction on driftnets in the Baltic Sea to 2.5 kilometres and their subsequent prohibition as a vital step to assist the survival of the critically endangered Baltic harbour porpoise population.
- (vii) The proposals fail to provide for the strategic management framework that WDCS and others have advised is essential to address the problem of cetacean By-Catch. This should identify management objectives, ensure that By-Catch reduction plans are devised and implemented, and enable the continuous monitoring, evaluation and adjustment that will be required to achieve effective By-Catch reduction.
- (viii) Other omissions include any commitment to Environmental Impact Assessment; targeted effort reduction as a By-Catch reduction measure; By-Catch monitoring and mitigation in EU distant water fisheries; and measures to reduce By-Catch in the pelagic trawl sector which, in the absence of other effective measures, should include the option of suspending or closing the problem fisheries.

1. INTRODUCTION

1.1 In October 2002 WDCS made a submission to the EFRA Committee enquiry into the reform of the Common Fisheries Policy (CFP). In this, we urged the Committee to include in its considerations the impacts of fisheries on non-target species and habitats, and whether the proposed reforms are adequate to deal with these matters.

1.2 In particular, we highlighted the commitment made by the Commission to bring forward a *“new set of technical conservation measures designed to reduce By-Catch of cetaceans to levels guaranteeing favourable conservation status of cetacean populations before 31 December 2002”* and our concern that such provisions may not provide the necessary framework and legal standing to ensure that this problem is addressed effectively.

1.3 We are, therefore, gratified that the Committee has set up a Sub-committee to investigate this issue and we welcome the opportunity to contribute further to this process.

1.4 Since the Committee's investigation into the Reform of the CFP, there have been two important developments that may lead to some progress to address this problem. First, in March 2003, the UK Government published its consultation document, the *UK Small Cetacean Bycatch Response Strategy*. Second, in July 2003, the European Commission published its *Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98*.

1.5 This submission briefly outlines the problem of cetacean By-Catch in UK and European waters and comments on the proposals put forward by the UK Government and the European Commission to address it, and further measures that we consider are necessary to deal effectively with the By-Catch problem.

2. BY-CATCH OF CETACEANS BY THE FISHING INDUSTRY

2.1 The By-Catch of cetaceans in fisheries is recognised to be one of the greatest threats to populations of small cetaceans and has been highlighted by various international fora including the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS). Several fisheries and sea areas have already been identified where By-Catch presents a serious and unsustainable problem. The case of pelagic driftnets used in tuna and swordfish fisheries is an example of a highly destructive practice that has now been addressed by the EU in the form of the driftnet ban that came into effect in January 2002. However, there is ample evidence of problems in other fisheries that have yet to be addressed. Moreover, many fisheries in the EU that present a threat to cetaceans are not yet being monitored for their By-Catch. Therefore, the data that are available represent only a minimum estimate of the scale of the problem.

2.2 Harbour porpoises are prone to capture in bottom-set gillnets and high incidences have been recorded in a number of fisheries throughout their range. The losses of harbour porpoises in the Celtic Sea bottom-set gillnet fishery were investigated using onboard observers in the early 1990s. This revealed an estimated mortality of 2,200 animals per annum, or roughly 6% of the local population¹⁵. It has been agreed internationally that an annual loss of even 1% of a population should be a cause for concern and merits investigation as a matter of priority¹⁶.

2.3 Observers on Danish vessels fishing in the North Sea have provided an estimate of 6,785 porpoises caught annually in the Danish gillnet fishery¹⁷ and approximately 1,000 were found to be caught in UK gillnets in the North Sea¹⁸. The Danish catches alone represent some 4% of the porpoise population of the area. In addition, losses to other fisheries in the North Sea are yet to be investigated.

2.4 In the Baltic, the harbour porpoise population has declined significantly in recent years, and is thought to number as few as 600 animals. They are still caught in both bottom-set and surface drift gillnets¹⁹. This population has been identified as a priority for conservation efforts and an Action Plan has been agreed for their recovery²⁰ but so far little has been done to reduce By-Catch levels.

2.5 There is also a significant European By-Catch of dolphins occurring, as evidenced by the hundreds of dead dolphins that regularly wash up on French and adjacent English coasts over the winter months. As early as 1991, these strandings were attributed to trawlers²¹.

2.6 During the 1990s, observer studies of By-Catch in pelagic trawl fisheries recorded dolphin catches in four fisheries targeting sea bass, hake, tuna and horse mackerel²². The report notes that, given the size of the European fleet and the amount of fishing effort, the total number of animals caught may be significant. It also observes that the By-Catch estimate must be treated as a minimum because, for instance, some fishing fleets refused to take observers on board.

2.7 A Dutch observer study of By-Catch in the pelagic trawl fishery for mackerel and horse mackerel was conducted in the early 1990s²³. The main species caught in this fishery was the Atlantic white-sided dolphin but other species caught included long-finned pilot whales, common dolphins, bottlenose dolphins and white-beaked dolphins. In 1994, a total catch of 172 dolphins were recorded by 12 Dutch and two English vessels in this fishery.

¹⁵ Tregenza, N.J.C., Berrow, S.D., Hammond, P.S. and Leaper, R. 1997. Harbour porpoise (*Phocoena phocoena*) by-catch in set gillnets in the Celtic Sea. ICES Journal of Marine Sciences. 54:896–904.

¹⁶ IWC 1995. Report of the Scientific Committee. International Whaling Commission.

¹⁷ Vinther, M. 1999. Bycatches of harbour porpoise (*Phocoena phocoena*) in Danish set-net fisheries. J. Cetacean Res. Manage. 1 (2):123–135.

¹⁸ Northridge, S.P. and Hammond, P.S. 1999. Estimation of porpoise mortality in UK gill and tangle net fisheries in the North Sea and west of Scotland. Paper SC/51/SM42 submitted to International Whaling Commission Scientific Committee.

¹⁹ Berggren, P., P.R. Wade, J. Carlstrom and A.J. Read. 1998. Potential limits to anthropogenic mortality for harbour porpoises in the Baltic Region. International Whaling Commission SC/50/SM7.

²⁰ Recovery plan for Baltic harbour porpoises (Jastarnia Plan) ASCOBANS. Bonn, July 2002.

²¹ Simmonds, M. and J.D. Hutchinson 1994. Mass mortality events in marine mammals and their implications for conservation. Scientific Symposium on the 1993 North Sea Quality Status Report 18-21 April. Ebeltoft, Denmark. 227-234.

²² Morizur, Y., Berrow SD, Tregenza NJC, Couperus AS & Pouvreau S. 1999 Incidental catches of marine-mammals in pelagic trawl fisheries in the northeast Atlantic. Fisheries Research 41: 297-307.

²³ Couperus A.S. 1998 Interactions between Dutch midwater trawl and Atlantic white-sided dolphins (*Lagenorhynchus acutus*) southwest of Ireland. J.Northw. Atl. Fish. Sci., Vol. 22: 209-218.

2.8 More recently, an Irish study of a trial pelagic pair trawl fishery for albacore tuna observed 30 dolphins being caught in a single haul, with 145 cetaceans caught by just four pairs of trawlers in a single season²⁴. During 2001 observers placed on UK pair trawlers targeting the winter sea bass fishery recorded a catch of 53 dolphins in 116 hauls²⁵.

3. POLICY DEVELOPMENTS

3.1 Members of the European Union are committed under Council Directive 92/43/EEC (the Habitats Directive) to establish a system to monitor the incidental capture and killing of all cetaceans and, in light of the information gathered, to take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned²⁶. However, it is apparent that few if any Member States are monitoring By-Catch adequately and no Member States are fulfilling the requirement to ensure that By-Catch does not have a significant negative impact.

3.2 Seven of the fifteen Member States are Parties to the UN Agreement on the Conservation of Small cetaceans in the Baltic and North Seas (ASCOBANS). Parties have agreed an intermediate precautionary objective to reduce By-Catches to less than 1% of the best available population estimate²⁷. ASCOBANS has also agreed the general aim *to minimise (ie to ultimately reduce to zero) anthropogenic removals* of small cetaceans.

3.3 WDCS has campaigned consistently for the implementation of these commitments. Amongst many other initiatives, in 2001 we put forward proposals for a *Bycatch Response Strategy—the need for a generic response to By-Catch*²⁸. In light of the escalating dolphin strandings associated with pelagic trawl fisheries, in 2003 WDCS submitted to the European Commission a *substantiated case for Commission emergency measures in pelagic trawl fisheries in the Celtic Sea, Biscay, Channel area*²⁹.

3.4 Some four years after UK Government Ministers first promised to WDCS that a Government strategy would be produced, in March 2003 Defra published its consultation document the *UK Small Cetacean Bycatch Response Strategy*. In July 2003 the European Commission published its *Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98*.

4. UK SMALL CETACEAN BY-CATCH RESPONSE STRATEGY

4.1 WDCS welcomed this document that acknowledges the importance of fisheries By-Catch as a major threat to the conservation of small cetaceans in UK waters and beyond, and sets an important precedent amongst EU Member States and Parties to ASCOBANS. However, we believe there are fundamental flaws and omissions in the proposals that need to be addressed.

TARGETS AND TIMEFRAME

4.2 We do not consider that the targets, objectives or timeframe identified in the UK's Strategy adequately reflect the acuteness of the problem or the need for precaution. For instance, whilst ASCOBANS has adopted the intermediate precautionary objective to reduce By-Catches to less than 1% of the population estimate, the Strategy assumes the 1.7% definition of "unacceptable interaction" for its By-Catch reduction targets. The Strategy proposes that these targets should be met within three years. We believe that the measures set out in the Strategy could be implemented and the proposed targets achieved within one year and that this should be the initial timeframe adopted.

EMERGENCY MEASURES

4.3 The Strategy acknowledges that the most effective method of By-Catch reduction is the closure of the offending fishery. It also outlines the provisions in the CFP Regulation that allow Member States to take emergency measures to restrict or close fisheries if "*there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities. . .*". We

²⁴ Diversification trials with alternative tuna fishing techniques including the use of remote sensing technology. Final Report to the Commission of the European Communities Directorate General for Fisheries. EU contract No. 98/010. Bord Iascaigh Mhara. Irish Sea Fisheries Board.

²⁵ DEFRA Cetacean Bycatch: action in hand. Unpublished briefing. Fisheries Division III (Sea Fisheries Conservation. DEFRA 21 February 2002.

²⁶ Article 12.4 of Council Directive 92/43/EEC (Habitats & Species Directive).

²⁷ ASCOBANS 2000. Resolution on incidental take of small cetaceans. Annex 9c of Proceedings of the Third Meeting of the Parties, Bristol UK.

²⁸ A Bycatch Response Strategy—the need for a generic response to By-Catch. A Wildlife and Countryside Link Statement. March 2001.

²⁹ Cetacean By-Catch in pelagic trawl fisheries in the Celtic Sea, Biscay, Channel area—a substantiated case for Commission emergency measures. WDCS February 2003.

consider it essential that provisions are made within the Strategy for the emergency restriction or closure of fisheries, for instance, where critical new problems are identified, other mitigation measures are unavailable, or By-Catch reduction targets are not met.

PINGER DEPLOYMENT

4.4 We consider that the Strategy over-emphasises pingers (acoustic deterrent devices) as a means to address harbour porpoise By-Catch, although it does acknowledge that there are serious concerns about their use. In summary:

(a) they are unpopular because of cost, maintenance and operational difficulties. As a result there remains a major question over whether they can be deployed, and their use can be enforced, effectively;

(b) their efficacy over the longer term and in commercial fisheries (as opposed to controlled trials) is uncertain. Experience elsewhere has found that efficacy drops over time in commercial use although it is not known whether this is a result of pingers not functioning or porpoises habituating to them;

(c) pingers may result in the exclusion of porpoises from important habitats when used intensively or over wide areas, which could have a significant negative impact on their conservation status.

4.5 We acknowledge the potential for effective pinger deployment to dramatically reduce harbour porpoise By-Catches in gillnets under certain circumstances. We also accept that with regard to the fisheries identified, and in the absence of other effective or acceptable mitigation measures, compulsory use of pingers probably offers the best means of reducing the current unacceptable levels of By-Catch in the short term. However, we do not believe they should be considered or presented as a long term solution.

4.6 We consider that far greater emphasis should be placed on research and development of alternative mitigation measures and more selective fishing methods and that a timeframe should be identified in which to phase out reliance on pingers.

MONITORING AND ENFORCEMENT

4.7 Where compulsory pinger use is proposed, we consider that more attention should be paid to monitoring their deployment, efficacy and potential negative impacts. Observer monitoring should be compulsory wherever pingers are in use. Compulsory carriage of observers has been proposed by the Commission and we question whether the UK Government would be able to support this provision if it is only prepared to propose voluntary arrangements for its own fleet.

4.8 The Strategy proposes a programme of research to identify any potential problems with habitat exclusion associated with pinger use, but only in the case of intensive pinger deployment in coastal areas. We strongly recommend that these potential problems should be assessed in all areas where there is widespread use of pingers.

4.9 The Strategy also proposes that in the Celtic Sea, pinger use should only be mandatory for UK fishing vessels using bottom-set gillnets beyond the 6 mile limit. This proposal will result in a considerable (and possibly increased) amount of gillnet being used in these waters where harbour porpoises and other species, such as the bottlenose dolphin, will be vulnerable to capture. In these waters that are known to have high porpoise By-Catch, we do not find this acceptable. We also suspect that the proposed exclusion of inshore waters from the pinger requirement will present difficulties for the enforcement bodies as there may be tendency for fishermen to set their nets on or very close to the 6 mile limit.

SPECIES RECOVERY

4.10 We are concerned that the Strategy does not address the recovery of populations in areas where they have been depleted. For example, the English Channel is identified as an area where the large amount of set net fishing may act as a barrier to recovery of harbour porpoises. However, no measures are proposed. We consider that management options should be presented for the Channel area including pinger deployment, restrictions on gillnet effort and alternative fishing techniques.

MORTALITY LIMITS AND FISHERY ACCREDITATION

4.11 The Strategy highlights several options for further consideration, such as cetacean mortality limit schemes. We consider that credible implementation of such schemes would depend upon comprehensive observer coverage, rigorous enforcement and would have to be subject to a stringent programme of limit reduction if it was not to become effectively an authorised cetacean catch quota. The document notes that in the case of the Agreement on the International Dolphin Conservation Programme, which operates in the tuna fisheries of the Eastern Pacific Ocean, mortality caps are set on the ultra-precautionary basis of 0.1% of the minimum estimated abundance. This Agreement also requires 100% observer coverage and a system for the tracking and verification of tuna.

4.12 The Strategy also proposes consideration of an accreditation scheme for “cetacean-friendly” fisheries. Again, such a scheme would require comprehensive observer coverage and also total traceability of fish and fish products. Qualification for such a label would have to be based on meticulously clear definitions and criteria, ideally established in legislation.

EFFORT REDUCTION

4.13 The Strategy mentions the potential utility of reduction of fishing effort for the protection of fish stocks as a means of achieving By-Catch reduction. However, the document then states that the UK Government believes that no unilateral action on effort reduction should be undertaken by the UK as part of a strategy to reduce By-Catch. We note that the Community Action Plan to integrate environmental protection requirements into the CFP (COM (2002) 186 final) states that highest priority be given to “*a reduction in fishing pressure on fishing grounds to sustainable levels*” and “*this reduction should target fishing activities having adverse effects both on the sustainability of fish stocks and on the favourable conservation status of non-commercial species and habitats*”. We consider that targeted effort reduction should be used as an active By-Catch reduction measure both at Community and UK levels.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

4.14 While the document acknowledges the need to address existing cetacean By-Catch problems, it makes no provisions for the prior assessment of new fisheries or changes in fisheries policy in order to prevent new problems arising. We consider that EIA should be a mandatory precursor to significant changes or developments in fisheries policy or practice. This would be consistent with the Government’s official reply to the Eighth Report from the House of Commons Agriculture Committee on Sea Fishing where it stated that “The Government agrees that the development of new fisheries can raise environmental issues which need to be properly assessed by scientists”³⁰.

EVALUATION AND ADJUSTMENT

4.15 We were disappointed that, despite our many representations, the Strategy presents only a one-off suite of recommendations and fails to make provisions for a strategic management framework that would enable the continuous monitoring, evaluation and subsequent adjustment that is likely to be required to achieve effective By-Catch reduction. The document states that a formal review should be undertaken within three years of publication and that this does not preclude adjustments in the intervening period. However, we maintain that a formal but transparent process, involving relevant experts and stakeholders with full access to monitoring and implementation data, must be established if proper evaluation and timely adjustment of By-Catch response and mitigation is to occur.

5. Proposal for a Council Regulation laying down measures concerning incidental catches of cetaceans in fisheries

5.1 The development of the UK’s Small Cetacean Bycatch Response Strategy and the Commission’s proposal for a Council Regulation on cetacean By-Catch have followed a parallel process and both are based largely on the advice provided to the Commission by ICES (ACE³¹) and STECF (SGFEN^{32,33}).

5.2 We consider the Commission’s proposal to be a good first step, but one that will not solve the EU’s By-Catch problems in itself. We believe that this Regulation must be built on with further and more far-reaching legislation and this must be done quickly if the momentum of this initiative and the work that has led to it is not to be lost. Therefore, our comments relate both to the specific measures put forward in the proposal and to measures that we consider are still required.

MANDATORY USE OF ACOUSTIC DETERRENT DEVICES

5.3 Our acceptance of the utility of pingers as a short-term mitigation measure under certain circumstances, and our concerns about the efficacy and possible adverse effects of their widespread and longer-term use are set out in paragraphs 4.4 to 4.9 above. Our support for the mandatory use of pingers is subject to the following conditions:

(a) that there is comprehensive observer monitoring of vessels using pingers to assess both efficacy of deployment and By-Catch rates;

³⁰ UK Government’s official reply (Oct 1999) to the Eighth Report from the House of Commons Agriculture Committee Session 1998–99, “Sea Fishing” (HC14101), see S12 (‘Research into new fisheries’).

³¹ ICES 2002. Report of the Working Group on Marine Mammal Population Dynamics and Habitat (CM 2002/ACE:02). ICES 27pp.

³² Incidental catches of small cetaceans. Report of the meeting of the subgroup on fishery and the environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF). SEC(2002) 376. 83pp.

³³ Incidental catches of small cetaceans. Report of the second meeting of the subgroup on fishery and the environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF). SEC(2002) 1134. 63pp.

(b) that there is monitoring of cetacean populations in the affected areas to investigate any potential exclusion effects; and

(c) that there is a parallel programme of development of other forms of mitigation or alternative fishing methods with an explicit view to phasing out pingers within a set timeframe.

BY-CATCH MONITORING

5.4 We strongly support the Commission's proposal for mandatory observer schemes in specified fisheries that pose a risk of cetacean By-Catch and where pinger use is required. We regard this measure as fundamental to any efforts to quantify and address this problem across the broad range of fisheries in which By-Catch occurs.

5.5 However, we are concerned that the levels of observer coverage set out in the proposal represent only the minimum levels recommended by scientific advisors (SGFEN) and in some cases fall below this. For instance, SGFEN recommended that observer coverage should be a minimum of 5–10% in the pelagic trawl fisheries in the Biscay, Celtic Sea and Channel areas, and "as high as feasible" during the December to March period when mass dolphin strandings occur. The Commission proposes only 5% coverage in these fisheries and 10% during these critical months.

RESTRICTIONS ON THE USE OF DRIFTNETS IN THE BALTIC SEA

5.6 The Baltic population of harbour porpoises is severely threatened and is estimated to number as few as 600 animals. Fisheries By-Catch, in both bottom-set and drift gillnets, is considered to be the major threat to this population. Therefore, we warmly welcome the proposed length restriction on driftnets in the Baltic to 2.5 km and their subsequent prohibition by 2007. The sooner these measures are introduced the better will be the prospects of this critically endangered porpoise population.

BY-CATCH MANAGEMENT FRAMEWORK AND STRATEGY

5.7 In the Impact Assessment Form accompanying the Proposed Regulation, the Commission acknowledges the need for a management framework within which a comprehensive strategy can be set up. However, the Commission contends that this cannot be put together at this stage "given the absence of precise information on By-Catch patterns [etc]". We do not accept this contention but regard a management framework as precisely the tool required to identify information needs, assess data that is collected, to devise appropriate management responses for each specific fishery or type of fishery, to oversee their implementation and to evaluate their efficacy and impacts.

5.8 The first and key recommendation of the SGFEN final report on incidental catches of small cetaceans³⁴ is that "a management framework . . . needs to be implemented at an EU and other appropriate levels if cetacean By-Catch is to be addressed adequately". Key features of such a framework identified by SGFEN are that it should include:

(a) **a management objective.** We suggest that such an objective should reflect the general aims identified by ASCOBANS [to restore and/or maintain populations to 80% or more of the carrying capacity and to minimise (ie to ultimately reduce to zero) anthropogenic removals] and the intermediate precautionary objective agreed by ASCOBANS [to reduce By-Catches to less than 1% of the best available population estimate]³⁵.

(b) **monitoring and surveillance schemes.** As provided for by the current proposals although we consider that levels of coverage should be higher than the minimum recommended levels.

(c) **By-Catch reduction plans.** We would strongly support the requirement of a By-Catch reduction plan for each individual By-Catch problem, drawn up and implemented with the inclusion of stakeholders. Such plans should define objectives, targets, timeframes and responsible parties and also address enforcement and ongoing surveillance of the mitigation measures. We would also support timetabled default management options in the absence of effective By-Catch mitigation³⁶. We consider that such management options must explicitly include the suspension or closure of fisheries that pose a serious threat to cetacean populations.

³⁴ Incidental catches of small cetaceans. Report of the second meeting of the subgroup on fishery and the environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries (STECF). SEC(2002) 1134. 63pp.

³⁵ ASCOBANS 2000. Resolution on incidental take of small cetaceans. Annex 9c of Proceedings of the Third Meeting of the Parties, Bristol UK.

³⁶ UK Government's official reply (Oct 1999) to the Eighth Report from the House of Commons Agriculture Committee Session 1998–99, "Sea Fishing" (HC1410I), see §12 ('Research into new fisheries').

ASSESSMENT AND REVIEW

5.9 We do not consider that the Commission's proposals for overall assessment and review of the operation of this Regulation are adequate. Member States are required to report to the Commission on implementation of the Regulation only annually, and the Commission proposes to report only after three years.

5.10 There are a large number of factors that need to be assessed and reviewed in relation to this Regulation, including *inter alia*:

- (i) By-Catch data from the fisheries listed in Annexes I and III and also from other fisheries that may need to be subject to monitoring or mitigation measures;
- (ii) the adequacy and efficacy of implementation of the measures;
- (iii) any negative impacts resulting from the measures, such as habitat exclusion;
- (iv) changes in the fisheries concerned, including those resulting from the measures such as redeployment of effort, that may influence By-Catch levels;
- (v) developments in By-Catch mitigation techniques and alternative fishing methods, and areas requiring further research.

5.11 These factors are likely to be highly dynamic and also inter-related. Therefore, we consider that reporting of relevant information must be more frequent than proposed. The establishment of a Strategic Management Framework would enable the continuous monitoring and evaluation of this information and adjustment of measures that is likely to be required to achieve effective By-Catch reduction.

BY-CATCH MITIGATION IN THE PELAGIC TRAWL SECTOR

5.12 The Explanatory Memorandum acknowledges that gillnets and pelagic trawls appear to contribute most cetacean By-Catch in European fisheries. While mandatory use of pingers is proposed to address the By-Catch in gillnet fisheries, no provisions are made regarding the pelagic trawl sector beyond observer monitoring. While research into By-Catch mitigation in gillnets is more advanced than that in pelagic trawls, the Community must make clear its intention to introduce without delay measures to reduce By-Catch in those pelagic trawl fisheries found to be problematic.

5.13 We acknowledge the UK's research to develop a separator grid for pelagic trawl fisheries and cautiously welcome the promising early results of this work. However, there is still considerable uncertainty as to why the device appears to be working and whether this effect is likely to continue in the longer term and without detriment to the dolphins. Therefore, we consider that there should be a parallel programme of research to investigate possible alternative mitigation measures or fishing methods for these fisheries.

5.14 In the absence of any other effective measures for the mitigation of By-Catch problems in pelagic trawls, the Community must be prepared to introduce urgent management measures including the suspension or closure of fisheries where necessary. In particular, where there is evidence of a serious threat to the conservation of cetacean populations, the Commission should introduce such measures as emergency measures³⁷ (as provided for by Article 7 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy).

EFFORT REDUCTION

5.15 The Explanatory Memorandum states that "scientists consider that mitigation of cetacean By-Catch can be primarily addressed through an overall reduction in fishing pressure" [together with some additional technical measures] and that [odq]an overall reduction of fishing pressure is expected as a result of other community measures aimed at ensuring the sustainability of fisheries[cdq]. While we acknowledge and welcome the measures being planned and introduced to reduce fishing effort within the CFP, we consider that targeted effort reduction should be more actively used as a By-Catch reduction measure in its own right (see 4.13 above).

BY-CATCH MONITORING AND MITIGATION IN EU DISTANT WATER FISHERIES

5.16 Finally, but by no means least importantly, it is essential that the provisions made for By-Catch monitoring and mitigation (as well as the requisite provisions for surveillance and enforcement) are reflected in the Community's regulation of its distant water fisheries. There is ample evidence of cetacean and other protected species By-Catch occurring in distant water fisheries such as those off Mauritania.

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³⁷ Cetacean By-Catch in pelagic trawl fisheries in the Celtic Sea, Biscay, Channel area—a substantiated case for Commission emergency measures. WDCS February 2003.

Witnesses: Ms Joan Edwards, Head of Marine Policy, *Mr Richard White*, Marine Conservation Officer, The Wildlife Trusts, and *Ms Ali Ross*, Fisheries Consultant, Whale & Dolphin Conservation Society, examined.

Q85 Mr Mitchell: Welcome. I apologise for holding you up. We have had certain problems with attendance; some of our members on the Conservative side have been elevated to positions beyond our comprehension, and we are just in awe! We will try and go through the areas of questioning. It is possible there may be a division. Two of you have come from the West Country, which is a considerable distance, and we are very grateful to you for coming. We are taking everybody together. I assume that Ali Ross will come in on issues that are wider than West Country issues; there is life outside the West Country, particularly in the North Sea and Baltic. If you want to add anything to what has been said, please indicate to me. Do not wait to be questioned because you might not get the question you want. Can I ask first about the scale of the problem and how significant you think the By-Catch problem is in terms of the population level and the threat to stocks of cetaceans.

Ms Ross: We divided it up into fairly discrete issues within the whole By-Catch problem. I wanted to start with the problem of harbour porpoise By-Catch, which occurs mostly in bottom set gill net fisheries. This is a problem that has been identified in many areas of the world, but was identified in this region originally in Danish fisheries in the North Sea. They started monitoring those fisheries, and have calculated that during the 1990s, at the peak level of By-Catch, there were over 7,000 porpoises just in the Danish gill nets alone in the North Sea each year. That is a level that is very high—it is a huge number of animals dying—but also a level that is calculated to be something like 4% of the population of porpoises in the North Sea. That level, by any international judgment of cetacean sustainability, would be considered well above what a population could sustain. The UK also has gill net fisheries in the North Sea, largely targeting species like cod, but also turbot, sole and a number of others. The UK fisheries were monitored slightly later in the 1990s; and they calculated a level up to 800 porpoises getting caught in the UK gill net. That is in addition to the 7,000 that were being caught by Danish nets, adding to the unsustainability of that catch. We clearly have a major problem in the North Sea that is fairly widespread.

Q86 Mr Mitchell: Do we know the total populations?

Ms Ross: We have an estimate from a survey that was done in 1994, the SCANS survey, which is Small Cetacean Abundance Survey of the North Sea and north-east Atlantic waters. There is a figure for harbour porpoise, which I think is included in our evidence. That is where this calculation of 4% of the population comes from. Equally, there is an abundance estimate for the porpoise in the Celtic Sea, the areas to the south-west. If I move on to the south-west now, following the concerns about the gill nets in the North Sea, a study was initiated in the gill net fisheries off the south-west in the Celtic Sea. There, the fishery of main concern is the hake gill net fishery, set net fishery. A study of UK and Irish fleets

involved in hake gill net fishing put observers on boats and calculated that certainly in the years they were looking at, it was a total catch of 2,200 porpoises each year. Again, that is a very large number, but if you take it in the context of the population of that area, which again came from the SCANS survey that I mentioned, we are talking of over 6% of that population. I should mention that the judgment of what is a sustainable catch has been assumed by a number of international bodies of scientists, and a figure of 1% of a population being taken is generally considered to be a matter of great concern. Several bodies have made fine-detail calculations, but I think we should take that 6% is far greater than 1%, as being a major issue of concern. To continue with the hake net fishery in the Celtic Sea, it is important to note that the observer work, where they established that level of By-Catch, was done in 1992–94. The results of that were published in 1997, including the fact that it represented over 6% of the population. It is therefore an acute problem in terms of conservation of that porpoise population. Research was started in 1998 to look at potential mitigation measures in that Celtic Sea hake fishery, particularly looking at pinger use. Despite three years of trials, eventually showing that pingers could substantially reduce catches in—

Q87 Mr Mitchell: What is the importance of the post-mortems on stranded cetaceans, the small cetacean population?

Ms Ross: The strandings data is an additional source of data. In terms of the harbour porpoise catches, because we have quite good survey data from observers actually on boats, that is our best estimate, the most reliable way of establishing the scale of the problem. In fisheries where we do not have good observer data on boats, then the strandings data assumes a greater significance, because that is the best evidence of the scale of the problem. Where you have a good observer programme, with observers on boats, that will always be your most reliable measure; although most people acknowledge that even having observers on boats is at most only going to give a minimum estimate of rate of capture. Even on boats, people miss some of the animals. You will not always see all the animals that are coming up; it will only ever be a minimum estimate.

Ms Edwards: We have talked about porpoises and bottom set nets. There are several different fishing issues, By-Catch issues, and obviously the south-west is the one we are particularly aware of. In the local community, the common dolphin issue has caused great concern. We tend to have mass strandings of common dolphins between January and March, and it is felt that these animals are caught in the pelagic trawl fishery for bass and other pelagic fish. Bass fishery starts in the Bay of Biscay. Bass spend a lot of time in estuaries during the summer, and are very important in terms of the economics of the south-west community because of sea angling. Come the winter months, however, bass come together in large numbers and spawn. They go

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to different areas, depending on where they originate from, but they spawn out to sea, beyond six miles, anything from Start Point right down to the Bay of Biscay. The problem is that probably about ten or twelve years ago, fishermen realised that these fish were coming together in very large numbers and provided a great fishing opportunity. Obviously, common dolphins are also aware of this great fishing opportunity, and that is where we are having a problem at the moment. As pelagic boats go after the bass, we then see strandings occurring in the south-west. This year, there were 265 common dolphins found on beaches in Devon and Cornwall. When you come across an animal on the beach, you can see how it has died. It has often got very obvious breakages in its bill. Its bill is quite delicate. It is surprising because you imagine a dolphin in the sea would be quite robust and large, but it has a quite fragile beak, and with an awful lot of the dolphins you come across the beak has just snapped. The view is that it is going along, gets caught in the net, decides it needs to breathe, goes up and gets caught in the net. It probably dies while thrashing the net and actually drowns.

Q88 Mr Mitchell: They are then hauled on board and chucked overboard, are they?

Ms Edwards: When the net is pulled in, that is when they tend to be removed. We had 265 dolphins this year. This fishery is quite well offshore, and the view is that we are probably only seeing about 10% of the animals killed; so we could have had 2,650 dolphins killed this winter off the English coast. Also, there are dolphins coming offshore in the Channel Islands and France as well, so it is a very, very large number.

Q89 Mr Lazarowicz: How extensive is the monitoring of the various fisheries in UK waters and the fisheries fished by UK vessels elsewhere?

Ms Edwards: It is a very different story for each fishery. With the bass fishery, it is unlicensed, so there are no quotas. We know how many vessels are involved because you tend to get that information via Defra. For example, we were well aware that there were eight Scottish boats, four pairs working in a fishery this year, and probably up to 30 pairs, so 60 boats from the French, and probably 15 to 20 Danish and Irish boats. There is no way of knowing how much fish they have landed. Last week you were talking about the issue of By-Catch in inshore waters. We do not know how many fishermen fish in 0-6 nautical miles. We have no idea, or Defra has no idea, how many miles of net are placed in the 0-6 nautical miles. There is varying information on different fisheries, but there is a lot of lack of knowledge.

Ms Ross: In addition to the lack of information about what fisheries are occurring where and how much net is in the water, obviously there is also an issue about monitoring of By-Catch. That, again, varies tremendously. The cases we have highlighted to you are the relatively few fisheries that have been subject to substantial monitoring. In terms of the gill net fisheries, there has been very little monitoring in the UK with regard to inshore fisheries, particularly

in the south-west, which is important because although they know about the hake net fisheries, which were subject to the detailed study I told you about, there has been very little monitoring done of the smaller boats that operate inshore, using a great deal of gill net around the south-west in various fisheries. Those have not been looked at. That does not mean there is not a By-Catch problem; it just means we do not know what the By-Catch problem is there. Equally, in the Irish Sea and around Wales, there has been very little monitoring, so again there could be a problem there.

Mr White: To follow on from the point Ali was making about not having any information, work has been carried out in south-west Cornwall by Wildlife Trust volunteers, which is leading us to be concerned about potential By-Catch impacts on bottlenose dolphin populations. That is based on two sets of evidence. First, the average group size of bottlenose dolphins has been monitored since 1991—and the Committee will have received the appendix with a graph—and the group size has declined dramatically. That, combined with similar studies on where those animals move, show that a lot of them move very close inshore, in exactly the areas where there is a fair amount of bottom set gill nets. There is concern that there may well be a problem with bottom set gill nets inshore and bottlenose dolphin populations. It has been estimated that the total bottlenose dolphin population around the UK is about 350, so even one or two animals will cause a significant problem. We are fairly sure that one group moves around the south-west and we have started to get a clearer picture of that, and we have concerns about it.

Q90 Diana Organ: You have mentioned concerns about the sea bass fishery and the By-Catch of common dolphin. What evidence is there about common dolphins being caught in the pelagic trawl fisheries such as hake, tuna and horse mackerel? What evidence do you have for that?

Ms Ross: Most fisheries that occur in the north-east Atlantic region have not been subject to rigorous observer monitoring to establish By-Catch levels. Several have: one is the UK's sea bass fishery, which demonstrated very high By-Catch rates. Another one that has been looked at is the Dutch mackerel and horse mackerel fishery, which again occurs over winter months, more westerly, south-west of Ireland, towards the Continental Shelf edge. It demonstrated very high dolphin catch levels, mostly in that case of Atlantic white-sided dolphins but also some common dolphins. Studies were done in the early nineties, looking at a whole range of pelagic trawl fisheries. Unfortunately, for most of them the sample size was quite low, so it was difficult to get a good idea of the overall scale of the problem. They did demonstrate that dolphin catches were occurring in the French hake fishery, the bass fishery and the Albacore tuna fishery. They also looked at a range of other fisheries, but at a very low level, and the researchers made a very strong point that although they did not happen to record dolphin By-Catches in those fisheries, this did not indicate that there is not

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a By-Catch problem in the fisheries. Perhaps I can list the species that are caught using pelagic trawl and pair trawl fisheries in the north-east Atlantic area, that you would expect to be affecting animals in the Biscay/Celtic Sea channel area, we are talking about Albacore tuna, which is a summer fishery but is caught using pair trawls; hake; herring; mackerel; horse mackerel; blue whiting; bass; pilchard; sardine and anchovy. Most of those have not yet been monitored for By-Catch, but they are using the same sort of gear. Most of them, except, as I said, for tuna, are occurring over these winter months, when we are seeing the big problem of dolphins being washed up as By-Catch. Until all those fisheries are properly monitored, it is reasonable to assume that quite a few of them, if not all, may well be involved in the By-Catch problem to some extent.

Q91 Mr Mitchell: Can we trust the French on the figures? There are more that have been thrown up on the beaches in France, and there is a suggestion in some of the evidence that the French have been less than forthcoming in providing evidence.

Ms Ross: On their strandings levels, or on the By-Catch levels?

Q92 Mr Mitchell: On both.

Ms Ross: It is hard to judge that. They do seem to have a fairly good system of recording strandings, and they do report annually on it. I do not think we have reason to believe that those are inaccurate, and that they report very, very high levels of dolphin strandings; but I would also add that the fleets that are involved in those fisheries I mentioned are not just French and UK boats; they also involve Dutch, Danish and Irish boats.

Ms Edwards: In the UK, Defra does, via the Natural History Museum, collect stranding data. It is up to local volunteers and people who have an interest in dolphins to collect the data. Within the Wildlife Trust we have forty or fifty volunteers who literally go walking the beaches, particularly during the winter months, and will record what they see. That information is then sent through to the Natural History Museum and then to Defra.

Q93 Mr Mitchell: We have more intensive scrutiny here.

Ms Edwards: We do, and because there has been a lot of press coverage in the south-west, people are going out of their way to look for these animals.

The Committee suspended from 4.32 pm to 4.41 pm for a division in the House.

Q94 Mr Lazarowicz: Returning to the question of the By-Catch problem in the North Sea, I was staggered by the proportion in the Danish fisheries. Your estimate for the UK gill net fishery was about 800 porpoises annually.

Ms Ross: That is the figure that was established in the mid 1990s; actually, there has been a revision downwards because most North Sea fisheries are in such a poor state, particularly cod, that there has been a reduction in fishing effort. Therefore, there is

a revised By-Catch estimate that has gone down since then to about 400-500 animals, because there is less gill netting being done because there are less cod around, in the North Sea in particular. There is so much restriction on fishing effort at the moment that we are assuming By-Catch rates at least temporarily are reduced there. Having said that, we are still looking at quite a big problem overall when you consider the Danish effort.

Q95 Mr Lazarowicz: Overall, which countries appear to be responsible for the cetacean By-Catch problem in the North Sea?

Ms Ross: The biggest gill netting fleet is the Danish fleet, although others—the UK was probably the second most important, and the others have a relatively smaller contribution. There are other North Sea countries that participate on a much smaller scale.

Q96 Mr Lazarowicz: Who is responsible for monitoring of By-Catch in the North Sea, particularly as far as the British boats are concerned?

Ms Ross: Monitoring in the UK is Defra responsibility, and most of the monitoring around the UK has been contracted to the Sea Mammal Research Unit, which co-ordinates pretty well all of the By-Catch monitoring that has been done.

Q97 Mr Mitchell: Neither of your organisations appears to have much faith in the Government's will and commitment to implement its commitments under the agreement on the Baltic and North Sea. Why is that? Do you think the Government has made genuine progress towards this 1.7% target?

Ms Ross: ASCOBANS, which is the agreement you are talking about, has identified targets and an overall aim to minimise, ie, reduce to zero, By-Catch within its area; but, quite frankly, the UK and the other parties have really done little, if anything, to actively reduce By-Catch levels.

Q98 Mr Mitchell: Why is that?

Ms Ross: Well, they have done research and they have done some monitoring. The UK, probably more than most other parties, has done By-Catch monitoring in a fair number of fisheries. They have done a fair bit of research, looking at pingers, and in the case of pelagic trawls looking at escape mechanisms; but actually, if you look at any of the fisheries that have been identified with serious By-Catch problems, no active mitigation measures have been introduced. In fact, there has been a fairly mind-numbing inertia on that front.

Ms Edwards: It is probably worth saying that it was twelve years ago that the evidence was brought forward on the hake fishery, where we had 6.2% By-Catch, and also the pelagic fisheries, when we realised we were getting large numbers. To be honest, the Fisheries Minister, Mr Morley, only three years ago, was announcing on the *Tonight* programme that there is not a problem. Government has, for many years, hidden and said it is not a problem, or that it is not the UK that is involved. We were very pleased to see the By-Catch Response

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Strategy, and it says an awful lot of good things, but it has taken twelve years. Now, although we have the strategy, it suggests that it will be another three years before most of the things it suggests are implemented. It is a very, very slow process. At the same time, when we think of 6.2% of porpoises being killed, that is 6.2% each year, so the population is getting smaller and smaller, and the 6.2% is becoming more significant. There is a frustration among the NGOs and the public in general at the fact it is so slow. We know there is a problem, so why are we not doing something about it?

Q99 Mr Mitchell: There is the 1.7% target and then eventually 1%, but I do not know of any commitment to reduce it to zero. You have put that figure.

Ms Ross: It is agreed by ASCOBANS parties that their overall aim with regard to fisheries By-Catch is to minimise—this is the actual text of the By-Catch resolution agreed—ie, ultimately reduce to zero takes (mortality) of cetaceans from fisheries By-Catch; but it is acknowledged that that is a long-term aim and that there should be intermediate objectives.

Q100 Mr Mitchell: Do either of you think we are likely to attain this 1.7%?

Ms Edwards: I believe that if everything that was in here was implemented now, we could start reducing By-Catch numbers, but to get it to 1.7 we need a lot more than what is down here. It is a step in the right direction, but it is only a step in the right direction if implementation starts now and not in three years' time.

Q101 Mr Mitchell: Have any of the partners reduced their levels to below the target of 1.7%?

Ms Ross: Do you mean other parties to ASCOBANS, other North Sea states? No. At the recent meeting of the parties in August this year, a further resolution on fisheries By-Catch was passed, and part of that resolution was a clause regretting the fact that the objective of reducing to below the 1.7% definition of “unacceptable” had not been met.

Q102 Mr Mitchell: It is “Lord make us virtuous, but not yet”. You say we have a programme which, if implemented, would do it, but—

Ms Edwards: Would make a positive step.

Q103 Mr Mitchell: Do not any of the others have the ability to make a positive step?

Ms Ross: The provisions proposed in the UK strategy are only addressing the gill netting problem and are not addressing the problem of the pelagic trawls. There is only research for further development of measures contained in this regard in the pelagic trawl issue, so gill netting potentially could be addressed at least within the short term by the provisions in here. With respect to the other parties, the only party that has taken some concrete steps is Denmark, which has a very serious problem with its gill net fisheries. In 2000 they introduced a compulsory requirement for pingers to be attached

to a particular sector of their gill net fleet, which is the cod wreck net fishery, that is gill nets that are fished over wrecks literally. That particular sector, in the third quarter of the year, was found to have a very high porpoise catch level; so they have required pingers to be used in that very discrete part of their fleet. The rest of their fleet, the rest of the cod fisheries and the turbot, are not subject to any measures yet. That is really the only mitigating step that has been taken.

Q104 Diana Organ: I am concerned about the measures that you would like to see implemented by Defra. What would you like to see happen in the first year of operation of Defra's proposed strategy for small cetacean By-Catch?

Ms Edwards: Again, the UK Small Cetacean By-Catch Response Strategy is very focussed on fisheries between 0-6 nautical miles, and to 12 miles to an extent. It is very much looking at gill nets and porpoises. It suggests that pingers are deployed on nets. Pingers are noisy and they scare porpoises away. They are not the ideal answer and there are concerns about them, but they are all we have in the toolkit at the moment. They could be implemented very, very quickly.

Q105 Diana Organ: That is what you would like to see.

Ms Edwards: Yes, we would.

Q106 Diana Organ: Do you have any concerns about Defra's proposal not to review the operation of the strategy for three years? Do you think that could be detrimental?

Mr White: One of the problems, not just with this aspect of fisheries management, but all aspects, is the lack of ability to react in a short time. Three years is a long time to wait to see if there is any result either way. We need a mechanism which would allow fisheries managers at all levels to react quickly in the event of events happening on the ground; and to say we are only going to review after three years does not give you that ability.

Ms Ross: Although we recognise that pingers can be very effective, and could, if introduced, dramatically reduce porpoise By-Catches—and it is a scandal that nothing has been done with this research to use them—we still do have big concerns. The first is whether the pingers will be used properly, because they are undoubtedly unpopular with fishermen. They are hassle and involve extra work. The second concern is whether they will be properly monitored to make sure they are working and reducing By-Catch, and the third is whether they will have any negative effect on the population of porpoises. Unless all those things are constantly monitored—and we think that it should be monitoring with compulsory observers—introducing something new like this is almost pointless unless you are going to monitor it properly—then we do not think it will be a worthwhile operation. Those things have to be properly and continually evaluated, with a process by which the requirements could be modified if necessary to make the things work—to either change

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the sort of pingers they are using or the way they are being operated or enforced; or indeed to change the whole approach to mitigation if pingers are found to be detrimental to the populations of porpoises. We think that three years is too long to be able to react to these sorts of changes.

Ms Edwards: It is not enough to do what is in here over the next three years and then think about what is next. We need a toolkit of mitigation measures and we need more research. We should be doing the research at the same time, working with the fishermen and trying to find other conservation measures that can be brought in to reduce By-Catch.

Q107 Diana Organ: If you are critical about the review taking three years before anything is done, how do you react to the comment that if we reviewed only after one year, any scientific conclusion drawn after one year would not be sound?

Mr White: I do not think it is a question of having spot reviews; it is a question of stakeholders, fishermen and scientists working together all the time, conducting a continual review process. It is a matter of keeping an up-to-date picture of what is going on.

Ms Ross: A year is a very long time if you are monitoring these things effectively; you can get a heck of a lot of data in that time. In the monitoring that we have had already, most of these trials have only been a matter of weeks or at the most months; so we would get a lot more information.

Mr Mitchell: Your point about carrying on research is important. Government always defers problems to more research.

Q108 Mr Lazarowicz: How far have there been trials of pingers and the work in commercial fisheries, as opposed to controlled experiments?

Ms Ross: So far, in the UK the main trials have been in research conditions; but elsewhere, for instance in the US, where pingers have been in use a lot longer, one of the concerns we have is that once they were introduced into the commercial operations, they found that the efficacy and reduction of By-Catch dropped off once they were used in a commercial setting. That is possibly because they were not being properly used or maintained; but, equally, it could have been because porpoises were habituating and therefore not being deterred. We do not know what was the cause of that. In the UK, once the UK's By-Catch response strategy had been released, there was a response from the fishermen saying, "we do not think these pingers are going to survive in our fishing conditions, particularly off the south-west"—where they have a fairly robust fishing technique in the hake fishery. In the last few weeks there has been a deployment trial within a commercial fishing setting, actually testing the four commercially available pingers. This is just happening now, and we have only just got the results of that. It is going to be a longer term thing to look at whether the pingers can stand up to the operation in the particular fishery off the south-west and whether they continue to operate effectively in terms of the electronics continuing to function.

Q109 Mr Lazarowicz: Have you had some results back so far, or is it too early to say?

Ms Ross: The results from the first stage of the trial—which have only just been discussed on Friday last week—were that three out of the four types of pinger tried did not survive satisfactorily to the end of a very brief first commercial trial. The manufacturers were present at this meeting where it was discussed and have undertaken to correct the faults that were identified so that they would be operational and suitable for the fishing conditions down there by January.

Q110 Mr Mitchell: Let us get the views of the south-west on this.

Ms Edwards: The industry that produces these pingers is saying that by January they will produce pingers that will survive in the severe conditions in the south-west. They call it the "bash" test. It does mean that we will have pingers very soon. To be honest, there has been a lot of discussion about how it will affect the local fishing community, whether it would put people out of jobs because of the additional costs to the individual fisherman. I understand that a set of pingers per fisherman is probably going to cost about £1,200 per year.

Mr White: It is an interesting point because one of the features of working for a wildlife trust is that you are working next to people who work in terrestrial conservation as well. We seem to have a completely different attitude to conservation and livelihood on the land as we do at sea. When you look at farmers and land-owners, Defra is, quite rightly concerned about their livelihoods, but they do not let that stop them trying to introduce conservation measures. In fact, farmers and land-owners can get payment for carrying out management. On the way up here we were doing some rough back-of-the-envelope calculations, and Defra are currently trialling a new entry-level scheme which is going to be open to all land-owners who, for very, very basic land management changes, can get £30 a hectare. For the average farm size in Devon of 40 hectares, that is about £1,200, which is, coincidentally, what it would take to put pingers on a small inshore boat. We should be looking at a level playing-field across land and marine conservation.

Q111 Mr Lazarowicz: Can I ask you about the possible willingness of skippers to carry observers being affected by the use of pingers? Do you think that is an unrealistic fear?

Ms Edwards: It is our view that observers should be mandatory anyway. It is pointless putting pingers on nets if you do not have observers; you have to have observers to see if they are working and what the results are, and also to check whether you are having any By-Catch at the same time.

Q112 Mr Lazarowicz: At present of course it is a voluntary system for carrying observers. Are you aware of any fishing vessels that have refused to carry observers?

Ms Edwards: There are several Newlyn boats that have refused to take observers.

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Q113 Mr Lazarowicz: Is there a problem anywhere else in the UK that you are aware of?

Ms Ross: I could not name specific fleets, but every observer programme, every trial, has had to very, very carefully approach fleets; and it has always been a matter of delicate negotiations to get observers on board. It is not something they could take for granted by any means.

Q114 Diana Organ: We have talked at length about the waters of the south-west and the North Sea, and what is happening to populations there. What action should be taken by Government and others in relation to the English Channel, where, obviously, there are very small cetacean populations, either because they have moved elsewhere because it is not the best environment for them, or they have died? What can you do about that?

Ms Ross: We are certainly concerned that within the By-Catch Response Strategy, although mention is made of the fact that at least in the eastern Channel and the very southern North Sea, there are very few, particularly harbour porpoises, left; and it is an area where there would originally have been harbour porpoises. Obviously, from the point of view of the fisheries management, it is not addressed here. We are concerned about that because there is an extremely high level of gill netting effort off the south-east of England, the most intensively gill netted area of waters around Britain. Clearly, there is not a lot of chance of recovery of that population with that sort of netting effort. Whether it is appropriate to look at the same sort of measures with pingers, or whether we should be looking at other measures such as restrictions on gill netting effort, is a matter for debate and consideration; but basically I do not think it should be an option to present no recovery measures for this sort of area.

Q115 Mr Drew: Can I ask a question, which came up on the back of last week, concerning the degree to which you accept the minimum level of observation that is being recommended by the EU. There are two questions: is this going to be adhered to, or will it be a bit of a fudge; and who does this? What level of expertise is there out there so that you can expect this to be done well, given you know that some of the fishing organisations take the view it does not need to be done, that they have already done what they can? There is not always going to be a degree of coalescence of views. I would welcome your opinions on that.

Ms Edwards: It is right to say we were disappointed that the proposal suggests mandatory observers of 5%, considering that ICES, which provides the scientific advice, suggested 5–10%. More importantly, ICES suggested substantially more observer levels for the pelagic fishery. Again, we are always seeing the figure of 5%; so it is disappointing, to say the least.

Q116 Mr Drew: You think the EU has been far too tentative in what it is proposing, and therefore there are going to be all sorts of problems, even if this minimalistic regime is introduced?

Ms Edwards: Any regime is better than nothing. For many years, there have not been observers. The UK Government has put observers on British pelagic boats, and it has given us some very unsurprising results; but the French have refused for many years. I think for the last three years the Commission has been asking the French to put observers on their boats, and they have refused to do so. I am also concerned that while the proposal says it should be 5% of observers, it gives no indication of how the observers will report the results. There is no transparency in the system. Considering the Member States' reactions to the Commission's invitation to put observers on board, we are slightly concerned that the French will not take it seriously; or we may end up in a situation where we will get the results in five or six years time. It is a very slow process and not transparent at all.

Q117 Mr Drew: Are the real bad guys in this the French? We did get some variable arguments in last week's session on the degree to which we can be "holier than thou", and that it is the blessed French who do not seem to have any interest in it whatsoever, as against those who say it is a problem across the whole of the EU and we have got to get our act together.

Ms Edwards: It is an EU problem. The UK has pelagic boats which do catch dolphins. It is a problem across the EU. I am sure when you speak to Mr Bradshaw he will put across that this Government has asked constantly for the French to put observers on board, and for years the French have denied there is a problem. Mr Morley stated at a meeting about two years ago that the French fisheries Minister had stated to him that "it is not our fishermen that were catching the dolphins." It has been a very naive attitude. Politically, it has not been taken seriously enough.

Ms Ross: In terms specifically of the bass fishery, the French clearly are the big players, but there are quite a few other pelagic trawl fisheries out there, most of which, equally, have not had observers on board. We saw from the small-scale monitoring that was one in the early nineties that several fisheries were approached and asked to take observers on board, and a number refused because there was no compulsion. One notable fleet was the Irish mackerel fleet, which is a substantial fleet. By analogy with the Dutch fleet, which we know catches a large number of dolphins, probably the Irish do as well, but because there was no compulsion on them, they just refused to participate in the trials. Equally, there are a number of other nationalities that have just not undertaken observer monitoring under their own volition, including the Danish pelagic trawls. Going back to the 5% level, it is important to note that the scientific advice was not just between 5 and 10% of the fishing effort but particularly with regard to the pelagic trawl fisheries—and that is all of them operating in the area, not just the sea bass fishery—the advice was that observer effort should be as high as feasible during the critical December to March period when we know there is a big problem.

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Q118 Diana Organ: You said that something is better than nothing, but you are obviously advocating a wider management framework, because that is ideally what you would like to see. Would you prefer that we delayed any implementation until we could get a wider management framework in place, or are you happy to go with something instead of nothing; but then, as a result of that, how effective is it going to be if it is not implemented in the context of that?

Mr White: I do not think we can wait to put the full management framework in place. We have to work towards that. The measures talked about in the response strategy may well form part of the final toolkit that the management framework has at its disposal to address these issues, so we can start looking at those. We cannot wait. We have to put those in place first, but to make sure the whole thing is sustainable in the long term, we need to put the management framework in place afterwards.

Ms Ross: In term of the Commission's proposals, in the explanatory memorandum they acknowledge that a management framework should be put in place; but their argument is that we cannot do that until we have all the information about where this By-Catch is going on and what it is. We would certainly argue that that is the wrong analysis, and that the management framework should be there at the beginning. It can be introduced in parallel with these very specific measures, but we do not think you should be waiting until your first three years of data have been called in before you start putting that formal management framework in place to deal with the information that is coming in.

Q119 Diana Organ: In all probability it will not be in place, will it? How effective therefore would the Commission's draft regulation be?

Ms Ross: I would certainly say that the measures they are proposing for the Baltic Sea are absolutely critical, and if we could get that tomorrow you would be saving porpoises straight away. In terms of the observers on boats, if we could get that going now, we have pelagic trawlers and gill nets now that should be monitored. Equally, if we could get pingers on boats we would be starting to cut down on the By-Catch problem. Obviously, we want the rest as well so that we can evaluate and adjust all these measures appropriately as we get the feedback from what is being implemented. All of these problems are critical and we should not be waiting. We have known about them and have been waiting year upon year upon year, and doing nothing for any longer is really not an option.

Mr White: Observer schemes and monitoring are very, very important, but alone they will not stop By-Catch happening; they are just going to tell us how much is happening. When we are talking about a wider framework of fisheries management, that would be beneficial not just in terms of cetacean By-Catch response, but in terms of managing fisheries we should be looking at holistic, across-the-board management, not just a framework for this particular issue.

Q120 Mr Lazarowicz: You have pointed out that the sea bass fishery is largely unregulated, and the Wildlife Trust has called for the European Commission to regulate the fishery as a matter of urgency. We have also been told that the Scottish Pelagic Fishermen's Association proposed a licensing scheme. Do you, in your organisations, support the introduction of any type of quota system for the pelagic sea bass fishery, or a system of licensing vessels for a particular fishery?

Ms Edwards: It is only common sense that the bass fishery needs licensing and that we need some sort of quota system because at the moment anybody can take the fish. If we license the fishery or bring in quotas, it will not really make any difference to the By-Catch problem, because it is about conserving the bass population. But it is something to think very seriously about because at the moment very large numbers of fish are being caught during the winter months and fetching a very low price. Bass is a very important fish to the local community in the south-west, Wales and southern Ireland and is particularly important in terms of sea angling. If you put the value on the bass, it is probably worth at least ten times more when it is caught by a sea angler, in terms of the local community. At the moment, we do not think strategically on how the bass fishery should be fished and when. It may be that if we looked at it in a more strategic manner, we may well say that pelagic trawling for bass is not the most appropriate manner to catch a fish and that it is better to be caught by rod and line, because that will bring more economic value to the local communities; but again may, as a result reduce By-Catch victims as well.

Q121 Mr Lazarowicz: Have you got a specific position on quotas?

Ms Edwards: We believe this fishery should be licensed; we should not, in this day and age, have unlicensed fisheries of this sort of size.

Q122 Mr Lazarowicz: What is the position of the WDSCS?

Ms Ross: The conservation of the bass stock itself is not something we have particularly taken a view on. Having said that, better management of fishery all round is of advantage both to the fishing industry and to the marine environment, so we would obviously support better regulation of that fishery.

Q123 Mr Lazarowicz: Is there any case for emergency closure of fisheries? I understand that the purse-seine tuna fishery in the Eastern Pacific Ocean has a cetacean mortality limit scheme which has been implemented. Do you suggest a similar scheme to deal with these problems as well?

Ms Ross: In terms of emergency closures, on the conservation side emergency measures are introduced in fisheries from a fish conservation point of view—we have seen that in cod and hake fisheries—but when it comes to wider environmental wildlife protection measures, then the same measures are not being applied, even though there are powers within the common fisheries policy for emergency measures to be taken when there is a

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significant threat to marine living resources. Our concern is that at the moment, although the powers legally are there to take emergency measures, there does not seem to be the will to apply them when it comes to wider environmental matters. We would like to see, both within the UK By-Catch response strategy and more widely in the Commission's proposals a specific clause that would allow that measure to be taken where a critical problem is identified, which is a threat to a population and cannot be resolved by any other means. If there is not a mitigation measure that could solve the problem, then there has to be the capacity to introduce emergency restriction or closure of a fishery where an acute threat to cetaceans or other wildlife has been identified.

Q124 Mr Mitchell: Is it possible to implement some kind cetacean mortality limit? Do you regard that as practical politics?

Ms Ross: It is obviously possible to do it; this has been done in the Eastern Tropical Pacific tuna fishery as a result of many years of working on how to reduce what was an extremely serious cetacean By-Catch problem there, as part of this international dolphin conservation programme. It is worth pointing out, as mentioned in the Government's strategy document, that in that case they have an extremely precautionary cap on the level of dolphins taken by that fishery. Here, we are looking at an ASCOBANS precautionary limit of 1% of the dolphin population. Over there, in the Eastern Tropical Pacific, where they are looking at this catch quota level, they are looking at 0.1%, a tenth of that level, as the limit of dolphin mortality.

Q125 Mr Mitchell: That industry is more vulnerable, in the sense that you can tackle it through the consumer here by the building up of pressure not to buy things which are dolphin-friendly or whatever—but which are damaging to cetacean catches; and that is a very powerful piece of pressure which is not applicable in any other area. Is there any other area where that could be tried?

Ms Ross: Nominally, you could apply the idea of labelling something as dolphin-friendly or dolphin-deadly to any fish project.

Q126 Mr Mitchell: That is an obvious one, is it not, where there has been a big problem, and which is quite specific.

Ms Ross: Because there was a lot of publicity associated with it. I would also add that in that fishery, in order to properly police the catch limit level, they have 100% compulsory observer coverage. Every boat over a specified size has to carry an observer. To be able to make a system like that work, you have to be able to verify that boats are not catching dolphins in order to ascertain whether they are exceeding their catch limit, but also to be able to qualify for a label saying it is dolphin-friendly or dolphin-safe. You have to have a completely foolproof monitoring system with observers on every boat and the product being

tracked from the net right up to the consumer. For most of our fisheries, we do not have anything like that level of scrutiny.

Q127 Mr Mitchell: I wondered if fishermen are going to accept some of the disciplines which pursuit of your case would impose on them. You talked about closures. Fishermen will grudgingly accept closures on the grounds that the stock they are catching will become extinct, because it will threaten their livelihood. However, they are not going to accept a closure for other catches, for wildlife protection.

Mr White: The difficulty at the moment is that we are having to talk about large-scale whole fishery closures, and that is difficult. If we can get an eventual management scheme with the flexibility we are envisaging, you would not necessarily have to have whole fishery closures for long periods of time. If you had a much more flexible management system with full observer coverage on board, you could probably get away with small area closures or small time closures, which could be more acceptable. If you can then tie that in with the concept of more sustainable fishing and more market value for sustainably caught fish, then you could make it a whole package that is more acceptable. The only reason it is difficult at the moment is because we are in such a state that we have to think about closing whole fisheries or very large areas.

Q128 Mr Mitchell: But your caveat there was with observers on board.

Mr White: I think that has to be part of any—

Q129 Mr Mitchell: Otherwise, fishermen are going to cheat if they are not wholeheartedly—

Mr White: Yes, but any effective fisheries management for any issue, not just the By-Catch issue, has to have a very clear understanding of what is going on on the ground at any time—what the catch is, what species are being caught, especially in multi-species fisheries—and what the By-Catch is. Again, if you can sell this not as a burden but as a way of achieving the sustainability that you can get extra market value for, you can start to look at these things. We have not got all the solutions, but we are talking about a quantum shift sideways in the way we think about the way these fisheries are managed.

Q130 Mr Mitchell: In our next session we will be hearing from the fishermen, but I think it would take more than a Peter Mandelson to sell anything like that to them as not a burden.

Q131 Mr Drew: The predecessor committee to this, had as a principle that there should always be environmental impact assessments where there were fundamental changes to fishing regimes. How practicable is that in regard to this change? Would you welcome that, or is that just going to cause further delay and give opportunities to those who will oppose this as a solution and give the ammunition to which they will just drag their feet?

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Ms Edwards: Generally, it is the view of the NGOs that any new fishery should have an environmental impact assessment. The environmental impact assessment will depend on the size of a new fishery. Again, when people think of environmental impact assessments, they think of consultants, lots of money and a big burden; but an environmental impact assessment can pull together round a table with the correct people. EIAs for fisheries are in place now. When a new fishery is proposed for an SAC, for example, then the Sea Fisheries Committee, the Countryside Agency and the fishermen go about carrying out environmental impact assessments. In a few cases, as a result of these EIAs, some fisheries have been stopped and a regulatory order has been brought in. We want more than an EIA, which are for specific fisheries. If you think of the English Channel, Bay of Biscay area, and think particularly of the pelagic issue, what we probably need is a strategic environmental assessment. That would look at the whole area and think strategically about what fisheries should take place and what is best for both conservation of the stock, issues such as By-Catch, and the economics of the region. For example, when you consider the bass, the individual bass is possibly worth more if it is allowed to grow to a large size and is caught by rod and line than if it is caught in large numbers on this side. That is something that a strategic environmental assessment would actually look at. Probably, SEAs. Should be carried out by government policy advisors and scientists, working with the regional advisory councils. This is so that you can ensure that the stakeholders, the fishermen and the NGOs, are involved in that process, so that we get all the different information on the table, and the RACs can produce a strategic statement on what is best for that area and all the fishermen and fisheries in that area; and also the marine environment.

Q132 Mr Drew: What is the authority that you believe should carry out the EIA, and can that be the same authority that is responsible for policing an effective change in regime?

Ms Edwards: The EIA Directive suggests that it should always be the developer that carries out an EIA. In this case, the developer is actually the fisherman. In terms of enforcement, that would be carried out, obviously, by the appropriate fishing body, whether it is the Sea Fisheries Committee or Defra, if it is beyond 6 nautical miles.

Q133 Mr Drew: What level of detail would we expect from an EIA? I know you are not necessarily over keen on seeing this as the answer to how we get some degree of understanding and consensus, but we have concentrated more or less on regime change, which is a favourite study of politicians, but I am interested in where we might be looking at new fisheries and the degree to which you expect that EIA to lock in? Will it be at the level of the individual boat that decided to go off and pursue a slightly different fishing area, or has it got to be more generalistic?

Ms Edwards: Again, it depends on what is most appropriate. For example, an EIA was carried out for a razor fishery in the Wash, which involved two boats. They were persuaded to produce an EIA. Another new fishery in Cardigan Bay involved about 10 boats, and they produced an EIA collectively. I think an EIA has to fit what is appropriate, and, again, the size and expense of the EIA depends on whether we are talking about one fisherman carrying out a very small activity, or a group of fishermen carrying out brand new activity that potentially has a significant impact.

Ms Ross: To illustrate the point a bit more, we should look at the pelagic trawl fishery that has grown up for albacore tuna in the north-east Atlantic, the Biscay area, Celtic Sea. That fishery, was initially a driftnet fishery in the 1990s, but when the driftnet ban was agreed in the EU, there was a great deal of interest in developing a pelagic trawl fishery to catch tuna. Indeed, European Commission money was put into investigating this as a possibility and developing this new way of catching tuna in the albacore fishery. With that sort of international fishery, with France, UK and Ireland, all pursuing albacore tuna and looking at new ways of catching it when driftnets were being phased out, clearly a strategic environmental assessment at that point would probably have picked up the fact that there was likely to be a problem with cetacean By-Catch in that fishery. However, what has happened now is that we have a substantially established pair trawl fishery catching tuna and catching a lot of dolphins, which could potentially have been prevented at an early stage, rather than now looking at how to mitigate a problem that has already been established.

Q134 Mr Lazarowicz: A brief last point. You will see from the front of the document on the UK Cetacean By-Catch Strategy that it has the logos not just of Defra but of the devolved administrations as well. Insofar as it is relevant to them, are you happy with the co-operation there has been between Defra and the devolved administrations in this area?

Ms Edwards: That is a very difficult one to answer.

Q135 Mr Lazarowicz: If you care to comment on that.

Ms Ross: Certainly my experience is that the devolved administrations seem to have had rather little to say on the matter. I think this has been a rather Defra-led operation. I think the others have kept their heads fairly low on the matter.

Ms Edwards: That would be a concern for the future because obviously implementation of devolved matters will be the responsibility of those devolved authorities. There is always the concern that proposals put forward by the UK Government would be implemented in England and probably Wales, but what happens in Northern Ireland and Scotland is difficult to know. They may well do something better, we would hope, but I would like to know just how seriously the Scottish Assembly has taken this strategy.

10 November 2003 Ms Joan Edwards, Mr Richard White and Ms Ali Ross

Q136 Mr Lazarowicz: It is the UK which has signed the international obligations and it is a matter for Defra to pursue it with those devolved administrations. Is that a concern?

Ms Edwards: It is a great concern to the Wildlife Trust because we have just made a complaint to the European Court about Strangford Lough, and Strangford Lough is a nature reserve, an SAC, an SPA, it has umpteen SSSIs all round the foreshore, and it was put forward as an SAC because within it it supports a very unusual community, the modiolus community, which is only found in Strangford Lough. The Northern Ireland Assembly is responsible for that SAC but unfortunately despite warnings over the last 20 years the modiolus community has been completely destroyed. You sense when you deal with people in Northern Ireland that conservation and the Habitats Directive are not taken as seriously as they are here in Westminster.

Q137 Mr Lazarowicz: I saw Ms Ross nodding when you made your comments earlier. What is your experience of the relationship between the devolved administrations and Defra on this issue?

Ms Ross: Particularly on the matter of cetacean By-Catch we have not seen an awful lot of activity or active input certainly from Edinburgh. I cannot really think of an awful lot from Wales either but that would come under Defra.

Ms Edwards: Definitely nobody from Northern Ireland.

Q138 Mr Mitchell: Any more points you want to put to us? I have given you a quick march or yomp, whatever the Marines call it, through the territory. Is there anything you want to say now which you have omitted to say?

Ms Ross: It is in our written evidence but on the point of the SEA, and EIA, one additional point is that it is in our view vitally important that any provisions both for the prior assessment of fisheries but also for their on-going monitoring and hopefully

their By-Catch mitigation, must be equally applied to distant water fisheries. We have a great deal of concern about the cetacean By-Catch in a number of the distant water fisheries operated by EU vessels, particularly down off the African coast where we think a huge number of dolphins are being caught and at the moment they are not being monitored. None of the proposals put forward are going to affect those so we really would like to highlight the fact EU vessels are probably causing a lot more damage elsewhere without being looked at.

Q139 Mr Mitchell: Any EU suggestions for monitoring and reporting which are developing gradually in the fishing areas rather than the coast do not apply to the EU fleet elsewhere?

Ms Ross: Some regulations do apply to EU fleets wherever they fish but a lot of them do just apply to EU waters. For instance, the proposed regulation specifies where they require observers on boats but they specify the areas and the fisheries and those are all within EU waters; nothing will apply outside as far as that monitoring is concerned.

Q140 Mr Mitchell: Has the South West anything to add?

Ms Edwards: Just to say there is real public outcry in the South West. If you live in the South West it is on the local news every night when the dolphins start coming ashore in the winter, and people are really angry, is the best way to describe it. We really do need to make sure the numbers are reduced significantly.

Q141 Mr Mitchell: Thank you very much indeed. I am aware I have marched us through this fairly quickly but I am very grateful to you for coming, particularly of course from the South West, and for the courteous way you have given us the answers. I think you have given us some very interesting information and it has been a good session. Thank you very much indeed.

Ms Edwards: Thank you.

Wednesday 3 December 2003

Members present

Ms Candy Atherton, in the Chair

Mr Colin Breed
Mr David Drew
Mr Mark Lazarowicz

Mr Austin Mitchell
Alan Simpson

Memorandum submitted by the National Federation of Fishermen's Organisations (C1)

We see the cetacean bycatch issue as having two distinct aspects. The first is the bycatch of dolphins in the South Western approaches caught in fast moving mobile gear fisheries. The second is harbour porpoises caught in static nets. The scale, and significance of the problem and solutions are different in each case.

DOLPHINS

It has been reasonably well established that a significant cause of mortality of dolphins in South Western approaches at certain times of the year is attributable to the bass pair trawl fleet. Primarily, although not exclusively French, the pair trawlers by virtue of speed of tow, size of net, target species and interaction of dolphin with the target species, catch significant numbers of dolphins.

Not least because of EC Treaty obligations to integrate environmental considerations into the CFP, this fishery and its consequences for dolphin populations as well as public reaction to carcasses washed up on the shoreline, this is a matter that will have to be dealt with as a priority. Our view is that every attempt should be made to quickly establish whether acoustic deterrent devices and/or escape windows are effective in reducing dolphin bycatch. In the absence of rapid progress we would not oppose a more restrictive approach, up to and including a prohibition of this fishing method for bass.

HARBOUR PORPOISES

The deep water static net fishery for hake also has a cetacean bycatch problem but for harbour porpoises not dolphins. For some years now our constituent organisation, the Cornish Fish Producers' Organisation, has been working collaboratively and successfully with the Sea Mammal Research Unit to establish the scale of the problem and identify remedial measures.

A voluntary on-board observer programme from the mid 1990s to present concluded the following:

- (1) the deep water fixed net fishery did not catch dolphins on a scale that would threaten the stock, although there were occasional entanglements;
- (2) there was an irregular but measurable problem with regard to harbour porpoise;
- (3) acoustic devices potentially offered a solution to this problem although a number of technical and cost obstacles remain to be overcome.

It is significant that for reasons of quota reductions and generally more restrictive fisheries management regime, the fleet of Cornish hake netters has been reduced from around 50 vessels in the early 1990s to 12 to 15 vessels at present. Cetacean bycatch in this fishery is, therefore, a problem of limited scale, and is reducing in magnitude and is potentially resolvable through mitigation measures.

HARBOUR PORPOISE BYCATCH IN SHALLOWER WATERS

There is some evidence to suggest harbour porpoise bycatch in other gill net fisheries but it is reasonably clear that incidental capture is:

- (a) not systematic;
- (b) varied in time and place;
- (c) is potentially open to mitigation measures such as pingers where necessary.

The priority here must be to collate reliable information in order to establish where and when it would be necessary to require pingers. A targeted and proportionate approach is necessary if we are to avoid the problem accustoming porpoises to the acoustic deterrent devices thus minimising their effectiveness.

STEWARDSHIP

There is potentially a significant role for fishermen as stewards of the marine environment parallel to the role afforded to farmers as stewards of the countryside. It would be useful if the Committee could explore how effective incentives could be put in place to secure fishermen's involvement in stewardship projects. It would also be helpful if the government was urged towards consideration of this type of approach.

The fishing industry has demonstrated that it can work collaboratively to jointly find workable solutions to problems of cetacean bycatch. This is an approach we would wish to develop and expand within a broader stewardship approach.

I hope that the Committee find these points useful.

B C Deas
Chief Executive

18 August 2003

Witness: Mr Barrie Deas, Chief Executive, The National Federation of Fishermen's Organisations, examined.

Q142 Chairman: Good afternoon. We very much welcome Barrie Deas to our Sub-Committee of the EFRA Select Committee on cetacean by-catch. Can I, before we start, thank my colleague, Austin Mitchell, who took the first two sessions of this Sub-Committee while I was in hospital and I am very grateful for his help and we will be working together on the Report. We very much welcome you, Mr Deas. Can I start by asking in terms of your members' experience how significant you believe the cetacean by-catch problem is in terms of the overall population levels?

Mr Deas: First of all, thanks very much for the invitation to put the industry perspective. The UK Response Strategy document gives the impression that the size of the by-catch problem and its impact on the total populations is well defined, well measured and understood and I think that is far from true in that there is a great deal of uncertainty here. There is a problem with by-catch in specific fisheries at specific times of the year and under specific conditions and I think that is very important because there is a need to target measures. The Commission's response and to a degree the UK Response Strategy, I think, misses the point and seeks solutions in blanket measures so that the question of where the problem lies, I think, is a fundamental one. I think that there should be no misunderstanding. The fishing industry wants to work towards the elimination of the cetacean by-catch. It is recognised as an iconic group of species. It is what the environmentalists call 'charismatic meta-species' which draws attention to that particular feature. The cetacean by-catch has a damaging effect on the public perception of the industry and for that reason alone I think we need to do something about it. It is self-interest to reduce the by-catch of dolphins and porpoises to a minimum, but I think partly because of the public and media interest, the Commission and the UK are blundering somewhat. I think it is very interesting that in previous evidence to this Committee, the experts, in particular Dr Tregenza, do not attribute the perceived decline in cetaceans to the by-catch problem. My understanding is that the fundamental problem lies with organo-chlorines which are apparently the main culprit and by-catch in fisheries

is targeted as possibly an obstacle to recovery, but not the primary cause of the decline. The decline itself seems to me to be very much based on anecdotal commentary.

Q143 Chairman: With that in mind, what monitoring do your members do?

Mr Deas: Our members do not do any specific monitoring other than their perceptions. For what it is worth, our members say that their perception is that in recent years there are more porpoises than dolphins around than for some time in the past. We do not know what weight to put on that, whether they are seeing the whole population or part of the population. Cetaceans, like fish, are notoriously difficult to count. They pop up here, they pop up there, so is that the same pod, the same school that we saw half an hour ago? I think it is possible to treat percentage figures for by-catch population with a reasonable degree of scepticism which is not to say that there is not a problem, but to say that a sense of proportion in all of this is essential. We share the view that geographical location, seasonality, type of fishing, and the observer programmes suggest that for dolphins, the bass fishery is likely to be the main source of the carcasses that are washed up. It seems logical to us that in terms of the scale of the problem and the principal drive for solutions, that is where the principal focus of attention should lie. We are prepared to take a fairly firm line by saying that the technical solutions, the grids and the acoustic deterrent devices, should be given a period to work, but ultimately we cannot support a fishery that has a demonstrable adverse impact on cetaceans and, consequently, our public image as an industry.

Chairman: We will come on to pingers a little later.

Q144 Mr Breed: In the letter that you sent the Committee back in August, Mr Deas, you said, "It has been reasonably well established that a significant cause of mortality of dolphins in South Western approaches at certain times of the year is attributable to the bass pair trawl fleet". Now, there are other views as to what is the principal cause and everything else, but is there any evidence at all of common dolphins being caught in pelagic trawl

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fisheries other than the sea bass fishery, in other words, to give us some sort of context so as to see where the weight of evidence is?

Mr Deas: I think all the evidence is relatively circumstantial and I certainly do not have any definitive evidence to lay before you. You have to look at what fleets are working in the area at what times of the year, what kind of gear they are working and how that relates to dolphin patterns of behaviour, but we have nothing firmer than that.

Q145 Mr Breed: There is, I think, some other evidence which suggests that hake, tuna and horse-mackerel, at least in parts of the 1990s, were also responsible for at least some of the by-catch problems. Has that been your experience or that of your members?

Mr Deas: The clear line of demarcation is between the dolphin by-catch where there is a particular problem with the mobile trawl fishery, and the indications seem to point in that direction, and with harbour porpoises which is a rather different problem, and it is the set nets where there is a recognised, but small by-catch of porpoises and I have various things I would like to say about that. The way that the industry is organised, its primary focus of attention is catching fish and I would like to say some things later about monitoring programmes and how the industry could be co-opted into improving the database, but it is fairly sparse and circumstantial at the moment.

Q146 Mr Breed: You also go on to say that bass pair trawl fleets are primarily, although not exclusively, French. How many sort of non-UK vessels are engaged in the bass pair trawl fishery and how many are engaged in the sort of other pelagic trawl fisheries? Can you give us some sort of idea of the numbers?

Mr Deas: I can give you a very crude idea. I think there are something like 60 French vessels and a much smaller number of Dutch vessels, under ten, but they are large vessels.

Q147 Mr Breed: Are these ones working in pairs, so ten would be five pairs?

Mr Deas: The Dutch would not be, no. They would be large pelagic vessels. There are a number of Scottish pair teams, between two and six I think, that visit on occasions.

Q148 Mr Breed: So relatively small numbers then in that sense?

Mr Deas: Yes.

Q149 Mr Breed: Can you tell us in what ways some of these non-UK, these foreign vessels that are within UK waters, are monitored? Is there any evidence that there is monitoring being undertaken of their activities at all?

Mr Deas: There is monitoring in the sense that if they are operating within UK waters, they are being monitored in the same way as any other vessel would be.

Q150 Mr Breed: So where they are, not what they are catching?

Mr Deas: That is correct.

Q151 Mr Mitchell: I see that you say in the evidence that you are not opposed to a more restrictive approach up to and including a prohibition of this fishing method for bass, so you are prepared effectively to stop?

Mr Deas: Yes, I think where there is a demonstrable cetacean by-catch that is of a level that potentially affects the species as a whole, it is very difficult to defend and we would not try to defend it. What we would say is that every attempt should be made to find mitigation methods, but if they do not work we would not defend that particular fishery as an impetus to speed up the location of solutions.

Q152 Mr Breed: When you say that you are prepared to look at approaches up to and including prohibition, are you saying that as someone, like me, because it is a useful way of getting at foreigners or are you saying it out of a more altruistic concern for the environment and for the preservation of cetacean stocks?

Mr Deas: No, I do not think you have to dig as deep as altruism. It is self-interest because the fishing industry has not just to operate on a sustainable basis, but it has to be perceived as doing so. We are very sensitive to the industry's image and if there is a problem, we either have to deal with it or face the prospect of an end to that particular fishery. Now, we would very much prefer for it to be dealt with through mitigation measures, but our Executive Committee some time ago took the view that this was a problem on an apparent scale that really could not be defended and we were not prepared to defend it. The story is entirely different with harbour porpoises where I think there are solutions and the scale of the problem is not at the same level and we think there are ways forward there. It helps of course that we do not really have much of a direct interest in that fishery, so it is always easier to take the moral high ground, but there we are.

Q153 Mr Mitchell: That is a good answer, but it means you are saying that a more prevalent attitude among fishermen, which is, "This is just another bloody nuisance imposed on us by the increasing importance of conservation", is not the universal position and that your organisation takes a more responsible position.

Mr Deas: I think it is self-interest. It might be self-interest, you might say, in that this is not an issue that really we can ignore because it will come back and bite the industry in one way or another whether it is consumer resistance to fish or a more restrictive regime altogether, so we do take that responsibility seriously.

Q154 Mr Mitchell: Would we have power to stop, say, the pair trawling for bass?

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Mr Deas: “We” being the UK?

Q155 Mr Mitchell: Yes.

Mr Deas: I think it would only make sense at the European level.

Q156 Mr Mitchell: Only Europe can do it?

Mr Deas: Well, I dare say that—

Q157 Mr Mitchell: We cannot enforce a unilateral conservation order?

Mr Deas: I think realistically it has to be at the European level.

Q158 Mr Mitchell: What would the economic impact on fishermen be if, for instance, you had to adopt the universal use of pingers?

Mr Deas: I think I would like to say something just by way of preface which is that it is very important to appreciate that the figures that have been quoted in relation to by-catch in the porpoise fishery in the set nets, in particular the hake fishery of 6%, that is a 1994 figure and since then there has been a very dramatic reduction in the size of the hake fleet from around 50 vessels down to about 12 so that in 2003, if you accept the original figure of 6%, we are probably down at about 2%. There has been a very significant reduction in the overall size of the fishery and, by implication, the size of any cetacean by-catch will have been reduced proportionately, so it is important to understand the reduction in the size of the fishery, but also to understand that dolphins are not caught in this fishery, but it is porpoises we are talking about. I think this is a general issue that goes beyond the south-west, that looking at 2002 and 2003 particularly there has been an enormous reduction in the size of the fleet through decommissioning programmes and through the sale of vessels. It is particularly true of the hake fishery, but it is also true in the North Sea and the wreck net fishery has been radically reduced partly through direct decommissioning, but also because under the impact of cod-recovery measures, it simply is not viable under the very restrictive regime that applies. On the economic impact, well, it all depends under what circumstances of course. Four thousand pounds per vessel has been quoted as an average, but of course the hake vessels are larger, carrying more nets than the average, so I would say we are talking about £7,000 there, plus the additional labour costs, so it is a very significant amount, especially against the background of very difficult economic conditions that the industry faces at the moment, so there is absolutely no question of being able to afford this without government support through FIFG presumably at the 100% level. I think that has to be an absolute pre-condition. However, I think before we get to that stage, we need to ensure that any measures that are taken are targeted at the fisheries where there is a demonstrable problem. We must move away from this kind of blanket approach. The measures must be proportionate which I suppose is a different way of saying the same thing. As I have mentioned, there must be transitional financial support to allow the purchase of the equipment and

I think, above anything else, it must make sense at vessel level. There are a number of outstanding practical problems associated with pingers that have not been resolved and it is very important before we rush ahead under the glare of the media spotlight just to be seen to be doing something, and we have all been there before. You could say that a large part of the Common Fisheries Policy and certainly the recovery programmes for cod and hake are there to be seen to be doing something, but that is very different from having a positive impact, so it is extremely important that the measures make sense at vessel level not just in terms of a regulation or a bit of paper or a strategy document. It must make sense at vessel level and that means overcoming the practical problems in specific fisheries, such as whether this equipment works at this depth under these conditions with this machinery. I think that has to be the starting point.

Q159 Mr Mitchell: And always with that proviso that if it is going to be imposed on vessels by government, it should be paid for by government?

Mr Deas: That is right.

Q160 Mr Mitchell: Let's move on to observers because Defra thinks that the effectiveness of pingers is best monitored by independent observers on board. They want it to be optional, on a voluntary basis initially. Are there practical problems in operating such a scheme even on a voluntary basis?

Mr Deas: Well, the first thing to say is that our constituent organisation, the Cornish Fish Producers' Organisation, has worked on a voluntary basis with the Sea Mammal Research Unit and other conservationists to resolve and reduce the by-catch problem in the hake fishery since the early 1990s and that has produced useful information and a collaborative approach in finding ways to reduce the problem. I think that 100% observer coverage may look good to the zealots, but I think there are lots of practical problems in finding people that are capable of doing the job and are willing to stay out there. Observers might be willing to go out for one or two days, but to go out for a week at a time, there are serious issues. Then apart from the question of who would do it, who would pay? As I say, the length of the trip has been a major problem, so I think again the regulatory approach 100% may look good on paper, but I do not think it is a practical solution. We would much prefer to work and develop the collaborative approach to recognise that where there is a problem, it is dealt with, but jointly with the industry and the principal conservation bodies.

Q161 Mr Mitchell: And you would prefer that on a voluntary basis?

Mr Deas: Absolutely.

Q162 Mr Mitchell: Rather than a legal requirement?

Mr Deas: I do not think a legal requirement is justified or practical. Again it gets back to this issue of something that looks good on a bit of paper, but when you look at the practical realities of implementing such an approach, it dissolves and in

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the meantime you have alienated the industry and that is not helpful. I think we need to work together jointly to find solutions.

Q163 Mr Drew: If we look at the idea of stewards, where did this come from? Did this come from the industry or did it come from NGOs or did it come from the Government or the EU?

Mr Deas: I do not think it has come from the government level. I am not certain where the original idea comes from, but it does seem to fit the bill. I suppose that perhaps the most obvious parallel is in agriculture where you have Sites of Special Scientific Interest and landowners are paid to play a stewardship role. There does seem to be a great disparity between the way that agriculture is treated and the marine environment is treated. It seems to us that fishing vessel owners and operators can play a very valuable role. Each fishing vessel is potentially a research platform gathering information and we would like it very much on fish stocks, but I see no reason why that should not be extended to cetaceans. Again it is part of this collaborative approach and we are indeed working at the moment with CEFAS on a collaborative approach, a partnership approach to issues relating to commercial fish stocks, but there is no reason why that should not be extended to cover by-catch, and the kind of question that was asked by the Chairman earlier about what sort of monitoring the industry does, we could put a more positive response to that.

Q164 Mr Drew: Can you, therefore, try and explain to me what sort of incentives or what sort of encouragement would you expect to be put in place for people who, with the best will in the world, want to catch fish? There are two issues there. There is the issue of what you pay them and what you pay them for and, secondly, what level of training and new aspirations would people be required to undertake to make this a reality?

Mr Deas: I do not think it makes sense to see this as a quick fix and I do not think that it can be seen in isolation from a broader change to the way that data on the marine environment and on fish stocks is collated, but we have at the moment a fairly secretive, elitist, closed world in which the scientific bodies hold the information very close to themselves. We would want to move to a more open system in which the industry is involved at every level, collecting the data, interpreting the data and developing joint solutions and I would see the cetacean issue as part of that broad approach, but I do not think it is a quick fix. A start has been made, as I say, this year and £1 million has been used to develop a partnership approach and it has, I think, so far proved to be very successful, but it is something that we would have to develop and expand in the future.

Q165 Mr Drew: They are nice words and I know from having interviewed you before that you are very diplomatic, but to go back to my first question, what are the incentives? This is money?

Mr Deas: Yes.

Q166 Mr Drew: What sort of money would a trawler captain require to be undertaking what could be quite an interesting, but quite a laborious activity actually to look at the scientific rationale for what is being caught, what should not be caught and so on? What is the money in this?

Mr Deas: Well, I cannot give you a fixed amount.

Q167 Mr Drew: I am not asking for a figure, but just a feel.

Mr Deas: This kind of idea would have to be related to the size of vessel and the tasks involved. The way that it has worked at the moment is that it is very difficult to give you a straight answer because the tasks vary.

Q168 Mr Drew: But have you any idea? Have they given you any figures where they said, "Barrie, you tell us what you expect and we will make it worth your while"?

Mr Deas: Well, I can give you an example of how it works at the moment which is that if the vessels are undertaking specific research trips, it is based on average earnings from fishing, so it has to be related to what they would earn fishing if you are talking about a designated trip, but if you are talking about a commercial fishing trip on which data is gathered while they are fishing, then that is a different story. Obviously we are talking about much lesser sums because you are not diverting all your time, so I think there is probably a scale of rates depending on how much you are deflected from your normal fishing operations.

Q169 Mr Drew: And that would be per vessel?

Mr Deas: Per vessel.

Q170 Mr Drew: You would have to do it like that?

Mr Deas: On a vessel basis, yes.

Q171 Mr Drew: You could not sort of sign up to an area or whatever as that would be meaningless?

Mr Deas: Well, you could. The way to do it would be to co-opt the local organisations and work out a schedule of which vessels are going to be doing the work and under what circumstances.

Q172 Mr Drew: Now, if we can go on to aspects of mitigation, there is this notion that we have now got, and I find it difficult to describe it, the supra-net, which I thought was something to do with IT, but we are on to the supra-net here where we have got fish that will stay within the net, but the dolphins and porpoises will be able to work their way out. Where are we on this? Can you try and give us a feel for the technical side of it and then I might be able to see whether I can get my mind around how the logic of the economics and the marine science locks into place?

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Mr Deas: I am not with you at all on the idea of a supra-net. It usually refers to a very large towed net and jumbo jets always come into it somehow. There are in the bass fishery, if we are talking about that, large nets. If we are talking about fixed nets—

Q173 Mr Drew: This is what is technically called a “cetacean-friendly gill net”.

Mr Deas: Well, we are talking about nets where, as I understand it, the mesh, the twine size would be of a size that would hold commercial fish species, but would break with larger mammals such as cetaceans and I have really got no information particularly on that.

Q174 Mr Drew: You are maybe feeling the same as me, that if a dolphin breaks out, I think the fish might be tempted to follow it unless he has had a word with them in advance to help them.

Mr Deas: I would have to be convinced that under practical conditions that would be a runner. I am happy to be convinced, but I have not seen anything so far.

Q175 Mr Drew: So you do not know of any particular trials or anything that has been going on out at sea?

Mr Deas: No. The most likely candidate for a practical, cost-effective mitigation device is the acoustic pinger.

Q176 Mr Drew: And this is an alternative because people do not like it.

Mr Deas: Well, there are a range of practical problems associated with the pingers and whether it is a long-term solution because of the habituation of the porpoise to the noise or whatever, there are real issues that have to be addressed, but it does seem to offer a reasonable way forward better than anything else I have seen and again against a background of a declining problem, particularly with reference to the hake fishery.

Q177 Mr Drew: Just as a final point, when we started this inquiry we were shown graphic pictures, I have to say historical pictures, of dolphins and porpoises being brought on shore. What is your feel for the individual vessels now? There clearly is an attempt to reduce this and, as you say, it seems to be a reducing problem, so I am interested in how you know that. Also what sort of measures are individual trawler skippers actually trying to take to make this a reducing problem?

Mr Deas: Your choice of language, I think, indicates that you are conflating the two fisheries and the two problems. There is the mobile trawl fishery which is a problem for dolphins and I think remains a problem. Then there is the set net, the gill net issue in relation to harbour porpoise and there it is a reducing problem and my evidence for saying that is two-fold. Firstly, the UK fleet that prosecutes that fishery is reduced from 50 vessels to 12, so you can, therefore, assume that the by-catch is reduced proportionately. Secondly, there does seem to be a prospect of addressing the problems in that particular fishery

through mitigation measures, particularly the pingers, and there does seem to be a way forward there.

Q178 Mr Drew: So are you saying that really we ought to be concentrating on the dolphins?

Mr Deas: Absolutely. That is the fundamental point we would want to make, yes.

Q179 Alan Simpson: I was just intrigued by David’s question about, “Give us a price. What would it take?” It sounds like the Whips’ Office! Would you just accept that there is another side of the questioning line that David Drew has been pursuing with you about the maintenance of fish stocks, namely that in addition to asking you, “What would it take for you to do the things we would like you to do?”, we can also pursue a line that says, “What would we need to put in place to stop you doing the things we do not want you to do?” In that context, would you just tell us what your position is in relation to the suggestions that we should impose quotas, particularly on the pelagic sea bass fishery?

Mr Deas: It is relatively easy for me to answer that question because we do not have a huge interest in that fishery ourselves. If quotas were introduced, I suppose the largest share would go to the French because they have got the largest historical participation in that fishery, but I think the fundamental point is that I do not think it would do a single thing for dolphins caught in that fishery. TACs, (total allowable catches), and quotas have not been notably successful since they were introduced. They are quite a convenient way of sharing a scarce resource between different Member States and different groups of fishermen, but they are not notably unsuccessful in terms of conservation and they would be even more blunt, I think, in terms of doing anything about the cetacean by-catch, so although we would not have a problem about it because we would not necessarily be affected, I do not think it is a solution to the problem.

Q180 Alan Simpson: In relation then to the cetacean by-catch, would quotas on any other part of the fishery be more effective?

Mr Deas: No, I do not think so.

Q181 Alan Simpson: So you do not see quotas as the answer at all?

Mr Deas: I do not think quotas are a solution to the by-catch issue, no.

Q182 Alan Simpson: So you do not see quotas as a solution, you do not see the gill nets as a solution, but would you see licensing of the vessels as a more effective way of dealing with this?

Mr Deas: In relation to the porpoise issue, all of those vessels are licensed under the UK fishing vessel licensing scheme, so we already have a very restrictive licensing regime and through the combination of the licensing system and the quota management system, the vessels that are in that fishery are the vessels that are in that fishery and they are not likely to expand. As I said earlier, the trend

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has been very steeply downwards since the early 1990s from 50 vessels down to about 12. In relation to the bass fishery, the issue is how many vessels are in that fishery. If you are looking to reduce the by-catch, obviously a reduction in the number of vessels would achieve that, but that is not a UK area of purview, it is not a UK jurisdiction and that would have to be done by the French or at EU level if the EU were to introduce a permit scheme or something like that on the basis of by-catch.

Q183 Alan Simpson: I was not necessarily asking who should do it, but whether you thought that this was a do-able idea and that it would deliver. The reason for asking that is that the Scottish Pelagic Fishermen's Association specifically made this as a recommendation, that restricting the number of vessels that were entitled to fish and restricting it to those with a proven track record of prosecuting the fishery was their view of an effective way of dealing with and limiting the issues of by-catch, so I just really was trying to sound you out on that.

Mr Deas: There are two aspects. A licensing system based on historical performance would prevent an expansion of the fishery. Whether the number of licences would come down would be the issue and how that would be achieved if your purpose is to reduce cetacean by-catch. There would have to be a reduction in the number of licences, not just freezing it at current levels.

Q184 Chairman: As someone who spends her entire life allegedly on a diet, size is quite important. You talk about the vessels being reduced from 50 to 12, but are the 12 vessels that are left in the fishery larger than the 50 that were originally in the fishery?

Mr Deas: No, there has not been a noticeable increase in size. I cannot swear that for every single vessel, but there has not been a general reduction in the size of the fleet countered by an increase in the size of individual vessels, no, certainly not.

Q185 Mr Mitchell: They have in the purse-seine tuna fishery in the eastern Pacific a mortality limit. In other words, if you catch and kill so many in relation to the catch you are making, the fishery is closed off and the vessel cannot fish anymore. Defra seems to think that we should consider whether any UK fishery should be subject to a cetacean mortality limit. What would your reaction be to that?

Mr Deas: Well, you are moving towards some kind of targeting there which makes some sense. If there is a problem, as I said right at the outset, we need to deal with that problem, but not in an indiscriminate, disproportionate way and the example that you give there is an example of targeted measures. If you have got a problem in a particular area with a particular fleet category, then deal with it in that way. I think that would be my general response.

Q186 Mr Mitchell: But you would not be in favour of it as a universal rule so that if a vessel catches more than the limit, it stops fishing or that branch of fishing is closed down either permanently or temporarily?

Mr Deas: Enforcement is an issue, let's be honest, of that kind of rule, so I would prefer to work towards a more collaborative approach where we have good information on precisely the scale of the problem. The difficulty with that is that unless you have an observer on every vessel, which raises all these questions about who is going to pay for it and who is going to do it, you do have an enforcement dimension there. The Cornish example, going right back to the early 1990s, is, I think, one that should not be dismissed where you have recognition of a problem and the industry working with the conservationists to find ways of reducing that problem. I think that is the model that we would want to stress in relation to that particular fishery.

Q187 Mr Mitchell: In the targeting scheme as we are moving towards it, is there a danger that fishermen will regard this not as a figure to come down from, catching less, but as precisely that, a target which they are permitted to take?

Mr Deas: I do not really have that much information or knowledge of the eastern Pacific, but I think that one of the problems is that the by-catch problem is not regular. It is sporadic. It is not even seasonal. From my understanding, you can go for years without having a by-catch problem and then there is a lot in one particular place and that kind of approach that you suggest would be a problem within that kind of scenario, I think.

Chairman: Well, Mr Deas, thank you very much indeed. We will be considering probably at the end of this session and reporting probably in the New Year. If, in the interim, there are issues which arise which you think your members or yourself would wish the Committee to take into account, please feel free to contact us. Thank you very much for giving evidence this afternoon.

Memorandum submitted by Linda Hingley, Brixham Seawatch (C16)

Common Dolphins are small agile Dolphins that normally reside in the Atlantic and Bay of Biscay. Every winter they move into the English Channel to follow the route of mackerel and bass, that annually move up the Channel from late Autumn.

Their main food source is mackerel, although they will eat other oily pelagic fish. They live and feed in large family groups, from as little as 20 in number up to 100's and are very dependent on living in sizeable groups for their survival. Their feeding methods (ie chasing shoaling fish like mackerel) are dependent on living in sizeable numbers.

Over the last 10–15 years the tide of Dead Common Dolphins found on South Devon beaches has been rising steadily every winter. Last winter (2002–03) was the worst winter on record for casualties. This has coincided with the increasing effort of Bass Pair trawling in the English Channel.

Three years ago the government put observers on these vessels and found (their own figures) on average Dolphins are killed, by this method, every other haul.

For the last 10 years, I have been involved in assessing and removing Dead stranded Dolphins from Devon beaches. Most of the Dolphins washed up in Devon are found in a small area called South Hams. The injuries on these animals are always the same:

1. Broken Beaks and teeth, many occasions beaks broken off.
2. Damage to pectoral and dorsal fins—Lacerations to body.
3. Often rope tied around tail stock. Many occasions tail fin cut off.
4. Often body cavity pierced or cut open.
5. Always found in winter months. Nov. Feb–March

We try to send as many of the Dolphins as possible for post mortem (only if they are fresh) and over the last 10 years the evidence of illegal slaughter and bycatch is overwhelming. 92% have died in this way. Scientists have ascertained that because of the wind and tide only 1%–10% of Dolphins dead, will be washed ashore.

Therefore for every one found on a beach there may be as many as 10 that may have sunk to the bottom of the sea.

This is confirmed by local Fishermen who tell me and report many occasions of finding rotting and Dead Dolphins coming up in their own fishing gear. (types of Fishing which we KNOW to not catch Dolphins—ie Beam trawling, scallop dredging, stern trawling). Often these Fishermen photograph or bring ashore the dead animals for inspection. Also, many bones for identification. There is a great deal of concern generally in the Fishing Industry about this matter.

I have been involved with the Fishing Industry for 25 years and have co-owned a Brixham based trawler for 12 years. Most of my information about where and how certain types of Fishing boats work, come via the industry. Also, my knowledge of Cetaceans comes from first hand observations from going to sea and watching these wonderful mammals, feeding and going about their daily business. Now that I am shore based, I rely on my fishermen friends and contacts for sightings and Information.

The reasons that Bass Pair trawling is particularly devastating to Common Dolphins is as follows:

1. Two large Pelagic commercial Trawlers tow a very large trawl between the two vessels. The trawl is massive (ie you can fit seven jumbo jets inside it). The problem for the Dolphins is that they enter the trawl chasing and feeding on fish (mackerel, Bass etc) and DO NOT realise that they are inside a trawl until they start to run out of air. (Being marine mammals they HAVE to come to the surface to breathe. Maximum time down eight to 10 minutes before death but they will be in trouble after three to four minutes).
2. The trawl is towed for long periods of time—often 10 hours or dawn to dusk.
3. The trawl is towed very fast eight to 10 knots (fast for Dolphins IF they are swimming in the wrong direction and do not realise they are caught).
4. The opening of the trawl is very large, from the surface to the bottom of the Sea. eg 30 fathoms opening in 30 fathoms of water.

Reasons why the Government's Trawl Design (Escape Grids) will NOT work

As you know this is not a new design. This type of trawl fitted with escape hatches or grids, was trailed in New Zealand years ago. That was on a much smaller trawl and for Sealions. It was found to be unsuccessful, as dead and injured Sealions, were filmed going through the escape grids. The main problem is still the same ie as the trawl (Bass Pair) is so large the Dolphins will STILL not realise they are in a trawl and trapped, and therefore will waste valuable time fishing and feeding. They will not realise, or find, or look for the escape hatches until they are dying, and panicking, and then it is too late.

Reasons why Defra' Research on Trawl Design and Escape Grids is virtually Useless

1. The Research was carried out at the wrong time of the year and under the wrong conditions and should have been conducted at the height of the Bass Fishing Season. (Nov–Feb). Defra's trail did not start until the end of March, beginning April, when the season had ended. There was therefore very little Bass left, and the Dolphins that had not been killed had returned to the Bay of Biscay. Very small numbers of Common Dolphins would have been in the English Channel at this time.

2. A camera WAS NOT fitted inside the trawl in order to film the Escape Grids (as done in the NZ trail) Therefore there is no evidence of what DID or DID NOT go out through the escape grids. This is crucial evidence, and no scientific trail could be conducted without this film footage.

3. DEFRA's own figures stated that two Common Dolphins were caught in 82 hauls. As I have explained how Common Dolphins live in large family groups, and how large the Bass Pair trawls are. It is impossible to catch two Dolphins in this way. You either don't catch any Dolphins or very many Dolphins. Three years ago, DEFRA's researchers confirmed this by saying they either caught no Dolphins or groups of 20-30 in one go. THIS leads me to truly believe that many Dolphins were caught during the trial and dead and dying Dolphins went through the escape hatches (as the sealions did in the NZ trial).

I suspect that the two Dolphins found, were trapped or enmeshed in some way, inside the trawl.

CONCLUSION

The Bass Pair Trawl Fishery in the English Channel should be stopped until measures are found categorically to prevent Dolphins being caught and killed in this way. The evidence about this particular Fishery is overwhelming. This has now moved on to being a moral and ethical issue. The MOST IMPORTANT THING to take on board is the numbers of Dolphins being killed this way (up to 5,000 a year, scientists believe and whole families being wiped out). And more importantly still the massive scale of suffering involved. The Dolphins will take up to 20 minutes to die, suffering incredible agony. They suffocate rather than drown, and consequently many internal organs explode, including the heart. This is totally unacceptable for intelligent sentient mammals so close to ourselves.

25 November 2003

Witness: Ms Linda Hingley, Brixham Seawatch, examined.

Q188 Chairman: Good afternoon.

Ms Hingley: Do you want me to start with a brief statement about what I do or do you want to start straight as you did with the other gentleman?

Q189 Chairman: I think we would probably like to ask questions and if at the end there is something critical that you think we have not covered, then feel free to mention it.

Ms Hingley: As you know, it is a huge issue and I am very passionate about it.

Q190 Chairman: Well, I would try and contain that. Welcome to the Committee. You know the purpose of our session.

Ms Hingley: Yes, and thank you for allowing me to come.

Q191 Chairman: You have give us written evidence for which we thank you. Can you tell the Committee what the evidence is this year for what is happening on Devon's beaches and I do not know if you know for Cornwall as well, and why is it that it is dolphins that you find and not the porpoises?

Ms Hingley: Well, I just cleared a dead dolphin yesterday off a Devon beach. The autumn ones have already started. As you know, this year is the worst year on record for Devon and Cornwall beaches. The main dolphins that I clear are common dolphins and they are seasonal. It is only in the winter months that I get common dolphins washed ashore and we know virtually how they are being killed now and I do not think there is any argument about that. It is the pelagic fishery in particular, the bass pair trawlers that are definitely killing the common dolphin and this is proven from the post mortem reports and from the observer scheme that Defra ran three years ago. I also get porpoises. Interestingly, the porpoises that I get are not seasonal, but they are all year round and they do correspond with neaps, neap tides. As you know, you get high tides and low tides and neap tides are when the tide is at its lowest

and that is interesting because that is actually when a lot of the set netters are working. They actually have to work neaps and not the tops of the tides, as they call it, so it is very interesting that when I do get porpoises wash in, it does correspond to the fishery that we know would have a problem with them.

Q192 Chairman: And are they autopsied?

Ms Hingley: They are autopsied, yes. Interestingly, and I am going to be absolutely straight on this, some of the porpoises that we send off for post mortem have died of natural causes, but most of the porpoises that we send off are actually by-catch and are proven to be by-catch, but we do get porpoises occasionally that have high worm burdens, worm infestations, and we get them with secondary pneumonia. Porpoises, as you know, are the smallest cetacean in our waters and they do have a real problem with pollution. Their nature of feeding is that they are bottom feeders, so they are very different from dolphins. They are bottom feeders, so they dig in the sand and the mud and they do pick up a lot more pollutants and things that are around in the river estuaries which is where they feed, so to be absolutely fair, you do get sick porpoises occasionally, but you would never get sick common dolphins. All the common dolphins that I send off are so healthy I cannot tell you.

Q193 Mr Lazarowicz: Why is the pelagic sea bass fishery particularly prone to common dolphin by-catch, do you think?

Ms Hingley: I do not know if you have had a look at the evidence that I put in, but I did actually say the reasons why the bass pair trawl fishery is particularly devastating to common dolphins. First and foremost, it is a massive trawl, it is a huge trawl, it really is. Secondly, it is pulled very fast through the water at about eight knots, which is not very fast for a dolphin, but very fast if you have got a huge trawl and a dolphin swimming into it going the other way. Thirdly, and this is very important, they are towed

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for very long periods of time and we are talking about from dawn till dusk, sometimes eight to ten hours, and there are very few fisheries that have their gear in the water for that length of time. For example, the pelagic fishery, which we know can catch and kill dolphins, I know pelagic fishermen and if they are targeting sprats or mackerel, their gear sometimes is only in the water—this is a pelagic single trawl—for 10 or 20 minutes. These boats are highly sophisticated. They do not want to waste time finding fish. What they do is they go out there, they find the shoal of fish on their fish-finding apparatus and they zap it, so, in other words, your gear is only in the water for a short period of time. If dolphins are around in that short period of time, yes, they could be caught and killed, but the chances are that the dolphins have more of a chance of escape. If you have got a massive phing going through the water at quite a high speed, eight to ten knots, for ten hours and you have got the opening, which I put in my evidence, which can be from the surface to the bottom of the sea, nothing is going to stand a chance, nothing

Q194 Mr Lazarowicz: I think you advocate suspending the fishery—

Ms Hingley: Yes, I would love to see it banned, yes.

Q195 Mr Lazarowicz:—until a method for preventing the by-catch can be found?

Ms Hingley: Yes.

Q196 Mr Lazarowicz: Do you think there are methods which can be worked out to prevent this by-catch?

Ms Hingley: No, I do not. I do not know what method you could use. With the Scottish bass pair trawls, they are so huge and they are devastating. They have done so much damage to the common dolphins in the English Channel over the last 10 or 15 years. Defra's own figures are so damning on this, I do not see how we can see these dead bodies washing in, and I just do not think there is anywhere to go on this. I think we have to ban it. What I would have loved to have done is to have banned it for one season, just suppose we banned it for one season, and see what is washing up in Devon and Cornwall. Let's just see. Ban it for one season and let's just see what we have washing up on our beaches.

Q197 Mr Lazarowicz: But if your supposition was correct, the logical conclusion to your position would be that the fishery would be closed, not suspended, and closed indefinitely. Is that not correct?

Ms Hingley: Yes, and I would like to say that I speak as a person from the fishing industry. As you know, I have been involved with the fishing industry for 25 years when I married a fisherman 25 years ago. For 12 years I have been a part-owner of a beam trawler. My whole income is derived from the fishing industry. I have nothing to gain from banning the bass pair trawl fishery because our boat does not really catch very much bass at all and we do not target bass. A beam trawler is for flat fish, it is on the

bottom and we target bottom fish. I can honestly tell you that the only reason I got involved with what I am involved with now is because I was devastated to find out how much damage is going on in an industry that I actually love, respect and admire. I am afraid this is an industry which is a wonderful industry which has been hideously mis-managed, it is motivated by total greed and it needs a complete clean-up. I am afraid there are ways to catch bass which do not kill dolphins and those are what we should be looking at. This is an industry which was banned in America six years ago on conservation grounds totally and I was not aware that the Americans have got a tremendously good eco-friendly record. I think the only way to approach the bass pair trawl fishery in the English Channel is to ban it until we know that we have got absolute categoric proof of designs or mitigation methods that are going to protect dolphins. There is no other way out of this. Let me just say, there is one thing that you could do, and I have spoken to a lot of fishermen about this. I have said, "What would you do?", and they have said, "Well, there is evidence to show", and the Defra observers proved this, "that smaller pair trawlers do not catch dolphins". The gear is much smaller, the trawls are much smaller, so if you are going to tinker with the fishing industry, and you cannot tinker with the fishing industry, as you know, because how do you tell a bloke who has a 1,200 horsepower boat to suddenly go out, flog it and buy one that is 300 horsepower, it is like dis-inventing the wheel, but small is beautiful, I am afraid, and I am afraid that in this particular issue there is evidence that shows that smaller horsepower does not catch dolphins purely because the gear is so much smaller. In other words, if you had two boats that were 300 horsepower towing a trawl, it would be much, much smaller and it would have to be. Do you get my drift? It is 600 horsepower in total. The boats that are working off Start Point, which is the area off Devon where all of these dolphins are washing in that I deal with at the moment, they are massive. They are 1,200 or 1,500 horsepower, 2,000 horsepower, so those two combined, that is the power. It is power, pure power that is pulling that amount of gear through the water.

Q198 Mr Lazarowicz: If the measures that you want to see put in place were taken, would there not be calls from the industry for government compensation?

Ms Hingley: Yes, there would have to be, I am afraid, yes. I would not like to talk about that because I think you need to ask your fisheries representatives about that.

Q199 Mr Lazarowicz: But if this activity is so morally reprehensible, why should the Government, why should the public purse compensate people for this?

Ms Hingley: Well, that is a good point. There is one point I would like to make. As you know, the common dolphins are killed in the main, we think, by the bass pair trawlers. As you know, the bass pair trawlers only work in the English Channel in the

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winter months and the season is actually quite small. They have started working now, but the actual bass season is only from the 1 January to 30 March, so we are only talking about three months. Now, these trawlers are actually working elsewhere for the rest of the year and they are doing other fisheries, so in actual fact they are not totally reliant on this fishery for all of their income as they do other things as well. I suggest they go back and they do their other things. That is what I suggest they do.

Q200 Mr Mitchell: Do you want to ban the bass pair trawlers?

Ms Hingley: Yes. Barrie spoke about targets; I do not agree with targets. One dolphin killed by a trawler is one too many. I hate to talk about dolphins in the same way that you talk about fish quotas, but you have to look at by-catch on a sliding scale. We are talking about porpoises being caught in set nets. That is a completely different problem to common dolphins and pilot whales being caught in these big pelagic nets. Nobody is perfect, we do not live in an ideal world, so I think what we will have to do is we will have to decide what is the biggest problem and deal with the biggest problem first and then work our way down. In order to do a proper clean-up job we have got to target the biggest offender first and I am absolutely certain that the biggest offender is the bass pair trawlers. I cannot tell you how much effort and work and trouble I have put into this. I would love to be able to see ways that these guys could keep fishing and save the dolphins. I do not enjoy doing what I do. I am not a charity, I fund myself. I would love to move on and get a life and do something else, I can assure you. This is such a big problem now that it needs addressing and basically it is not being addressed. The fishermen are not going to address it. Let us be honest about it, fishing is a tough game, fishermen are tough people and I respect them because they are tough. They are a special breed but they are also the biggest rogues going. They are out there to make a buck. It is a tough world out there. We cannot expect these guys to turn into saints. They are not going to suddenly start telling you, "Oh, yes, I really care about dolphins. I really want to do this." I am talking as a fisherman's wife and I know the only way to make fishermen do anything is to say you are going to do this, you are not going to like it but you are going to do it because you have to, because too many dolphins are dying. They will accept that. They are tough enough to take it.

Q201 Mr Mitchell: What you are saying contradicts what the previous witness was saying, which is it is a matter of responsibility and not putting a bad image on the occupation, but they should do something about it.

Ms Hingley: Barrie touched on a point which I think is very important. I am sure none of the Committee here is probably aware that there is actually a European Commission statute which was made quite a long time ago, not on conservation grounds but on fisheries grounds, that fishermen are duty bound to report any cetacean by-catch. This has

never been followed up. It is a classic case of one of these laws that is made that nobody is going to take notice of. Do you honestly think a fisherman is going to phone you up and tell you he has caught 50 dolphins?

Q202 Mr Mitchell: Why are your figures for the proportion killed as by-catches so much higher than those from Defra?

Ms Hingley: I do not know where Defra get their figures from, but I talk to fishermen. I started a sighting scheme. You touched on fishermen actually reporting live dolphins, we had a monitoring scheme about what is around our waters. One of the things I did when I first set up the little organisation 12 years ago was a monitoring scheme with my fishermen friends and that was very interesting and I still get a lot of information from the fishermen, but I get a lot of information from fishermen who tell me what is down on the bottom, which never washes in and that is a very pertinent point. The figures that are compiled by Defra and the Natural History Museum are only the tip of the iceberg, they are only about what washes in on the beaches. I only see the tip of the iceberg.

Q203 Mr Mitchell: So your figures are more accurate than theirs?

Ms Hingley: I feel so for two reasons. One, because I come from within the fishing industry and I am party to information about what is actually on the bottom of the sea, what fishermen trawl up in their nets that is dead and rotting; and secondly, because I obviously deal with it first-hand, I go out on the beaches, I drag these animals up, I get them off the post-mortem, I see the damage to them, I talk to fishermen, I know where the boats are working and I keep a very close eye. I have had a whole load of dolphins in in the last week in South Hams in Devon and I have actually made it my business to find out where the pair trawlers are working; they are working off Start Point. We have had south-westerlies for the last week and that is why they have come in where they have. You do not have to be very clever to do this.

Q204 Mr Mitchell: You have to be very political to get it stopped. The argument there will be that this is a European responsibility which our Government cannot do much about. There has been an overwhelming desire for a ban on industrial fishing. The British Government says it wants industrial fishing banned but it cannot do anything about it because it has to come to a deal with the Danish Government who does want industrial fishing to go on and so get other catches reduced. The same thing is going to arise with a ban on bass pair trawling because it is primarily a French interest and the French really are not open to influence and they are very intransigent when it comes to defending their interests. That is a real difficulty which you have got to face. How do you propose to face it?

Ms Hingley: That is your job. I am not an MP and I do not want to be an MP. I just want to get on with my life and save dolphins. You understand the

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machinations of the European Union, I do not. All I can tell you is please stop it now because we are about ten years too late for these animals. We have very few common dolphins around. Defra will tell you this year they have not caught very many and that is because there is none left. Do we wait until we have wiped out huge populations? We are wiping out the breeding males, the alpha males, the alpha females. They are healthy, their bodies are in such good condition. We are not taking the sickly ones or the young ones or the old ones, we are taking out the breeding population. We do not know what damage we are doing. We do not really know what the population is because it is transient. We know they only come into the English Channel to feed in the winter months, as they have done since time immemorial. I can tell you that since I have been involved in what I am doing I have seen so much devastation, so I am absolutely and utterly converted to a ban on certainly the bass pair trawling. I can assure you, I have nothing to gain from this in any way whatsoever, this is my personal belief.

Q205 Mr Mitchell: Touché about our responsibility, that is absolutely right.

Ms Hingley: I am here today to tell you what I believe to be going on. Certainly some of the things I can prove, some of the things are my own belief, but I do not want to do your job. Your job is to stop it in any way possible. The British Government could ban the Scotsmen. We have got about four pairs working over Scotland. Now, I know there would be uproar and, quite fairly, the Scotsmen would have a point, they would say "How can you ban us when the French are carrying on?" Interestingly, the Scottish pair teams are bigger, their gear is bigger than the French. I am not saying they kill more dolphins, they do not. We have these dolphins washing up on French beaches that never make a line in a newspaper. They had 800 dolphins washed up in a weekend last winter on French beaches but it never even made the news. I have only dealt with six in the last week and you might say "So what, Linda?". I am not trying to take away from the French problem, all I am saying is the Scotsmen's trawls are much bigger and their boats are much bigger. I have always said that one Scottish pair team equals about three or four French teams because their gear is smaller and they work it slightly different. Obviously we cannot catch more. Every time a pair team catches dolphins they do not catch one or two, they catch 25, 30, because the animals always feed in large groups, they have to chase their shoaling fish to feed. They are not like porpoises that can live on their own and feed off the bottom, dolphins are interesting, they have to live in large family supported groups and they feed by chasing shoaling fish at speed and they need the whole family around them to chase the fish into a pack and to feed off it. You cannot catch two dolphins in this way, you are going to decimate 20, 30 or 50 and Defra's figures prove that, do not take my word for it.

Q206 Mr Mitchell: Let us move on to separator grids because Defra argues that they have been successful at deploying it on an experimental basis in New Zealand and Tasmania, although you are less happy. Where did you get your information from Defra's recent trials?

Ms Hingley: I have a friend in New Zealand who has looked into the New Zealand trials for me and she gave me the information on the New Zealand trials. The New Zealand trials, first and foremost, were not for dolphins, they were for sea lions. The second thing is that the trawls were much smaller. The problem we have with these big trawls is the dolphins do not realise they are in the big trawls. In order to tow the big trawl you have to cut down water pressure. That is one of the problems with these big trawls, the dolphins swim in and they do not feel the change in water pressure on their body, they do not realise they are in a trawl at all. They waste valuable time swimming around feeding on fish that is in the trawl not realising that they are caught. First and foremost, the New Zealand trial was done on a much smaller trawl and if that trawl was going to work it would have worked in New Zealand. Let us face it, if you are going to find your way out of a trawl, it is easier to find your way out of a smaller trawl than a bigger trawl. Secondly, sea lions are much smaller and more agile than dolphins, they are really slippery creatures. The trial proved that too many sea lions were injured and went through those separator grids and they were filming what went through the separator grid. I would love Defra's design to have worked. I cannot think of anything better than us here discussing a trawl design that is going to work. First and foremost, they did not have a camera filming what went through the separator grids and that is vital. How do they know it was a success if they do not know what went in and out? Secondly, they did not start the trial until the end of March or the beginning April. As I have just told you, the bass season starts on first January and finishes at the end of March. I can tell you quite categorically that quite often the bass is being so heavily hit that there is not much bass left around mid-March. Often the Scotsmen go back to Scotland because it is not worth being here if you are not catching anything.

Q207 Mr Mitchell: Would it not be better to use some kind of mitigation device like the separator grid than not use any at all?

Ms Hingley: Yes, I see your point. Why are we tinkering with things? If you are going to do research, you either do it properly or not at all. It is like me running a survey on snow in the middle of June. You should do the survey at the height of the season. They should have been doing that survey in January when the boats started bass pair trawling. They should have had a camera fitted to watch everything that went out of that separator grid. I would love to sit here and say, "It worked, how brilliant, how wonderful," but I am not going to support research that is totally unscientific. Secondly, while we are tinkering another year has gone by and I am dragging dead dolphins off

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beaches in Devon that have suffered. This is the point I want to make that nobody makes, these animals suffer terribly. If this was happening on land, if farmers were saying they could not afford to send their sheep off to the abattoir so they will just slowly strangle them in the fields over a period of 20 minutes they would be imprisoned. These dolphins die a terrible, torturous death. They are exactly the same as you and I. I have seen them post-mortem, I have seen them opened up and when you look inside the dolphin it is exactly the same as a male or female of our species. We know they are highly intelligent, sentient mammals. It takes them 20 minutes to die with all their body organs rupturing. I am not kidding, they struggle so much they rupture their own muscles. You imagine struggling so hard you break your own neck. You imagine struggling so hard you break your own pelvis, imagine the agony. The only thing you can think of is getting out of what you are trapped in and all your family members are calling and panicking around you. How dare we put these animals through this in the name of money and in the name of buying up bass—which, incidentally, is my favourite fish, it is a lovely fish, I want to carry on eating bass. Does anybody here want to eat bass that has rolled around in a trawl with a dead dolphin? I do not think so. There are ways to catch bass that does not kill dolphins. What are we doing putting money into supporting an industry which is devastating these creatures? They do not die quickly, it is a lingering, suffering, terrible death and that is it as far as I am concerned. I do not want to talk about targets, it is the suffering and the scale of the dolphins that are dying that is important. I cannot tell you any more.

Mr Mitchell: That was very powerful evidence. I can see now why so many MPs spoke so highly of you and said we must hear you. It has been a real pleasure. Thank you.

Q208 Chairman: I would like to echo that. I think you should think about being a Member of Parliament. If this is your first appearance before a

Select Committee, I wish those who came more frequently to give evidence gave it with so much passion and authority. Thank you very much for your evidence today.

Ms Hingley: May I just show you some photographs?

Q209 Chairman: Yes.

Ms Hingley: I will be very quick. I brought some photos along today to show you the injuries to the animals that I deal with. You can see the lacerations to the body. The beaks are always very badly broken or damaged. I want you to take this one away with you and remember this one when you are tired and you do not feel like doing anything and you have loads of other things to be dealing with. This is a common dolphin—all these are post-mortem by the way—which was proven to have died in a trawl, you can see the classic damage to the beak, to the pectorals, to the dorsal. This one was heavily pregnant and she also was lactating, so she would have had a calf. The calf would have gone away, if it was not killed in the trawl with her, and starved to death. This is how I often find them washed up, hand on heart, I have not touched them in any way. They catch so many, they tie them together to get them over the sides of the boat and sometimes they are tied in twos or threes together with ropes still around their tails, they do not even bother to take the rope off. How damning is that? Lastly, this is what they do to them when they want to get rid of them and they do not want us to find them, they chop them into bits, but because the sea is such a wonderful place it throws up all its secrets and this is what we find, heads, tails, bodies, torsos. Imagine if your children or your grandchildren were finding those and they asked who did it and you said the fishermen, it is just not good enough.

Chairman: Austin says “the French” but we will not go there! Thank you for your co-operation and passion. We very much hear what you are saying. Thank you.

Memorandum submitted by the Department for Environment Food and Rural Affairs (C8)

INTRODUCTION

1. Bycatch, the unintended mortality of non-target species, is widely recognised as one of the most serious impacts of modern commercial fishing. If the level of bycatch of a species is too high then the species population cannot maintain itself, leading to population decline. This can particularly impact on long-lived vertebrate species with low birth rates, such as marine mammals.

2. The UK Government is concerned about levels of bycatch and is committed to making progress on reducing them. To understand properly the impact of bycatch, it is important to set it in the context on the overall population of a species. Scientific work was undertaken on the levels of bycatch which would lead to population declines for the Agreement on Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) and the International Whaling Commission. Following this study, in 2000 the UK Government was instrumental in gaining international approval at ASCOBANS to a resolution which identifies that annual cetacean bycatch above 1.7% of the relevant abundance estimate for the species constitutes an unacceptable level, as any take above this level would inevitably lead to population decline. Parties to ASCOBANS have also agreed an intermediate precautionary objective of reducing bycatch to less than 1% of the best population estimate. The measures proposed by the Government in the UK Small Cetacean Bycatch Response Strategy are aimed at meeting these targets.

Number and Causes of Bycatch and What Research has been Carried Out

3. Defra and previously MAFF have contracted the Sea Mammal Research Unit (SMRU) to carry out a number of research projects into cetacean bycatch in UK waters. This research has helped to improve our knowledge of the interaction between fisheries and small cetaceans and has also helped in the identification and development of mitigation measures. International efforts to identify and reduce bycatch have also benefited from this research and it has also played a key part in the elaboration of EU proposals to reduce bycatch issued by the Commission in July 2003.

4. In the early 1990s, SMRU were part of a team of researchers who undertook a project on behalf of the European Commission which examined the extent of bycatch in the Celtic Sea. From observations on UK vessels, it was estimated that there was a bycatch of around 740 harbour porpoises per year between 1992 and 1994 in UK gillnet fisheries (over 15 metre vessels only).

5. MAFF funded SMRU in 1990 to carry out a four year study assessing the population biology of harbour porpoises. The objective of this study was to assess the status of harbour porpoise populations by investigating stock structure and collecting basic biological data from carcasses obtained from strandings and by-catches. The study provided useful preliminary scientific information on interactions between human activities, primarily fishing, and cetaceans. This was followed by more targeted projects assessing the extent of small cetacean bycatches in specific UK fisheries. In 1994 SMRU established a monitoring scheme on UK gill and tangle net vessels in the North Sea and West of Scotland where a bycatch problem was suspected. This programme estimated the total number of harbour porpoises taken by these fisheries in ICES Divisions IVa, b, c and VIa to be approximately 1,000 animals in 1995 reducing to around 600 in 2000. It was thought that this reduction was primarily associated with a decline in effort in this fishery. As part of a three year project beginning in 2000, SMRU looked at the reasons how and why harbour porpoises became trapped in gill nets and also widened observer coverage to pelagic fisheries which had not been monitored previously. In observations made, no bycatch was seen in the fisheries for herring, mackerel, sprat, pilchard, blue whiting and anchovy. However, a significant bycatch was identified from surveys carried out from 2001 to date in the offshore pair trawl fishery for bass off the South West coast of England: in observations made during 313 hauls, a total of 91 common dolphins were observed caught (see Annex A for a more detailed breakdown of these observations).

6. Research has also considered whether adjustments to gear or devices have the potential to minimise the bycatch of small cetaceans. In studies carried out by SMRU for MAFF and the EC, and in studies undertaken elsewhere, acoustic devices (pingers) were found to be effective at deterring porpoises when used with fixed fishing gear (gill nets) Unfortunately trials carried out in 2001 found that pingers did not have the same deterrent effect on dolphins when used in mobile (ie trawl) gear.

7. In considering the results of research funded by MAFF and Defra, it should be stressed that activities of UK vessels alone have been observed and bycatch estimates for vessels from other member states' fleets fishing in UK waters are not known. For example, the French element of the offshore bass fishery is significantly greater than the UK's but bycatch data for that fleet are not available.

8. As a result of the level of bycatch observed in the offshore pair trawl fishery for bass, the focus of Defra research shifted to the identification and trialling of mitigation measures for this fishery. Scientists at (SMRU) have recently completed the second stage of sea trials of an exclusion grid designed to reduce common dolphin bycatch. These trials have demonstrated that grid performance has now improved to the extent that it will fish reliably with minimal loss of fish which indicates that the grid system ought to be acceptable not only to UK fishermen but to those of other countries involved in the pair trawl fishery. The very significantly reduced mortality rate overall in this trial compared with previous years (two animals, both caught in the same haul, over seven weeks, and these from causes that are expected to be eliminated) is grounds for optimism that a viable means of minimising dolphin bycatch in this fishery can be attained very soon. We intend to move forward on the basis of these results from trialling measures to actual deployment on a wider scale in the fishery and we will be discussing how this can be achieved with the industry and whether other adaptations to the fishing gear, such as changes to fishing methods, could also contribute to bycatch reduction. If effective bycatch reductions cannot be achieved in the short term, other options such as closure have not been ruled out.

9. A new Defra-funded study began in July this year for SMRU to extend and improve assessments of the nature and extent of marine mammal bycatches in fishery operations and to investigate the impact of bycatch in marine mammals at the population level. The study will also continue investigations into how and why bycatch occurs and develop and test bycatch mitigation methods.

RESEARCH INVOLVING POST-MORTEMS OF CETACEAN STRANDINGS IN THE UK

10. In addition to the research projects on cetacean bycatch, the Government has funded studies by the Natural History Museum on trends in cetacean strandings around the UK coastline, involving post-mortem examinations. These establish cause of death and provide information on the number and causes of cetacean bycatch, alongside other causes of mortality such as disease.

11. There were 655 reported cetacean strandings in the UK in 2002 (the most recent year for which data is available). The last three years have seen progressively increasing numbers, predominantly due to increasing winter strandings of common dolphin (*Delphinus delphis*) and harbour porpoise (*Phocoena phocoena*) in southwest England. Strandings of other cetacean species are much less common. 189 specimens were examined at post-mortem in 2002 (post-mortem is not always possible as often stranded specimens are too decayed). 29 harbour porpoise bycatches were diagnosed in 2002 (including four retrieved directly from fishing vessels as part of observer research), 24 of these were in England and Wales and four in Scotland. 29 common dolphin bycatches were diagnosed, all but one of which occurred in the south west of England. Other major types of cause of death diagnosed included physical trauma other than bycatch, eg (27, including 26 harbour porpoises probably attacked by bottlenose dolphins), disease (38, including 23 harbour porpoises), starvation (21, including 17 harbour porpoises) and live strandings (18). Annex B and Annex C set out this information in more detail.

12. A review of the UK strandings data from September 1990 to December 2002 has been carried out. Within England and Wales, bycatch was the most common cause of mortality for harbour porpoises (156, representing 30% of established causes of death) and common dolphins (176, representing 66% of established causes of death). Harbour porpoise bycatches frequently demonstrated external injuries consistent with wide-meshed monofilament gillnet-type fishing gear and these strandings had a wide spatial and temporal distribution within England and Wales. In contrast, common dolphin bycatches were almost exclusively stranded in southwest England between December and April (thus demonstrating a strong spatio-temporal relationship with winter mid-water pelagic trawl fisheries operating off the southwest coast of England). The number and proportion of harbour porpoise bycatches stranded in Wales/northwest England and along the east coast of England peaked in the mid-1990s and declined markedly thereafter, whereas the number of stranded harbour porpoises and common dolphins diagnosed as bycatches in southwest England increased annually between 1999 and 2002. In Scotland, only 14 stranded cetacean bycatches were diagnosed between 1992 and 2002, consistent with the very low fisheries efforts in Scottish waters during this period.

13. The research suggested that, although the frequency and distribution of strandings is highly correlated with weather conditions, the increase in strandings of common dolphins and harbour porpoises in southwest England in recent years appears to reflect a genuine increase in (predominantly bycatch related) mortality of these two species.

The likely effectiveness of the Government's UK Small Cetacean By-catch Response Strategy, and what further steps should be taken either by the Government or by the European Union to address the problem.

14. The UK Strategy, developed by Defra in partnership with the Devolved Administrations, sets out the Government's proposals for action to reduce unacceptable levels of small cetacean bycatch in UK waters and UK vessels operating in EU waters. It recommends practical measures to reduce bycatch drawing on the research undertaken to date and identifies areas needing further research.

15. The recommendations in the Strategy include:

- a legal requirement for certain UK vessels using bottom set gill nets in the Celtic and North Seas to use pingers;
- an expansion of the UK's bycatch monitoring scheme;
- consideration of whether any UK fishery should be subject to a cetacean mortality scheme;
- the need for further research on bycatch mitigation measures for pelagic trawl fisheries;
- consideration of an accreditation scheme for cetacean-friendly fisheries; and
- the need for action at EU level.

16. Three-month public consultation with a wide range of fishing industry organisations, non-Governmental conservation organisations, regulators and others concluded in June and their responses are currently being considered.

17. The strategy acknowledges that whatever action can be taken by way of requiring the use of separator grids or other mitigation measures, it would be much more effective if implemented at an EU level. This is because any UK requirements would apply only to UK fishermen: there is a large number of fisheries in UK waters prosecuted by vessels from other member states, so a UK measure alone would have no significant impact on the problem. This is why the UK has continued in the light of the research findings to press for meaningful action at an EU level to address the problems identified. The issue has been raised by the UK at ministerial level with the Fisheries Commissioner Fischler on a number of occasions. In particular, the UK has pressed for the introduction of an observer programme across the EU to broaden the information available and raised the need for urgent action at Council of Ministers' meetings. We have also urged the Commission to join us in providing funding for a project led by SMRU to provide reliable and up-to-date estimates of cetacean abundance in the North Sea and adjacent waters. This study would enable us to assess the significance of levels of bycatch in conservation terms.

18. The Government welcomes the publication of recent Commission proposals to address the incidental catches of cetaceans in fisheries and is looking for their early agreement and implementation. Alongside these discussions, which we have to acknowledge may unfortunately take some time to conclude and for measures to come into force, consideration of implementing the UK strategy and taking action on a unilateral basis will continue, taking account of responses received to the consultation process.

12 September 2003

Annex A

SEA MAMMAL RESEARCH UNIT: OBSERVATIONS ON BOARD BASS TRAWLERS 2001–03

| Year | Days at Sea | No of hauls | Dolphins | Tonnes landed | Fleet effort (hauls) | % Observer coverage |
|------------------------|-------------|-------------|----------|-----------------|----------------------|---------------------|
| 2001 | 72 | 116 | 53 | 49.63 | 364 | 32 |
| 2002 of which | 37 | 66 | 8 | 44.01 | 363 | 18 |
| with exclusion grid | 4 | 9 | 0 | NA | NA | NA |
| without exclusion grid | 33 | 57 | 8 | NA | NA | NA |
| 2003 of which | 84 | 131 | 30 | NA ¹ | NA | NA |
| with exclusion grid | 49 | 82 | 2 | | | |
| without exclusion grid | 35 | 49 | 28 | | | |
| All | 193 | 313 | 91 | NA | NA | NA |

¹ Figures not yet available

Annex B

REPORTED CETACEAN STRANDINGS ETC IN THE UK FOR 2002 BY REGION AND SPECIES

This table includes all reported cetacean strandings and covers all causes of mortality, not just those associated with bycatch.

| | England, Wales & Isle of Man | Scotland | Northern Ireland | Total |
|---|------------------------------|----------|------------------|-----------|
| BALAENOPTERIDAE | | | | |
| <i>Balaenoptera acutorostrata</i> (minke whale) | 5 | 13 | - | 18 |
| DELPHINIDAE | | | | |
| <i>Delphinus delphis</i> (common dolphin) | 111 | 8 | - | 119 |
| <i>D. delphis/S. coeruleoalba</i> (common dolphin/striped dolphin) | 5 | 2 | - | 7 |
| <i>Globicephala melas</i> (long-finned pilot whale) | 15 | 6 | - | 21 |
| <i>Grampus griseus</i> (Risso's dolphin) | 3 | 7 | 1 | 11 |
| <i>Lagenorhynchus acutus</i> (atlantic white-sided dolphin) | 2 | 2 | - | 4 |
| <i>Lagenorhynchus albirostris</i> (white-beaked dolphin) | 2 | 5 | - | 7 |
| <i>Orcinus orca</i> (killer whale) | 1 | - | - | 1 |
| <i>Stenella coeruleoalba</i> (striped dolphin) | 4 | 5 | - | 9 |
| <i>Tursiops truncatus</i> (bottlenosed dolphin) | 4 | 2 | - | 6 |
| Unidentified dolphins | 49 | 2 | - | 51 |
| PHOCOENIDAE | | | | |
| <i>Phocoena phocoena</i> (harbour porpoise) | 283 | 60 | 4 | 347 |

| | <i>England, Wales & Isle of Man</i> | <i>Scotland</i> | <i>Northern Ireland</i> | <i>Total</i> |
|--|---|-----------------|-----------------------------|--------------|
| PHYSETERIDAE | | | | |
| <i>Kogia breviceps</i> (pygmy sperm whale) | 1 | - | - | 1 |
| <i>Physeter catodon</i> (giant sperm whale) | - | 4 | - | 4 |
| ZIPHIIDAE | | | | |
| <i>Mesoplodon bidens</i> (Sowerby's beaked whale) | 1 | - | - | 1 |
| <i>Ziphius cavirostris</i> (goosebeak whale) | 2 | 1 | - | 3 |
| Unidentified toothed whales | 14 | 4 | - | 18 |
| Unidentified cetaceans | 23 | 4 | - | 27 |
| TOTALS | 524 | 125 | 5 | 655 |

(Consultancy report—Trends in cetacean strandings around the UK coastline and marine mammal post-mortem investigations for the year 2002. The Natural History Museum)

Annex C

CAUSE OF DEATH CATEGORIES OF MARINE MAMMALS AND TURTLES STRANDED IN THE UK IN 2002

This table sets out the cause of death of stranded cetaceans for those specimens where post-mortems were carried out. It identifies the bycatch issue for harbour porpoises and common dolphins. It was not possible to undertake post-mortems on all stranded specimens, hence the numbers are lower than for the total strandings in Annex B.

| <i>Species include Common Names</i> | <i>Cause of death category</i> | <i>No</i> |
|--|---|-----------|
| <i>Phocoena phocoena</i> (harbour porpoise) | Bycatch* | 29 |
| | Physical Trauma (bottlenose dolphin attack) | 24 |
| | Pneumonia, Parasitic | 15 |
| | Starvation | 9 |
| | Starvation (neonate) | 8 |
| | Others | 5 |
| | Live Stranding | 4 |
| | Pneumonia, Parasitic and Bacterial | 4 |
| | Gastropathy and/or Enteropathy | 3 |
| | Generalised Bacterial Infection | 3 |
| | Physical Trauma | 2 |
| | Pneumonia, Parasitic and Mycotic | 2 |
| | (Meningo) encephalitis | 1 |
| Not Established | 10 | |
| <i>Delphinus delphis</i> (common dolphin) | Bycatch | 29 |
| | Others | 4 |
| | Gastropathy and/or Enteropathy | 1 |
| | Live Stranding | 1 |
| | Physical Trauma | 1 |
| | Pneumonia, Bacterial | 2 |
| | Not Established | 6 |
| <i>Stenella coeruleoalba</i> (striped dolphin) | Live Stranding | 2 |
| | (Meningo) encephalitis | 2 |
| | Starvation | 2 |
| <i>Lagenorhynchus acutus</i> (atlantic white-sided dolphin) | Live Stranding | 2 |
| | Starvation | 1 |
| | Not Established | 1 |
| <i>Lagenorhynchus albirostris</i> (white-beaked dolphin) | Live Stranding | 4 |
| <i>Balaenoptera acutorostrata</i> (minke whale) | Entanglement | 2 |
| | Dystocia and Stillborn | 1 |
| <i>Grampus griseus</i> (Risso's dolphin) | Dystocia and Stillborn | 1 |
| | (Meningo) encephalitis | 1 |

| <i>Species include Common Names</i> | <i>Cause of death category</i> | <i>No</i> |
|--|--------------------------------|-----------|
| <i>Tursiops truncatus</i> (bottlenosed dolphin) | Not Established | 2 |
| <i>Globicephala melas</i> (long-finned pilot whale) | Live Stranding | 1 |
| <i>Kogia breviceps</i> (pygmy sperm whale) | Not Established | 1 |
| <i>Mesoplodon bidens</i> (Sowerby's beaked whale) | Live Stranding | 1 |
| <i>Physeter catodon</i> (giant sperm whale) | Live Stranding | 1 |
| <i>Ziphius cavirostris</i> (goosebeak whale) | Starvation | 1 |
| <i>Caretta caretta</i> (atlantic loggerhead sea turtle) | Starvation | 1 |
| <i>Chelonia mydas</i> (green sea turtle) | Impaction | 1 |

* Of the 29 harbour porpoise bycatches reported here, five were carcasses retrieved directly from fishing vessels as part of observer-based research conducted by the Sea Mammal Research Unit. The *post-mortem* investigations of these carcasses were conducted in collaboration with the Sea Mammal Research Unit.

(Consultancy report—Trends in cetacean strandings around the UK coastline and marine mammal post mortem investigations for the year 2002. The Natural History Museum)

12 September 2003

Witnesses: **Mr Ben Bradshaw**, a Member of the House, Minister for Nature Conservation and Fisheries, **Mr Martin Capstick**, Head of the European Wildlife Division, **Mr Colin Penny**, Head of the Sea Fisheries Conservation Branch, Department for Environment, Food and Rural Affairs, examined.

Q210 Chairman: Minister, welcome. As you know, we are conducting an inquiry into cetacean by-catch and as a Devon Member of Parliament I am sure you know from your post bag and your involvement in the community exactly how important this is in the West Country. We have just had an incredibly passionate presentation from Ms Hingley and prior to that the Sea Fisheries Committee. We welcome you today. Would you be kind enough to introduce your officials to us?

Mr Bradshaw: Martin Capstick, on my right, is from our Wildlife Division, and Colin Penny is from our Fisheries Division.

Q211 Chairman: Welcome to you all. Can you give us an estimate of the current status of the by-catch response strategy which was published in March this year? How is it going?

Mr Bradshaw: We think it is going very well. We are hoping to move forward with practical, concrete proposals in the New Year. The response has been very helpful to us. It has been informed, as you may already have been told, by some very interesting research that we have carried out with the Sea Mammal Research Unit from St Andrew's University in the last bass fisheries season and which is resuming this very week in the bass fishery off the south-west.

Q212 Chairman: So there will be changes to the strategy as a result of the review or the consultation?

Mr Bradshaw: There will certainly be changes to our policy. We are already changing the policy as a result of what we are discovering all the time. I think it is

probably worth putting on the record that the United Kingdom has led in the field of both raising concern about and implementing policies aimed at tackling the problem of cetacean by-catch not just in the European Union but in the world. The Agreement on the Conservation of Small Cetaceans of the Baltic of North Seas was driven by the UK. The new proposals that are coming out from the European Commission to help tackle this problem are again as a result of pressure from the United Kingdom. We are in the forefront of both the research and action to tackle the problem of cetacean by-catch and the more we find out about it the more we are prepared to do. We have already, since our strategy was published earlier this year, decided to resume the trials that I have just talked about off the south-west coast because they proved to be so successful this season and we wanted to see if we could make them even more successful in the next so that we have evidence to take to other countries to encourage them to tackle the problem in the same way as we are doing.

Q213 Chairman: So there is a timetable on implementing the strategy, is there? I know you have said you are doing work already off the south-west coast.

Mr Bradshaw: We will implement whatever measures unilaterally that we think can be helpful, we are not going to wait for other countries to do this, but at the same time we recognise that without concerted international action and in our case at a European Union level whatever we do is only going to be a very small contribution. As I was waiting to

3 December 2003 Mr Ben Bradshaw, Mr Martin Capstick and Mr Colin Penny

come in one of your members raised the problem of the offshore bass fishery. To put this into context, we have two or four pair trawlers, at most, involved in our bass fishery off the south-west compared with 30 French. As you may also be aware, while the terrible and distressing problem, quite rightly, highlighted by Linda a few minutes ago of cetacean catch is very high profile in this country and is taken very seriously, it hardly registers on the radar across the Channel. When my French colleague was asked about it recently he said he was not even aware it existed. I know that some of the non-governmental organisations like Greenpeace are trying to raise the profile of this problem across the Channel, but a unilateral action would be helpful insofar as it goes, but until we can persuade our fellow European countries—and the Commission is making progress on this, coming up with its own proposals—the problem is not going to be solved by us alone.

Q214 Chairman: I do not think there will be any disagreement about that, but when do you think the Commission is going to enact its strategy?

Mr Bradshaw: I do not think I would be wise to put a date on that. The Commission will try to move the matter forward as quickly as it can get agreement among Member States. Fisheries is an EU competence, decisions are determined on Qualified Majority Voting and I think, to be realistic about it, a great deal more work still needs to be done on some of the other Member States for whom this is not such a serious issue, if they recognise it as an issue at all. I would urge a lot of those organisations and individuals who do a great deal of very good campaigning in this country and who have helped raise this as an issue either themselves or in groups to campaign on it in other countries because until we put it on the agenda of other countries I do not think we are going to move forward as quickly as all of us would wish.

Q215 Chairman: What is the process to get it onto the agenda?

Mr Bradshaw: It is already on the general agenda. The Commission, as a result of UK pressure, has come up with proposals. At this time of year, as I am sure your Committee understand, the minds of, certainly, fisheries ministers are on other things in the run up to the all-important December councils when the quotas and TACs are set. We shall be pushing it in the New Year in discussions both with the Commissioner and with colleagues. We are writing to the Commission giving them evidence already of the success of the trials that we undertook in our own bass fishery this year. We will, of course, send them any evidence that we gather from those recommenced trials this week and throughout the bass fishery season we will keep up as much pressure as we can, but I cannot second-guess what timetable the Commission is going to use to implement the proposals that it has already put in the public domain.

Q216 Chairman: But if you could put a guess on it.

Mr Bradshaw: It is very difficult, Candy. I would hope that they would move forward with concrete proposals next year, but that will not stop us doing whatever we think is necessary in order to mitigate this very serious problem.

Q217 Mr Mitchell: I think you are going to have to press hard and passionately for it because we have just heard from Linda Hingley a very powerful demand for the bass pair trawler with his massive clean up of nets in which the dolphins are crushed and killed to be stopped entirely. We know the difficulties of giving some to get some in trading and the Common Fisheries Policy has been the best example we have had most recently with the industrial fishing which the British Government wants banned but because it needs support from the Danes on other issues it does not get banned. It is going to be incredibly difficult to persuade the French to abdicate anything which they feel is in their interest.

Mr Bradshaw: I think it would be difficult to persuade the French to close the bass fishery altogether, but I do not think it would be difficult to persuade them that this is a serious issue.

Q218 Mr Mitchell: It would not be closing the bass fishery altogether, it would be stopping bass pair trawling and trawling for bass in other fashions, with smaller nets maybe.

Mr Bradshaw: We certainly would not rule that out as an option. All I would say to you is if we can avoid closing the pair trawl fishery through using the mechanisms that have shown themselves to be amazingly and extraordinarily successful this year in reducing the amount of cetacean by-catch then that would be a more sensible course of action. The other thing that is worth pointing out is that cetacean by-catch is not a problem that is solely associated with the bass trawl fishery. This is a problem that happens all over the world in virtually all fisheries and particularly in mixed fisheries. It is very difficult to avoid catching some fish and small sea mammals that you do not want to catch in the fishery. It was Britain that led the way in reaching the international agreement to aim to reduce a by-catch of small cetaceans to 1.7% and we ourselves are aiming at 1 per cent. I repeat what I said, I think it is very important that people recognise the success of the research that we did this year on the separator grid which is being repeated in this current fishing season. I would think it would be very difficult for any other Member State, when shown the evidence that we are already gathering as to how you can avoid catching dolphins in this fishery and the relatively low expense of installing these grids, not to follow our example.

Q219 Mr Mitchell: I would be worried because that sounds a little complacent as a reply and I would hope the British Government would take it up more passionately than it is doing. Separator grids were strongly criticised by Linda Hingley as leading to considerable damage, still killing cetaceans and not

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providing the escape channels that they are supposed to provide. You mentioned our lead in fixing a target of 1.7% of the best estimates of the total population, but we have not achieved that.

Mr Bradshaw: This is one area where I disagree very strongly with what Linda thinks. I did not hear what she told you today but I have heard what she has said in the past about this. I do not know whether members know what these nets look like. I would invite you to view the film that was made of how this works. In the period of seven weeks when these grids are being trialled, they are inserted into the net near the bottom end where the fish are caught so that any larger thing than a bass that comes in hits the grid, which is at an angle, and is then released through a flap in the net. In the period that we would normally have expected, at the height of the bass fishery, to catch in by-catch probably more than 50 dolphins, only two were caught in that period. So it was quite a dramatic reduction.

Q220 Mr Mitchell: You said your experiments were filmed, did you not?

Mr Bradshaw: Yes.

Q221 Mr Mitchell: Linda said they were not.

Mr Bradshaw: She is wrong on that, as she is on one or two other things about these trials. You may like to see the film and I would be happy for you to view the film of the trials that are being done this season as well.

Alan Simpson: These are different from the New Zealand trials, are they?

Chairman: Yes, these are our trials.

Q222 Mr Mitchell: It would be exciting.

Mr Bradshaw: It is very exciting. You will find this as intriguing as I did. For some of the critical period the underwater camera was not working, but the film shows how the system works, not in the case of a dolphin but a shark swims into it and I found this very dramatic and pleasing to watch. It swims in, touches the grid and floats out through the flap while the bass continue to go through the grid. The two dolphins that were killed in the system we believe were actually caught in the flap. One of the things that we have changed in this season's experiment is we have changed the grid from metal to some form of plastic or something that is a bit lighter and we have changed the mesh size of the flap that allows the sea mammal to escape. The findings were very encouraging. As I say, we are not quite sure, to be perfectly honest, why they were so successful. We are not absolutely sure, because we did not catch this on film, whether the dolphins actually went in and out through the flap or whether they just did not enter into the net before because they were put off by the grid. There are a number of electronic devices attached to the net that may have operated in the same way that pingers operate on fixed nets to put off porpoises. That is one of the reasons we wanted to repeat the experiment this year, to try and find out why they worked, but work they did.

Q223 Mr Mitchell: Why have we not achieved the ASCOBANS targets in British catches?

Mr Bradshaw: Because they are pretty ambitious targets and we are working towards them, but it is very difficult to know when we will achieve them because it is quite difficult getting an accurate estimate of the number of porpoises and dolphins in UK waters let alone the number that die as a result of any kind of fishery let alone a bass fishery.

Q224 Mr Mitchell: Would implementing the Defra strategy help us to achieve the target?

Mr Bradshaw: Yes, I think it would.

Q225 Mr Breed: Minister, you will be aware that we already have certain obligations under the EU Habitats Directive and one of those is an obligation to ensure that there is some monitoring of the incidental catches. To what extent do you think that we have been able to fulfil that obligation?

Mr Bradshaw: I think we have been able to fulfil it fairly reasonably. During the trials that we undertook last season there were monitors on the boats all the time and when the people who are running the trials from St Andrew's were not there themselves. It is quite a big logistical problem to monitor every single boat all of the time and we are of a view that it is still much more sensible to monitor on a spot and voluntary basis rather than have permanent compulsory monitors all the time at this stage until we understand more about how the by-catching can be avoided.

Q226 Mr Breed: Are fishermen actually required to notify Defra of any cetacean by-catch?

Mr Capstick: I believe not, though obviously one thing that we do in addition is we do have a contract to monitor strandings, which we have been conducting since 1990, and also arranging for a number of post-mortems to be carried out on dolphins and porpoises to see, where we can, the causes of death, and that is significant.

Q227 Mr Breed: So you do not believe there is a requirement for fishermen to notify Defra about any cetacean by-catch?

Mr Capstick: We do not believe so.

Q228 Mr Breed: Do you think there ought to be?

Mr Capstick: I suspect one would always have a question as to how reliable the data will be and therefore what you could use the evidence for. I think that would probably be the biggest question.

Q229 Mr Breed: Nevertheless, it might not be a bad idea if they were all made aware of the fact that they had to, even if they did not always do it.

Mr Capstick: I suppose there would be a question of value in relation to the cost that we were imposing.

Mr Bradshaw: It is something worth considering in discussing how the EU as a whole can implement the Commission's proposals.

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Q230 Mr Breed: They are required to do all sorts of notifications. I know this would only be one extra thing, but in terms of the whole monitoring exercise it would seem to be quite a good idea. In terms of Defra's strategy, if it was implemented tomorrow, how far do you think it would go in helping to meet the current obligations we have got under the EU Habitats Directive?

Mr Bradshaw: One of the problems about quantifying any of the likely impacts of what we do is we still do not know enough about what is causing the deaths, which sort of fisheries and why. We know that we can take measures like putting pingers on fish nets and that does work and will make a contribution, but it is really very difficult and I would be reluctant to put in numerical terms what percentage difference that would make. Dolphin mortality can vary enormously from year to year and I do not think our understanding is yet scientifically rigid enough for us to be able to quantify the improvements that we might hope to see. As long as we are moving in the right direction and as quickly as possible and using what pressure we can to encourage others to do so as well, that is the best way forward at the moment.

Q231 Mr Breed: But the best available evidence at the moment is that the pair sea bass fishery is likely to be the most responsible for these by-catches?

Mr Bradshaw: In our part of the world, yes, but there are fisheries in the rest of the United Kingdom that also cause cetacean by-catch.

Q232 Mr Lazarowicz: We were told by Linda that she believed there was some European legislation which required notification of instances of cetacean by-catch. Are you aware of any such legislation?

Mr Bradshaw: I am not.

Mr Capstick: I am not personally aware of any but we can check.

Q233 Chairman: And you will let the Committee know?

Mr Capstick: Certainly.

Q234 Mr Mitchell: There seems to be some difference of opinion between Defra and the European Commission about pingers inside and outside the six mile limit because you are proposing that they be used outside the six mile limit. Why is that? There is an argument over porpoises and whether they will be threatened within the six mile limit if you do not have pingers. Why does Defra say they should be compulsory only on vessels operating at least six nautical miles from the coast? Is that for practical reasons of enforcement or is it on environmental grounds?

Mr Bradshaw: I suspect it is for both. In terms of the practicality of it, what we would be concerned to do is to get something that is achievable. When you have major European Union countries like France, for example, resisting the need to have pingers even outside the six mile limit then I think we would be very keen to achieve what we think can be achieved.

Q235 Mr Mitchell: We can achieve the six miles because we control it.

Mr Bradshaw: Absolutely, but I mean in terms of if the European Commission is going to make rules on this. The other reason is that, in terms of enforceability, the problem that is caused within the six mile limit is far less and if we want to make a start on this, let us start where the problem is greatest and see what impact we have there before we move into something that (a) might not be achievable politically within the EU and (b) is not such a big problem.

Mr Capstick: There are porpoises within the six mile limit but I would echo what the Minister says. I think in framing the strategy the concern was to approach things in a measured and sensible way so that we were tackling, first of all, the fisheries that give rise to the biggest problems relative to the number of boats that would be affected.

Q236 Mr Mitchell: The threat to the bottle nosed dolphin as well as porpoises is mainly within the six mile limit, is it not?

Mr Capstick: It is certainly the case that there are dolphins and porpoises in there, yes.

Q237 Mr Mitchell: And we can control what goes on in the six mile zone whereas outside that we cannot.

Mr Capstick: Yes, we can, but I think we have taken the view in forming the strategy that the main beneficiary, certainly in relation to the number of boats affected would be that the main area we would hit is the area outside the six mile zone. But coming inside the six miles raises a number of issues in relation to small craft fishing in smaller areas and therefore that has not been our priority bearing in mind the fact that at the moment we have no obligations at all on this issue.

Q238 Mr Mitchell: It could be well worth having a European draft regulation on this issue. Is it going to be modified when that comes into place?

Mr Penny: In terms of the response to the European proposals, they have obviously seen our strategy and they know what our position is and we have raised these same points with the Commission, the fact that we would wish a stepwise approach to be adopted outside the six mile limit and not within certain areas.

Q239 Mr Mitchell: I honestly do not see that because here we can make a start, here are waters we control and yet we are insisting on pingers only outside it.

Mr Penny: It is a step-wise approach and we think the most effective use would be to stay outside the six mile limit and then observe what happens and then we will be having more observers and more testing and we will see if there is an issue we need to address.

Q240 Mr Mitchell: That is very disappointing. On pingers, it is a very expensive business because you have got to have it every so many yards, you have got to change the batteries and there are days of labour involved in doing that, there is failure and these are big nets. Is Defra going to finance the pingers?

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Mr Bradshaw: Not fully, no, but there are grants available through FIG and other sources that could help the industry fund these pingers. One of the reasons that we are not suggesting we do this everywhere immediately is because it is going to involve some pretty considerable costs for the industry and, as my colleagues have already said, the smaller vessels working within the six mile limit might find this more burdensome than the larger vessels who we believe are more responsible for the problem fishing outside. In terms of starting somewhere and not overburdening the industry immediately, that is another of the reasons why we have decided to exclude the six mile limit for the time being. You are right, the pingers cost about £60 each and that will be an added expense. In the discussions I have had with those in the industry who share our concern about this, they are certainly prepared to contemplate this and they do not want the fishing industry to be given a bad name. We will give whatever help we can, but there will be a balance of responsibility between the taxpayer and industry.

Q241 Mr Mitchell: Going by past history, Defra is not the most generous of departments when it comes to matters like this. Mr Nick Tregenza told us that the pingers cost £60 each, you have to have them every 100 metres, that is £9,600 to set up the nets and about £500 for batteries every year, and you have to do the battery change intermittently, that is about four man-days of work. So it is an expensive business imposed on an industry which is hovering around bankruptcy. Is it not really the responsibility of Defra to finance these pingers? When you will the ends you have to provide the means.

Mr Bradshaw: It is not Defra, it is you, it is the taxpayer. It is very convenient to pretend that we have our own money; we do not. There is no such thing as Defra money, it is public money.

Q242 Mr Mitchell: As the agency which is imposing it you should have a responsibility to pay for it.

Mr Bradshaw: Yes, and we estimate that in some cases public funding will amount to 75% of the cost of these pingers. We cannot guarantee that we will fund the whole cost or even most of the cost in all circumstances and that is one of the reasons why it is always a balance in these areas. As an MP representing a fishing constituency you know that in all areas of public life it is up to Government to make balances between how far the taxpayer should be responsible for doing something and how far the industry itself should be responsible. A classic example is satellite monitoring where we are about to announce the full funding of the satellite monitoring programme. Many people in your own constituency know they are going to fund 40% of it. You can always make arguments that the taxpayer can fund more, but at the same time you have to go back and explain to your voters why you are putting their taxes up. **Mr Mitchell:** Can I suggest you might consider a loan scheme? They would not pay for the pingers at the time of installation, they would pay for

them later on, maybe 15 years after the fish have been culled, depending on the scale of their catches and on their income from the use of the pingers.

Q243 Chairman: Perhaps Mr Penny could tell us the state of the bass fishery. Obviously some fisheries are in more difficulty than others.

Mr Bradshaw: The boats that catch bass, contrary to the image that is sometimes portrayed in Britain about the state of our fishing industry, is quite a big part of our fishing industry that is doing extremely well and where stocks are plentiful. Pelagic stocks, not just bass but herring, mackerel, and shellfish, crabs, lobsters, prawns, are all doing extremely well in the UK, so the incomes are there and I do not think it would be unreasonable to expect that those people who are making a profit in the industry and who care, rightly, about their reputation when it comes to cetacean by-catch should be expected to shoulder some of the cost of avoiding that cetacean by-catch.

Q244 Mr Lazarowicz: Your strategy recommends that observers be carried on boats that use pingers, but you suggest this should be done on a voluntary basis. Do you not foresee difficulties with that? Are you confident you will get a positive response from the industry to accept observers on a voluntary basis?

Mr Bradshaw: So far I am. The small number of bass trawlers that are involved in this fishery have responded to our requests and that response has been incredibly encouraging. The fishermen themselves realise it is in their own interest to try to tackle this problem. They realise that people feel very strongly about cetacean by-catch and they want everything possible and reasonable to be done to avoid it happening. At least the vast majority of responsible and sensible fishermen will co-operate and will help us find the solutions that we all want to find.

Q245 Mr Lazarowicz: I am sure the vast majority of responsible fishermen will do that, but in every industry there are people who will not be so responsible and one issue here is how responsible are people and how many are not so responsibly inclined. Is it not the same ones who are most likely to be irresponsible who will most resist doing this on a voluntary basis?

Mr Bradshaw: I do not think so. No one is trying to apportion blame here. This is a problem that afflicts the whole industry and some bits of it more seriously than others and we are trying to find solutions to that problem and we are looking for ways of avoiding it. We are not seeking to catch people out or blame them for a by-catch, we are asking for them to co-operate in a strategy which will avoid it happening and they will benefit from as well.

Q246 Mr Lazarowicz: At what point would you come to the view that the voluntary scheme was not sufficiently comprehensive to allow you to have real information on the effectiveness of using something else?

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Mr Bradshaw: If we found that people in the industry were resisting having observers at all or if they were refusing to fit pingers or if they were refusing to do other things which were being asked of them by our strategy, then we would have to revisit the issue of compulsory rather than voluntary observers. I do not think it is sensible politically at the outset to go in all guns blazing if only for the fact that it would be considerably more expensive to the taxpayer or the industry, whoever we were going to make pay for it, and when we do not yet know whether or not a voluntary system is going to work.

Q247 Mr Lazarowicz: What kind of people do you envisage acting as these observers, would they be scientists, lay staff, volunteers?

Mr Penny: At the moment they are people employed by and trained by SMRU.

Mr Bradshaw: That is the Sea Mammal Research Unit.

Mr Penny: They are fairly expensive beasts. The Community draft regulation envisages that observers will be independent of the industry and it defines what we require from observers. I heard Barrie's point earlier about using the industry and obviously, as he said, the Minister has been working to involve the industry more in developing fisheries policy. It is an issue we could look at when we are negotiating the regulation in Brussels because the cost of observers and the amount of observation required is an issue which has been raised by a number of Member States and the possibility of training and involving vessel owners as part of this process is obviously something we could look at if it would reduce the cost.

Q248 Mr Lazarowicz: You said people would be recruited in some way by Defra, but what kind of expertise or skills or background are these people coming from? Will they be people from the industry primarily?

Mr Penny: I think in the main they are ex-fishermen. They have to have expertise in maritime matters, I think it says, and they have scientific expertise as well so they can identify species and they can, if necessary, take scientific samples as required. They do have to have a certain degree of scientific expertise.

Q249 Mr Lazarowicz: All of this works well if it is indeed the case that the vast majority of the people involved in the industry are responsible and want to co-operate with the surveys and experiments, and I have no reason to suggest that they will not, but nevertheless we have heard evidence that suggests that some fishermen will not co-operate and there will be ones who will not want to have the full facts come out in the survey. How can you be sure that you are not going to be putting in place observers who, to put it bluntly, will be too close to the industry to come out with a fair assessment?

Mr Bradshaw: These would be paid for and employed by Defra, they would not be in the pockets of anybody. The fact is that a lot of our best fisheries inspectors are former fishermen because they

understand the industry and they know some of the ways of the industry, let me put it as mildly as that. On top of their already fairly difficult and onerous jobs they would be doing some of this as well. Enforcement, as you may be aware, is going to be a major issue in the next two years, not just because of the legal proceedings that the Commission has announced it intends to take against the United Kingdom for our, as it sees it, lax enforcement but also because when the Prime Minister's Strategy Unit reports, as we are expecting it to do in January of next year, we expect it to say some fairly dramatic things about enforcement as well. I think we, as a department, will be wanting to have a look at our enforcement procedures but across the board not just in enforcing or observing on the cetacean by-catch issue. At the moment I think the point is the people who have been doing this so far are highly paid, highly professional marine biologists and I do not think anyone is suggesting that we need to have people quite of that expertise and pay scale to do this. It will be a fairly simple thing to observe as to whether people are complying and what the by-catch problem is. They would not need to do it all the time. There is no reason why you cannot do spot-checks to give you a good impression as to what compliance is like. If we had fishermen who were recalcitrant then we would deal with them in the way that we deal with them on other issues of enforcement where the rules are not being complied with.

Q250 Mr Lazarowicz: The Commission's draft regulation, as I understand it, requires or proposes the use of observer schemes on other fisheries, not just those in which pingers are being deployed. Do you intend to amend your strategy in line with that draft regulation?

Mr Bradshaw: I do not know whether we have any concrete proposals on where we intend to use observers. It is unrealistic to assume that there is suddenly going to be an army of observers all over the place, we are going to have to think very carefully about how we use the observers we do employ and where they are best deployed and what the best use of the time and resources that are available to us as a government are. It is in our interests that this works and is effective and if it can work on a voluntary basis, I hope it does because that is better for the fishing industry and it is certainly better for the taxpayer as well.

Q251 Mr Lazarowicz: How many observers are you envisaging?

Mr Penny: At the moment the Commission proposal is between 5 and 10% of effort. The Sea Mammal Research Unit is about to undertake a research programme which is looking at the requirements for observation within different fisheries to give us a more exact figure of what would be statistically significant. The Commission are aware of the research we are doing and they are awaiting our observations on this. It would depend to some extent on which fisheries we are talking about. We could be looking at fairly small percentages up to the 5% the Commission is looking at.

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Mr Bradshaw: Martin has some statistics on this that you may be interested in.

Mr Capstick: This is paragraph 111 of the strategy itself on page 29 where we were referring to the issue of monitoring and assessment of the cost. As Colin says, if we were looking at 5 to 10% levels of observer coverage at a cost of between £300 and £500 a day that would imply a cost of somewhere between £1 million and just under £3 million per year. But there is obviously a question about what we need to do to ensure that we get statistically significant and useful results, and ensure that we get results which are useful to us but in a way that does not involve disproportionate cost, which is going to have to be one of the things that we will look at.

Mr Lazarowicz: It sounds like highly paid marine biologists at that daily rate.

Q252 Mr Drew: We have talked quite a lot about the trials with the various types of nets and so on. I think it would be useful to know what continuing work is being undergone and how much further the experimentation will be required to get us to a stage where we at least know what we are dealing with. You have said on a number of occasions “We are still finding things out”. Can you map out for me what the timescale now is and what are the likely outcomes in terms of future research?

Mr Bradshaw: We, as the Government, have invested £1 million on this research with the Sea Mammal Research Unit and, following the successful trials this year, I held a meeting with the fishermen who were based in Scotland who do this bass fishery off the South West, with officials, with scientists from the research unit who had undertaken the research, and the fishermen themselves agreed on a voluntary basis to repeat the trials this year and to attach the grids to all of our boats. The Sea Mammal Research Unit again will monitor those trials, they will film it, they will see whether the modifications that they have made to both the grid itself and to the flap make any difference. We hope that they will be as successful as last year, if not more successful, and if they are then I think I have already said on the record that we will make them mandatory in our fishery. The fact is they are in practice being used in the only pair trawl fishery from the UK this year anyway. As I said earlier, this is evidence that we will use in the arguments that we make with other EU member countries and with the Commission about how the by-catch can be avoided in this particular fishery.

Alan Simpson: You have delicately referred to observers who understand the ways of the industry. Perhaps you missed an earlier exchange between Linda Hingley and Austin where she referred to them as “crooks”.

Mr Mitchell: Not the observers, the fishermen.

Alan Simpson: The fishermen, yes. And Austin corrected her saying that they must be foreigners.

Mr Drew: I think he said French.

Chairman: Specifically, yes.

Q253 Alan Simpson: The thing that worries me is that in the representations that the Committee has had there are lots of references to the monitoring

that Defra is committed to but the criticisms are about how little Defra is committed to doing. When we were talking about looking at the effectiveness of pingers, whether it should be inside the six mile limit which we can control or outside which we cannot, the criticisms boil down to this question about what is it that we are prepared to do. I think Linda Hingley put us on the spot in her evidence when she said, “Look, let us be realistic about this. We know that there are high levels of by-catch problems in relation to sea bass trawling. In particular we need to focus on the part that we know is responsible for the greatest problem, which is the bass pair trawlers. Even if we cannot go the same way as the United States with a complete ban that they imposed six years ago, we should ban for one season. If you are talking about observations, the cheapest thing to do is to ban for one season and see what the outcome would be, what level of by-catch problems turn up in the form of dead dolphins on our beaches”. Where are we in the doing part of Defra’s strategy?

Mr Bradshaw: As I have tried to indicate to the Committee, I think we are doing quite a lot and we are certainly doing more than any other European Union country. I would follow the logic of your argument, Alan, in favour of a ban if there was nothing else that we could do but it seems slightly counterintuitive to me to propose to ban a fishery, put people out of business, prevent them catching fish that people want to eat and is very good to eat, if we can avoid catching the dolphins at the same time. The research that we did this year showed that it is possible to avoid catching dolphins using these mechanisms. If we can achieve that then I would hope that is a solution that most sensible people would support. I do not know, I am not an expert on this, but I understand that the reason the trawl was banned in America was for rather different reasons and that was about sea angling and bass rather than to avoid cetacean by-catch. If we can avoid cetacean by-catch in this fishery there is no point in closing the fishery. There is no problem with the stocks. We close fisheries in this country if there is a problem with stocks and there is no problem with stocks of bass. If we discover in the trials this year that last year was some kind of fluke and by some sort of miracle we managed to avoid catching dolphins, if these separator grids and the flap do not work this year then we will have to revisit this issue and, as I have said on a number of occasions, I do not rule out closing this fishery. If we can find a way to allow fishermen to continue to make a living and me to buy and eat bass while avoiding catching dolphins, surely that is the most sensible course to take.

Q254 Alan Simpson: I think to be fair to her she was quite specific in declaring her interests in eating bass as her favourite fish and making the point that it was not the banning of the whole fishery that she was looking for.

Mr Bradshaw: My remarks just now should have been about the pair trawl fishery which is where these trials are taking place and took place this year.

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Q255 Alan Simpson: If there was evidence that the strategy was not working and that the pair trawling was continuing to be a significant part of the problem, you are not averse to coming back to that prospect?

Mr Bradshaw: Absolutely not. I would simply point out that it would be much more effective if we could persuade others to do the same. As I said earlier in this evidence session, we have two, or at most four, pair trawlers on this fishery at any one time and the French have 30. I would be reluctant to take unilateral action in the direction of a ban. I would not completely rule it out but I think it would be much more sensible in terms of trying to save dolphins if we came to that situation where we worked in concert with other European Union countries with the Commission taking the lead.

Q256 Alan Simpson: You quite legitimately raised questions about whether there are other parts of pelagic fisheries that we ought to be looking at, not just bass but also issues about mackerel, hake, tuna and horse mackerel. Could you just tell us whether the logic of what you have described is something that Defra is applying to those other aspects of pelagic fishing? What are you doing and where is the strategy taking it?

Mr Bradshaw: You are right to remind everybody that this is not a problem restricted to the bass pair trawling off the South West of England, it is not. I think because of the high public profile and the fact that this is the biggest concentration and this is where most of the dolphins have been washed up, this is where public attention has been focused in recent years but it is not the only problem of cetacean by-catch in the UK. As I said, the international agreements that we have entered into, and the European Commission, are not restricted to what we do in the bass trawl fishery off the South West, it is in the UK's fishery as a whole. I do not know whether you have anything more to add about what we are doing in the rest of the pelagic fishery or what we are looking at. It is not such a big problem but it is still a problem.

Mr Penny: We are continuing to look at it because we recognise that there is a possibility and, as Linda said earlier, the strandings have started but the mackerel fishery and the bass fishery have both started as well, so it could be one or the other.

Mr Bradshaw: Also it is not just pelagics, cetaceans are caught in fisheries for demersal stocks as well in the North Sea. It is not an issue that is just about mid-sea fish.

Q257 Mr Lazarowicz: I am glad you made that point because I think there can be an emphasis on just one particular fish and one particular part of the seas around the UK. What is the Department's assessment of the other nations that are responsible for cetacean by-catch in the North Sea, which is obviously the other major area of concern?

Mr Bradshaw: Perhaps if I could, for the first time in this session, read directly from my brief because it answers that question. On our observations the by-catch of harbour porpoises, for example, has been

noted in: UK gillnet fisheries in the Celtic Sea for hake and other species, (these fisheries are also pursued by France, Ireland and Spain); gillnet fisheries in the North Sea for cod and flatfish species, these are fisheries also pursued by Germany, Denmark, Netherlands and Belgium; and the by-catch of common dolphin has been observed mainly in the offshore bass fishery off the South West coast. I think one of the helpful things that your Committee's investigation into this can highlight is that this is a rather deeper and broader problem than is the common public perception which has tended to concentrate purely on the bass fishery off the South West of England; it is much wider than that.

Q258 Mr Lazarowicz: That being so, what discussions have you had with these governments? What pressure have you put on them to adopt an approach which is at least as rigorous as that of the UK?

Mr Bradshaw: Some of the countries are also doing quite a lot. Denmark, for example, I think I am right in saying, has already fitted pingers, so in that respect it is ahead of us. Those of you who know about fisheries will know that the European Union countries tend to split into the more conservation minded, in which I include the United Kingdom, the Scandinavian countries and Germany, and those which have a slightly different attitude to the environment, which are the ones I have not named.

Q259 Mr Lazarowicz: What kind of sharing of information is there between the UK Government and the devolved administrations, on the one hand, and these other nations to ensure that these measures are actually making a difference?

Mr Bradshaw: We have already shared all of our information with the Commission and in discussions with them that led to the Commission announcing its own proposals. As we gather evidence in this season, which will begin this week, we will share that with the Commission again and we will go back to the French, from whom we are still awaiting a formal response to a letter my predecessor Elliot Morley sent on this, and impress on them the importance of taking this issue seriously.

Q260 Mr Lazarowicz: What information are you getting from the other nations you have mentioned who are involved in other fisheries where there is a cetacean by-catch problem?

Mr Bradshaw: I do not know if there is anything we have usefully learned from other nations that are doing other things.

Q261 Mr Lazarowicz: To ensure what they are doing is having an effect or is a step in the right direction.

Mr Bradshaw: The research shows that pingers work. I do not know whether our Danish friends have actually been doing it for long enough to supply us with any data, have they?

Mr Penny: Their research reports were the background to the Commission's proposals, as ours were as well.

3 December 2003 Mr Ben Bradshaw, Mr Martin Capstick and Mr Colin Penny

Q262 Mr Lazarowicz: What about the others, the Germans, the Spanish and the rest you mentioned?

Mr Penny: I think there have been exchanges at a scientific level but I am not aware of them being very public. The Commission is about to start funding collaborative research projects into the pelagic problems and mitigation measures. I think Denmark, Ireland, France and Netherlands are all part of that collaborative group, so we are building up steam and we have got France involved. France has been involved quite a lot in discussions with our scientists about the separator grid.

Q263 Mr Lazarowicz: If it is the case that it is not just a question of the French and the South West, there are also issues regarding these other fisheries, is this not something that should be higher up the political agenda with the other nations that we have heard about?

Mr Bradshaw: I think it should be higher up the agenda. As you will be aware, certainly for the last 12 months because of the more immediate and very large questions of stock levels, and particularly problems with cod and hake, it is inevitable that most member countries and their political class and, indeed, their fishing industry has been grappling to cope with some of the problems that have arisen as a result of the depletion of cod stocks and the very difficult and tough decisions that we have had to take in the Common Fisheries Policy, and will probably have to take again this December. I would hope that if we can get through this December's council and reach agreement not just on next year's TACs and quotas but also put on a firm footing what the Commission would like to do, which is a multi-annual approach to TACs and quotas, once we have published our own—this is a once in a 30 year strategic investigation report on our fishing industry—which again has been taking up a lot of our own thought and officials' time, these are the sort of environmental issues that will be able to come

much higher up the agenda with other Member States and we shall be certainly doing what we can to make sure that they do.

Q264 Mr Lazarowicz: Within the UK has the cetacean by-catch issue been on the agenda of the Joint Ministerial Committee?

Mr Bradshaw: You mean with my devolved colleagues in Scotland and Wales?

Q265 Mr Lazarowicz: Yes.

Mr Bradshaw: It is not an issue that I can recall. I have only been in the job for less than six months but it is not an issue that we have discussed with my colleagues in the devolved administrations, no.

Q266 Chairman: Minister, you have been generous with your time but I have one last question. Your predecessor, who you just mentioned, was reported in quite a few newspapers in February of last year as saying that he estimated that maybe 50 dolphins a day were getting caught in the bass pair trawl fishery. Do you think that was an accurate estimate?

Mr Bradshaw: I am sure it was if that was the figure he gave out. That is a politician's answer for you.

Q267 Chairman: Perhaps it highlights the enormity of the issue. Thank you very much and thank you to your officials. We are going to see the Commission ourselves in connection with the marine environment investigation that we are doing and it may well be that Members will be pursuing these issues with the Commission in the New Year if we agree that is the way forward, but we will be looking in the New Year to be reporting.

Mr Bradshaw: I would encourage you to do so and also encourage you, if you have not already done so—I think they have provided written evidence—to talk to the Sea Mammal Research Unit people from St Andrews because they have been doing some excellent work and their research is ongoing.

Chairman: Thank you very much. Thank you for your time. We will see you again, no doubt.

Written evidence

Memorandum submitted by Interfish Limited (C4)

CETACEAN BY-CATCH DIRECTLY RELATED TO FISHING ACTIVITY

I would like to take this opportunity to introduce our company and to also provide you with a bit of background information on this topic. I am particularly concerned that last winter a number of newspapers reported this matter with much misinformation and confusion about Pair Trawling in general. Not only was this misleading to the public, but some sections of the media even encouraged the public to boycott eating mackerel for which there is absolutely no link with the by-catch of cetaceans.

Interfish is a company founded in 1977 and based in Cattedown, Plymouth. We are a sizeable, locally based fishing company employing approximately 200 people, with interests in the catching, processing and retail sectors. We operate seven fishing vessels in total; their activities cover both the Pelagic and Demersal fisheries.

We operate our fishing activities with a responsible and honest attitude and have a long history of working with government agencies, such as Defra/Cefas and the Sea Mammal Research Unit (SMRU), on a number of projects including fish stock assessments and also Cetacean by-catch surveys. We are opposed to the unacceptably high numbers of cetaceans killed last winter by some fishing activities in the English Channel and we have evidence to conclude that there are three main fisheries that are responsible for the by-catch of cetaceans.

These are as follows:

- Bass Pair Trawlers
- Monofilament Gill Netting
- Industrial; Fishing (Fishing for Fishmeal)

Attached is some relevant information that may be of interest [Not printed]. In particular, I wish to make clear the distinction between “Pelagic Pair Trawling” (in general for pelagic species such as mackerel, herring, pilchard and horse mackerel), as opposed to “Bass Pair Trawling”. The actual fishing techniques are vastly different (please see articles enclosed for further details).

18 August 2003

Memorandum submitted by the Joint Nature Conservation Committee (C5)

RESPONSE OF THE UK STATUTORY NATURE CONSERVATION AGENCIES

1. This response is from the Joint Nature Conservation Committee (JNCC) on behalf of the UK's statutory nature conservation agencies: Countryside Council for Wales, English Nature and Scottish Natural Heritage.

A. NUMBER AND CAUSES OF BYCATCH AND RELEVANT RESEARCH

2. We assume that the inquiry is addressing primarily bycatches that affect UK waters or are by UK vessels working elsewhere. This response focuses on this area but touches on relevant issues from elsewhere. By-catches in EU waters have been described in several recent comprehensive reviews. These are:

- (i) ICES, 2002. Report of the working group on marine mammal population dynamics and habitat. ICES CM 2002/ACE:02.
- (ii) CEC, 2002. Incidental catches of small cetaceans. Report of the meeting of the subgroup on fisheries and the environment (SGFEN) of the Scientific, Technical and Economic Committee (STECF). SEC (2002) 376. Commission of the European Communities, Brussels.
- (iii) CEC, 2002. Incidental catches of small cetaceans. Report of the meeting of the subgroup on fisheries and the environment (SGFEN) of the Scientific, Technical and Economic Committee (STECF). SEC (2002) 1134. Commission of the European Communities, Brussels.
- (iv) Kaschner, K. 2003 Review of small cetacean bycatch in the ASCOBANS area and adjacent waters—current status and suggested future actions. ASCOBANS MoP4/Doc. 21.

One member of the Joint Nature Conservation Committee's staff was involved with others in the production of each of these documents. We use information from these below, but can supply the full documents in both electronic or hard copy if you wish. In addition, the Committee will have read the summary of the scale of bycatch in Section 3 of the UK small cetacean bycatch response strategy.

3. There is a risk of bycatch of cetaceans wherever fishing gear is deployed. This is a worldwide problem, and not confined to the UK or European waters. Bycatch is caused when cetaceans become entangled in the gear. In most cases, this leads to death by drowning. In some gears (eg traps or nets that are open to the

surface), bycaught animals can be released alive. The risk of bycatch varies with fishing gear types, timing and location. This variation appears most related to the ecology of each cetacean species. Harbour porpoises appear most susceptible to capture in larger-meshed bottom set nets—we presume that this is associated with harbour porpoise foraging on or near the seabed. Common dolphins appear more susceptible to capture in mid-water trawls and surface drift-nets—probably due to foraging on shoals of the fish species targeted by these fisheries. In the case of purse seine fisheries for tuna, the tuna that are targeted by the fisheries travel with the dolphins (this practice is now banned for EU vessels). Plainly, for bycatch to occur, the cetaceans need to be in the same place at the same time as the fishery. Seasonal and spatial variation in bycatch is caused both by changes in the timing and location of fisheries and by cetacean migration.

4. Given that there is a risk of bycatch in all fisheries, it is unrealistic to expect to be able to reduce such bycatch to zero in the short-term unless there is a closure of all fisheries. This will not occur and therefore efforts have focussed on identifying the most problematic fisheries and on ways of reducing bycatch in those fisheries. In order to identify which are the most problematic fisheries (in a population sense), two key bits of information are required. First is an estimate of numbers of animals being caught and the second is an estimate of the size of the population to which those animals belong. From a conservation (i.e. population) point of view, a bycatch of a certain size of a small population of cetaceans would be more serious than the same number caught from a large population.

5. The UK is required under the Habitats Directive (92/43/EC), as with all other EU member states, to introduce a system to monitor the incidental capture and killing of all cetaceans. This requirement has been addressed through a series of contracts let to the Natural Environment Research Council's Sea Mammal Research Unit (SMRU), commencing in 1992. Monitoring of fisheries under this contract was through the use of independent scientific observers. This research has documented bycatch in several fisheries.

6. The largest documented bycatches were of harbour porpoise in bottom set nets. As documented in the UK small cetacean bycatch response strategy, these amounted to around 1,000 animals per year in fisheries to the east and north-west of the UK in 1995 and 740 animals per year in fisheries to the south-west between 1992–94. Both of these numbers are likely to have since decreased due to an overall decline in gillnet effort. If these numbers are placed in a population context, it is likely that the bycatch to the south-west on the Celtic shelf is taking a higher proportion of the population than the bycatch in the North Sea. However, in both cases, only UK fisheries have been observed by SMRU and fisheries of other nations also catch harbour porpoises from the same population. In the case of the North Sea, Danish fisheries have been observed, and bycatch assessed. Observations of gill net fisheries of other nations to the south-west of the UK have probably been inadequate.

7. More recently, there has been concern over the number of small cetacean carcasses beaching in south-west England and western France in late winter. These were predominantly of common dolphins and many had wounds consistent with fish-net entanglement immediately prior to death. As noted above, dolphins appear primarily to be bycaught by mid-water trawls. There are a number of such trawl fisheries working in the western Channel and off France in late winter. One such fishery undertaken by UK vessels is for bass. A scheme supported by the UK fishermen involved has observed this fishery and documented bycatch. These UK vessels are a small proportion of the overall bass fishery and, as noted above, the bass fishery is one of several fisheries working in this area at this time. Surveillance of bycatch in both the bass and other fisheries by other nations has either been inadequate or non-existent.

8. The responsibilities for cetacean bycatch do not end at recording numbers caught in a sample of hauls and extrapolating these to the whole fisheries. These numbers need to be placed in context and a determination made as to whether or not the bycatch is having a negative impact on the species concerned. As noted above, the numbers can be put in a population context. The most recent population abundance estimates for both harbour porpoises and common dolphins are getting out of date (surveys were conducted in 1994) and in the case of the common dolphin at least, do not cover the whole geographical range of the population. A new survey of these populations is planned for 2005–06, but has yet to receive full financial support. UK has committed substantial funds already, but will probably need to supply more. Few other countries have yet committed to fund the work.

9. One animal bycaught from a relatively large population is unlikely to have a negative effect on the population, but several hundred bycatches might have such an effect. The UK is a party to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (about to be renamed the Agreement on the Conservation of Small Cetaceans of the Baltic, north-east Atlantic and North Sea) (ASCOBANS). An international workshop between the International Whaling Commission and ASCOBANS modelled the effects of bycatch on populations of harbour porpoises and found that an unacceptable interaction would occur if bycatches were over 1.7% of the best estimate of abundance. No similar work has been carried out on other cetaceans, including common dolphin.

10. Based on this work, the bycatches of harbour porpoises in the North Sea and on the Celtic shelf to the south-west of Britain are at unacceptable levels. Research on ways of reducing bycatches has been undertaken in several parts of the world including the UK. Almost without exception, the most promising technique to reduce bycatch (with the exception of stopping fishing) has been through the use of acoustic deterrents—"pingers" attached to the nets. These appear to work by producing sound that keeps harbour

porpoises away from nets. Field trials of pingers have been successful in the UK and further trials are now being conducted to determine which of the commercially available devices will best survive the rigours of use under UK conditions.

11. Due to the incomplete abundance estimate of common dolphins and the lack of modelling of their populations it is not possible at present to say whether or not the bycatches in the Channel are having a negative population effect. It would be a sensible, precautionary approach to reduce these interactions as far as possible. Defra has funded work on the use of grids in bass pair trawl nets that has proved largely successful. It is not clear at present how these grids work to reduce bycatch, but one mechanism is that dolphins are deflected from entering the cod end of the net and ejected through a flap of net in the roof of the trawl. This is illustrated in the UK small cetacean bycatch response strategy. From the first year of trials it appears that many fewer dolphins than might be expected actually swim into the nets carrying grids, so it is likely that at least another mechanism is also at work to reduce bycatch. No similar work has yet been carried out on vessels of other nations either fishing for bass or for other species.

12. Outside the North Sea and other waters adjacent to the UK, we highlight the risks that bycatch poses to the already greatly depleted population of harbour porpoises in the Baltic. Research on bycatch (and indeed abundance) in this population (now likely to number less than 1,000) is very difficult. UK has been working through ASCOBANS to jointly produce a harbour porpoise recovery plan for the Baltic. This plan was recently agreed unanimously by Parties to ASCOBANS.

13. Harbour porpoise populations in the central and eastern English Channel and southern Bight of the North Sea similarly appear to be rare where they were formally present in higher numbers. This area holds a large amount of set-netting (and is also one of the most heavily used shipping lanes in the world). ASCOBANS agreed recently to start work on a recovery plan for the North Sea harbour porpoise that will include this area.

B. LIKELY EFFECTIVENESS OF UK SMALL CETACEAN BYCATCH RESPONSE STRATEGY AND FURTHER UK AND EUROPEAN STEPS

14. We have been involved throughout the process of assembling the UK plan and thus we believe that it will be effective if implemented. The public consultation period for comments on the plan ended in mid June. We recently took part in a meeting to consider these responses and agree the way forward in the light of those responses. We hope that it will be possible to move forward to start implementation of the strategy before the end of 2003.

15. At the end of July, the European Commission published a proposal for a Council Regulation laying down measures concerning the incidental catches of cetaceans in fisheries (COM (2003) 451). These proposals have been long needed and anticipated, and are very welcome. This response briefly reviews the key recommendations of both documents.

16. The UK bycatch response strategy might broadly be seen as a partial implementation of the Commission proposals. Given that the Commission proposals may take some time to agree, an early start at implementing the UK strategy would be a wise step forward. The UK strategy is also a step towards meeting several obligations entered into by UK and there is a commitment to review and update it in the light of progress. If the Commission proposals are agreed as they stand, plainly the UK strategy will need to be fully implemented within the timetable set when the proposals are agreed.

17. The UK strategy makes 15 recommendations that we fully support. Recommendation 1 would make it a legal requirement to use pingers on bottom-set gill nets in the western Channel and SW Approaches. As noted in paragraphs 6 and 10 above, bycatch of harbour porpoise in this area is at unacceptable levels. The recommendation initially targets vessels working outside 6 NM of the coast that are believed to generate most bycatch per vessel. This targeting will reduce the inevitable logistic difficulties in implementing a full deployment on all UK vessels and reduces the difficulties likely to occur in enforcement. The Commission proposal is for a blanket deployment of pingers on all bottom set gill nets in this area. The UK strategy would need to be extended if the Commission proposals were adopted in full, but we would still advise that a phased introduction, which would allow learning and regulatory adaptation, would be sensible.

18. Recommendation 2 of the UK strategy requires the use of pingers on all large mesh set net fisheries in the central and south North Sea. As noted in paragraphs 6 and 10 above, bycatch of harbour porpoise in this area is at unacceptable levels. This approach again targets those fisheries that generate the most bycatch per vessel. The Commission's proposal is very similar, but extends the requirement for use in these nets to the whole North Sea and the Skagerrak. It is not believed that there is a very much UK fishing effort using large mesh nets in these northerly areas.

19. Recommendation 3 is designed to reinforce measures taken already by Danish authorities to require pinger use in the wreck net fishery for cod in the North Sea in autumn. This period appears to have particularly high bycatch rates for harbour porpoises. The Commission proposals are the same as both the Danish regulation and the proposed UK action.

20. Recommendations 4 (consideration of the use of mortality limits in UK fisheries), 11 (further trials on acoustic deterrents in pelagic trawl fisheries), 13 (research on separator grids and other technology to reduce bycatch) are all necessary to ensure that newer techniques continue to be developed, and their use

kept under review. We consider it particularly important that methods to minimise the common dolphin (and other small cetacean) bycatch in the western English Channel and Bay of Biscay be developed, so that these may be rapidly deployed in the relevant fisheries once it is determined which these are (see paragraph 7). We applaud the voluntary efforts being undertaken by the few UK vessels fishing using pelagic trawl nets for bass to reduce bycatch in their nets. We do not believe that prohibiting the fishery by these UK boats would significantly reduce any bycatch, and such a ban would send a very poor signal to any other fisherman considering voluntary measures to reduce bycatch in their fishery. We are pleased to note that other research to help fulfil these recommendations is already under way.

21. Recommendation 5 on management within and near protected areas for cetaceans helps fulfil UK commitments under the EU Habitats Directive.

22. As noted in paragraph 8, we consider that a new abundance estimate for small cetaceans in NW European waters is essential, and therefore fully support Recommendation 6 of the UK strategy. It will be important that this project also receives European funds. The proposed project to survey NW European waters will also address Recommendation 7 on new methods to identify trends in abundance.

23. The UK is already funding research on cetacean population structure and seasonal movement (Recommendation 8). The Joint Nature Conservation Committee recently published an atlas of cetacean distribution in NW European waters. It is hoped that further development of the database underlying this atlas will enable seasonal movements to be further elucidated.

24. Recommendations 9 and 10 involve the use of observers on fishing vessels. There are two main uses of observers; the first to determine the scale of any bycatch in a fishery (and often to incidentally provide insight into ways of mitigating such bycatch) and the second is to determine the effectiveness of any mitigation measure that is implemented. Both of these roles must be distinguished from any possible enforcement duties in relation to mitigation. Experience elsewhere has shown that a mix of enforcement and scientific observation may compromise both roles. We are concerned that the Commission's proposals in relation to observers do not fully distinguish the two roles and certainly hints at a mixed role. We also note that these observers need to be dedicated to cetacean bycatch observation and not be also tasked with any other major duties.

25. In relation to Recommendation 9, we note that the Commission (in Annex III of their proposal) suggest minimum levels of observer coverage in various fleets. The UK strategy advocates a statistically valid level of bycatch recording. The Sea Mammal Research Unit has recently examined the statistics of bycatch observer levels and we are presently considering their report. We note that the Commission's proposals are rather blunt and that it may be necessary to adjust levels of observation (in both directions) to achieve statistically valid results at minimum cost.

26. Recommendation 12 calls for an examination of the important issue of exclusion of cetaceans from coastal areas caused by intensive deployment of pingers. We note that under the UK strategy, such deployments are unlikely in the short term. If the Commission proposals are accepted in full, then such deployments may occur and there would be a need to attempt this challenging research.

27. We support the use of accreditation schemes to encourage sustainability in fishing and would certainly wish to encourage the adoption of cetacean-friendly fishing methods (Recommendation 14).

28. We have devoted considerable thought to the role, structure and function of Regional Advisory Councils (RACs) that will be established under the new Common Fisheries Policy (2002/2371). Without going into detail here, we certainly agree that RACs should accept responsibility for addressing the environmental consequences of fishing activities when they provide their advice (Recommendation 15).

29. We support the proposal to keep the UK bycatch strategy under review, with a formal review every three years. We would be very willing to participate in this review process.

C. SUMMARY AND RECOMMENDATIONS

30. We have worked for at least ten years in order to reduce the bycatch of cetaceans in fisheries. We are therefore very pleased to see concrete proposals from both the UK and the European Commission that will, if implemented, significantly reduce bycatch in fisheries.

31. We consider that both sets of proposals are measured and considered responses to the issue. Both identify key bycatch interactions and propose proportionate measures to reduce that bycatch. We regard both proposals as steps towards the goal of eventually minimising bycatch. The proposals should not be regarded as end points, especially in relation to bycatches about which too little is known at present. We urge the rapid and compulsory implementation of observers in these fisheries to determine the scale of the bycatch.

32. It is essential that further research continues—we identify in particular the need for a new survey of cetacean abundance in NW European waters and the need for further research on newer mitigation techniques.

Memorandum submitted by the World Wildlife Fund (WWF) (C9)

EXECUTIVE SUMMARY

WWF has a long history of working globally on the issue of cetacean bycatch and offer the following comments in response to the committee's investigation into the issue and how it should be progressed in the UK and European waters. Key points are:

- that the management of cetacean bycatch must be placed within the context of a strategic framework which will identify conservation and management objectives, establish timeframes for action and review of processes;
- that this process must be well resourced;
- that the UK small cetacean bycatch response strategy is a welcome step forward but that there are some elements which need to be critically improved;
- that acoustic deterrents (pingers) do not offer a long term solution to bycatch problems and if used must be deployed correctly with an accompanying observer programme; and
- there is an urgent need to prioritise funding and resources to investigate alternative means of addressing the issue in order to secure a long term solution.

1. To set in context the committee's investigation it is worth recalling that the UK government has various commitments to protect cetaceans under a range of international and national agreements and legislation, including:

1.1 The Wildlife and Countryside Act 1981: In the UK all cetaceans are protected under Schedule 5 of the WCA. Section 9 of the Act notes that if any person intentionally kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence. It goes on to note that if any person damages, destroys, or obstructs access to any structure or place which any wild animal included in Schedule 5 uses for shelter or protection or disturbs any such animal while it is occupying a structure or place which it uses for that purpose he shall be guilty of an offence.

1.2 Habitats Directive: The harbour porpoise and the bottlenose dolphin are listed on Annexes II of the Habitats Directive while all cetaceans are listed on annex IV. Annex II identifies animal and plant species of community interest whose conservation requires the designation of special areas of conservation. Annex IV identifies animal and plant species of community interest in need of strict protection.

The aim of the Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

Importantly in relation to bycatch Article 12.4 of the Directive requires that Member States shall establish a system to monitor the incidental capture and killing of the animals species listed in Annex IV (a). In light of the information gathered Member States shall take further research or conservation measures as requires to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

1.3 Bonn Convention: Cetaceans are listed on Appendix II of the Convention of Migratory Species of Wild Animals (Bonn convention) which lists species whose conservation status requires or would benefit from the implementation of international co-operative Agreements. The Agreement on the Conservation of Small Cetaceans in the Baltic North Seas (ASCOBANS) was brought into being in 1992.

1.4 ASCOBANS: The conservation objectives established by ASCOBANS (of which the UK government are a Party) are *"to restore/and or maintain populations to 80% or more of the carrying capacity and to minimise (ie to ultimately reduce to zero) anthropogenic removals"* with an intermediate precautionary objective agreed by ASCOBANS *"to reduce bycatches to less than 1% of the best available population estimate."*

1.5 Common Fisheries Policy: There are commitments under the framework regulation for the Common Fisheries Policy (2371/2002) to apply the precautionary approach to fisheries management, aim at a progressive implementation of an ecosystem based approach to fisheries management (article 2). Articles 7 and 8 also provide powers to take emergency action to address serious threats to the conservation of living aquatic resources or to the marine eco-system resulting from fishing activities.

2. The incidental capture of animals in fishing gear (bycatch) is considered to be the major threat facing small cetacean populations worldwide. In order to assess the extent of the threat it is important to know certain key issues about the cetacean population in question such as the population size, structure and growth. In order to know what fisheries are impacting on cetacean populations there is a need for comprehensive monitoring of the fisheries throughout the range of the population.

3. While some efforts have been made to address these issues in the UK the process has been slow to date and has suffered from a lack of a strategic approach. There are currently numerous fisheries which have been identified as having unsustainable levels of bycatch associated with them but no mitigation measures are yet in place.

4. WWF are of the view that the management of bycatch has to be placed within the context of a strategic framework which will identify conservation and management objectives, establish timeframes for action and review of processes, and importantly commit much needed resources towards meeting these targets.

5. WWF believe that the UK small cetacean bycatch response strategy went some way towards addressing this but falls short of achieving it. Some of our key comments were:

5.1 WWF support, as an interim measure, the short term deployment of properly functioning pingers where they are accompanied by onboard observers. We believe that it will be important to have mandatory onboard observers accompany any deployment of pingers in order to address a range of concerns associated with pinger use. Such concerns include the proper functioning of pingers, maintenance of pingers, the effectiveness of the devices and the potential for habituation. The need for effective monitoring of pinger use was a key issue highlighted by pinger deployment in the US. We do not believe this can be left to work on a voluntary basis.

5.2 WWF do not believe that pingers offer a long term solution to the porpoise bycatch problems and that there is an urgent need to prioritise funding and resources to investigate alternative means of addressing the issue. In the case of static gear a key initiative will be to work with fishermen to explore the potential replacement of gill nets with other gear such as pots or cages for certain species.

5.3 We would be interested to learn the reason for the exclusion of mandatory pinger use for those vessels operating within six miles of the coast. There is a real risk of bycatch not only of porpoises but other small cetaceans in inshore waters. This cannot be ignored and needs to be assessed. There is also a risk of a shift in effort from outside the six mile zone to within in order to avoid pinger use. This may alter fishing patterns in the inshore and must be addressed. If pinger use is considered impractical in the first instance on vessels operating within the six mile zone there may be some merit in considering a length restriction of gill nets in this area while at the same time monitoring the fisheries at some level for bycatch.

5.4 We do not believe that the issue of habituation can be passed over as a significant concern and as the document notes it is something which will be studied by observers, this clearly makes the need for observers a critical issue. There had not been a comprehensive long term study undertaken on the issue of habituation and is something which must be studied under any pinger implementation programme.

5.5 We do not believe the potential for animals to be excluded from key habitats by the use of pingers should be underestimated and in fact believe there is an obligation for further work to be undertaken on this matter with respect to obligations under the Habitats and Species directive, particularly given the current lack of designated sites for porpoises.

5.6 We were disappointed to see the referral to the lack of reliable and recent population estimates as the major constraint to estimating the effect of bycatch. Even when the estimates were newly published in 1994 and bycatch levels were established there was a sense of denial as to the extent of the problem. It is only because we have had to do so little effort made to tackle the problem that the years have slipped by and now the 1994 estimate appears dated. As is noted there is another survey planned for 2004–05 but until this happens we should be working with the best available estimates that we have which are those generated by the first SCANS survey.

5.7 We welcome the UK support for SCANS II but believe that governments should work with existing population estimates as best available until new estimates can be generated.

5.8 We support the UK intention to expand bycatch monitoring scheme to assess levels of bycatch in all UK fisheries at a statistically valid level.

5.9 We support the further investigation into means of addressing bycatch of small cetaceans in towed gear.

6. At a European level WWF welcomed the publication by the European Commission of proposals to minimise the unsustainable impact fisheries have on small cetaceans through incidental catches. We noted that if implemented effectively it could (i) allow Member States to meet important commitments under the Habitats and Species Directive, specifically Article 12.4 (ii) bring the Baltic into line with the rest of the EU in relation to the use of drift nets, possibly one of the most non selective fishing gears, and (iii) demonstrate the EU's commitment to addressing the wider impacts of fisheries on the marine environment

7. WWF consider the Commissions proposal as a welcome first step towards minimising cetacean bycatch in European fisheries but believe that there are some key issues which must be addressed if it is to achieve its objectives:

7.1 WWF acknowledge the potential short term benefits of introducing the use of acoustic pingers as a bycatch mitigation measure but only if their deployment is accompanied by an observer programme. The current proposal does not explicitly identify onboard observers as a condition of use—it should. There exist a range of concerns associated with pinger use including (i) possible exclusion of animals from essential habitat, (ii) possible habituation of animals to the devices, (iii) operational problems including poor maintenance of devices leading to ineffective bycatch reduction, or devices not functioning. These problems are acknowledged by cetacean bycatch experts globally who have identified the need for observers to be a mandatory requirement of any pinger programme. This is to ensure that pingers are being deployed, and importantly, maintained properly, that they are functioning and also to monitor their impact on small

cetacean populations. Experience has demonstrated that without an accompanying monitoring programme it is unlikely that pinger use and impact will be properly deployed or monitored. WWF does not accept the mythical argument that it is usually impossible for small vessels to take observers—there are examples of observer schemes running on small vessels in a number of countries. Member States cannot afford to get this wrong—onboard observers must be a condition of any pinger deployment.

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

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

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

7.5 A strategic framework will require that unequivocal, quantifiable management objectives are defined, which subsequently form the reference point for risk assessments. Objectives should reflect the general aims identified by ASCOBANS—to restore and/or maintain populations to 80% or more of the carrying capacity (in a period of 50 years with a 95% certainty) and to minimise (ie to ultimately reduce to zero) anthropogenic removals and the intermediate precautionary objective agreed by ASCOBANS—to reduce bycatches to less than 1% of the best available population estimate.

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

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

7.8 The Commission needs to ensure that the measures advocated apply not only to EU waters but also to EU vessels in distant water fisheries as these remain largely unmonitored and unregulated in relation to their impact on cetaceans and other non target species.

8. Current bycatch mitigation is moving very much in the direction of acoustic deterrents. While WWF recognises that these devices can provide effective reduction in bycatch of certain species in certain fisheries they do not provide a long term option (see paras 5.1 and 5.3). In addition to existing points the potential impact of the deployment of large numbers of pingers into an already noisy marine environment must be assessed. Where they are used in the short term they must be used properly (see para 8.1) .

9. Key to developing alternatives to an over reliance on pingers is the provision of adequate funding to research alternative technology for the fisheries where problems are identified. Real efforts must be made to explore the potential for gear modifications, developing alternative gear and the use of time or area closures needs to be explored further as part of a long term mitigation strategy.

10. There is also the need to fund further research into identifying the necessary information on the biology and population structure of populations as these are also key factors when assessing the impact of any human induced mortality on populations.

11. Within the overall framework to address bycatch the recommendations must be clear and achievable, and have realistic timeframes within which to meet their targets. Enforcement will be key to the success of any recommended measures, and likely enforcement problems need to be considered by government. There must be appropriate political will and financing made available to implement and drive forward whatever measures are recommended.

12. While there are now moves via the proposed EU regulation and the UK strategy to monitor fisheries to assess levels of associated bycatch there should also be the requirement for any new fishing ventures to undergo an environmental impact assessment to identify the potential for unsustainable incidental capture of not only cetaceans, but other non target marine wildlife.

13. It is clear that the socio-economic aspects of fishery regulations will be important, such that financial compensation and incentives for the affected fisheries can assist effective implementation.

14. Importantly it is essential that effective measures are introduced in order to reduce the current levels of bycatch of small cetaceans in UK and other European fisheries.

12 September 2003

Memorandum submitted by The Natural Environment Research Council (C10)

1. The Natural Environment Research Council (NERC) welcomes the opportunity to provide input to this inquiry.

2. The Natural Environment Research Council (NERC) is one of the UK's seven Research Councils. It funds and carries out impartial scientific research in the sciences of the environment. NERC trains the next generation of independent environmental scientists. Its priority research areas are: Earth's life-support systems, climate change, and sustainable economies.

3. NERC's research centres are: the British Antarctic Survey (BAS), the British Geological Survey (BGS), the Centre for Ecology and Hydrology (CEH) and the Proudman Oceanographic Laboratory (POL). A list of NERC's collaborative centres is appended.

4. The NERC Sea Mammal Research Unit (SMRU), University of St Andrews, prepared NERC's comments to this inquiry.

THE NUMBERS BEING TAKEN

5. The capture of cetaceans in fishing operations has been recorded for centuries. As fishing operations have become more efficient it has become an increasing problem, especially in the last forty years. Despite some recent impressive decreases in levels of mortality in some fisheries, the total number of marine mammals taken annually in fisheries world-wide is still almost certainly in the hundreds of thousands¹.

6. Globally, cetacean bycatch represents the biggest conservation threat to cetaceans. Two species of small cetacean (a river dolphin and a porpoise) are threatened with imminent extinction with bycatch as a major cause, and several local populations of cetaceans are also threatened with extinction.

7. When addressing numbers of animals being taken, it is important to be clear that from a conservation perspective the level of threat that bycatch poses is not indicated by the number of animals caught, but by the number caught as a proportion of the total population size. Thus the capture of 10 animals from a population of 100 is more significant from a conservation perspective than the capture of 1,000 animals from a population of a million animals. Converse views might emanate from a welfare perspective, which we do not address here.

8. The largest known bycatches in a single fishery remain those in the Eastern Tropical Pacific purse seine fishery for tuna. In 2002 a total of around 1,500 dolphins were reported killed in this fishery; this represents about 0.02% of the total number of animals present in the area, and is down from several hundred thousand animals per year in earlier decades². It is assumed that catches at such levels are no longer a threat to the large populations of dolphins in the area, but the Inter-American Tropical Tuna Commission aims to continue to reduce bycatch to levels close to zero.

9. In European waters the greatest recognised conservation threat is to the harbour porpoise, notably in the Baltic. The Baltic Sea, which is about 64% of the size of the North Sea³, used to contain great numbers of porpoises. Directed hunts took over 1,000 porpoises per year from this population between 1,834 and 1,892⁴ with no evidence of a declining population then, suggesting a population at least in the tens of thousands and likely in the hundreds of thousands. Currently the population numbers no more than a few hundred individuals, and bycatches continue to be recorded in several gillnet fisheries. Without action it is likely that this population will in time be eliminated.

10. Despite being one of the two most abundant species in European waters, porpoise numbers in the southern North Sea and the eastern Channel are also thought to be greatly reduced from levels in the mid-20th century. The SCANS survey of 1994 recorded no porpoise sightings in the eastern channel, and the annual number of stranded animals has also declined almost to zero between the 1950s and the 1990s. The

¹ Read, A J, P Drinker, *et al* (2003). By-Catches Of Marine Mammals In US Fisheries and a First Attempt to Estimate the Magnitude of Global Marine Mammal By-Catch. Paper presented to the Scientific Committee of the International Whaling Commission, Berlin, May, 2003.

² See: <http://www.iattc.org/dolphinsafeeng.htm>

³ Surface area of the Baltic ca 370,000 km² compared with ca 575,000 km² for the North Sea.

⁴ Andersen, SH 1982. Changes in occurrence of harbour porpoises in Danish waters as illustrated by catch statistics from 1834 to 1970. In *Mammals in the Seas Vol 4*. FAO Fisheries Series No 5.

reason for the near disappearance of porpoises from this area are not known for sure, but whether by coincidence or not, the Channel is also the most heavily netted area (highest concentration of gill, trammel and tangle nets) around Britain, and wherever they co-occur, porpoises seem to be subject to bycatch in such fisheries.

11. In the adjacent western Channel and Celtic Sea bycatches of both dolphins and porpoises are known to occur in gill and tangle net fisheries. Tregenza and colleagues made estimates of porpoise bycatch for the years 1993–94⁵. These were of 740 porpoises per year by UK gillnet vessels more than 15m length⁶, and a further 1,497 animals per year⁷ by Irish gillnet vessels of more than 14 metres length. These estimates excluded any porpoise mortalities in nets used by English and Irish boats of less than 15 metres and 14 metres respectively, mortalities due to English and Irish tangle netting and mortalities in any French gill or tangle net fisheries.

12. In June 1994 the abundance of porpoises in the same area was estimated by the SCANS survey to be around 36,000 animals⁸. Assuming that catches of more than 1.7% of the local abundance are likely to be unsustainable, and that catches in excess of 1% are at least undesirable⁹, an annual bycatch of more than 360 animals would be undesirable, and more than 612 would be considered unsustainable. These limits should be considered for all fisheries from all nations fishing in the area combined, as it is likely that only one population is being impacted. Despite various changes in the fisheries operating in the area since 1994, given the existing levels of fishing effort it is unlikely that porpoise bycatches could be anywhere near as low as these levels at present.

13. Estimates have also been made for common dolphin bycatches in the same fishery. Tregenza and Collet¹⁰ estimated that about 200 common dolphins per year may be taken in the same English and Irish gillnet fishery as described above, again excluding small vessels, tangle netters and French vessels.

14. The abundance of common dolphins in the Celtic Sea was estimated at around 75,000 by the SCANS survey in June 1994¹¹. A French survey in July and August of 1993 estimated there were 62,000 common dolphins in an adjacent and partially overlapping area to the southwest of the Celtic Sea. Taking account of the area of overlap a summer estimate of around 120,000 common dolphins was later calculated by Michel Goujon who led the French survey.

15. Additional sightings data suggest that during summer months common dolphins are distributed along the continental shelf as far north as Northern Scotland, and even into the North Sea. During winter months sightings of common dolphins around the UK are almost exclusively in the western Channel and Celtic Sea. Animal numbers may therefore be greater in the winter than in the summer in this region. On the basis of the summer 1993–94 abundance estimates, a 1% bycatch limit would be 1,200 animals and a 1.7% limit would be 2,040. Again, such numbers are simply yardsticks to measure possible population level impacts and do not address any other concerns.

16. In the North Sea we have estimated UK bycatches of harbour porpoises to number some hundreds per year in gill, trammel and tangle net fisheries¹², though the total is likely to have declined from around 800 in 1995 to around 400 by 1999 with declines in fishing effort. Porpoise numbers in the North Sea were estimated at around 270,000 in June 1994 by the SCANS survey. Bycatches by other nations are likely to number in the thousands¹³.

17. We have monitored bycatch rates in gill and tangle net fisheries on the West coast of Scotland and estimate that current bycatches can be no more than a few tens of animals per year.¹⁴ Fishing effort with gillnets is currently so low in the Irish Sea that even if we assume a high bycatch rate of roughly one animal per 20 hauls¹⁵ the total annual bycatch would be unlikely to exceed 90 animals.¹⁶

⁵ Tregenza, N J C, S D Berrow, *et al* (1997). "Harbour porpoise (*Phocoena phocoena* L.) by-catch in set gillnets in the Celtic Sea." *ICES Journal of Marine Science* **54**(5): 896–904.

⁶ 95% Confidence Limit of 383–1097.

⁷ 95% Confidence Limit of 566–2428.

⁸ Hammond, P S, P Berggren, *et al* (2002). "Abundance of harbour porpoise and other cetaceans in the North Sea and adjacent waters." *Journal of Applied Ecology* **39**(2): 361–376.

⁹ For more on catch limits see: SEC (2002). Report of the second meeting of the subgroup on fishery and environment (SGFEN) of the scientific, technical and economic committee for fisheries (STECF). Brussels, Commission of the European Communities: 57.

¹⁰ Tregenza, N J C and A Collet (1998). "Common dolphin (*Delphinus delphis*) bycatch in pelagic trawl and other fisheries in the northeast Atlantic." *Reports of the International Whaling Commission* **48**: 453–459.

¹¹ Hammond, Berggren *et al*: *ibid*.

¹² See SEC (2002). Subgroup on fishery and environment (SGFEN). Scientific, technical and economic committee for fisheries (STECF). Incidental catches of small cetaceans. Brussels, Commission of the European Communities: 83.

¹³ *ibid*.

¹⁴ *ibid*.

¹⁵ This is the highest rate we have observed among UK net fisheries.

¹⁶ Details given in Northridge, S and L Thomas, 2003. Monitoring levels required in European Fisheries to assess cetacean bycatch, with particular reference to UK fisheries. Final report to the Department for Environment Food and Rural Affairs, European Wildlife Division. August 2003.

18. We have also monitored over 400 fishing operations in UK pelagic trawl fisheries over four years, during which time we have observed 91 bycaught cetaceans, all of which were identified as common dolphins and all of which came from the bass pair-trawl fishery.

19. The UK bass pair-trawl fishery is very small, typically involving two to four pairs of boats every season. Skippers involved in this fishery approached us in 2000 to help address a problem with dolphin bycatch. Since that time we have monitored approximately a third of all operations while working with the skippers to develop a solution to the problem.

20. In 2001 we observed 116 hauls with a total bycatch of 53 dolphins. In 2002 66 hauls were observed with eight dolphins recorded. In 2003 we observed 131 hauls with 30 dolphins recorded bycaught. The average number of animals taken in a net at one time is just over four, and the maximum observed was 10. Observations have been made in all months between November and April, and all but one dolphin was recorded in late February and March. Excluding tows where we were using an experimental grid, the overall rate of capture was 89 dolphins in 260 tows. Total annual fleet effort in both 2001 and 2002 was around 360 tows. We have not yet extrapolated to a total bycatch estimate as we have yet to allow for the fact that our sampling has been focussed on the time when bycatch rates are highest in this fishery, in March.

21. Our efforts to reduce bycatch rates in this fishery in 2003 resulted in two animals being taken in some 82 tows using an exclusion grid¹⁷. We aim to reduce this rate even further, and the skippers involved will voluntarily adopt this measure next season. If similar or lower bycatch rates can be achieved in future, the total cetacean bycatch in this fishery should be reduced to less than 10 animals per year, and hopefully close to zero.

22. Total UK bycatches of common dolphins, in pelagic trawl and gillnet and tangle net fisheries are likely to be in the low hundreds. Common dolphin bycatches are also known in several other European fisheries operating in the wider area. The overall impact at a population level is not yet possible to assess without estimates of bycatch from other European fleets. Estimates of total cetacean bycatch based on the number of animals stranding are totally unreliable.

23. Observations in other UK pelagic trawl fisheries have demonstrated zero bycatch rates. Such observations do not mean that there is no bycatch in any other pelagic trawl fishery. Bycatches of cetaceans are possible in any fishery and have been recorded in some very unlikely ones¹⁸. Estimating the exact rate of occurrence of a very rare event would require very high levels of observer coverage. Statistical methods can be used instead to infer the maximum probable bycatch based on the number of hauls observed with no bycatch. We calculated that given what we have so far observed, cetacean bycatch rates in the remaining UK pelagic trawl fisheries (combining mackerel, herring, sprat, horse-mackerel and pilchard) are very unlikely to exceed 457 dolphins per year in total¹⁹. This does not mean that the UK fleet *does* take this many animals—the overall rate might equally be less than one per year, but it is almost certainly less than 457. Further observations are planned, and if these continue to yield no observations of bycatch this figure would be reduced.

24. To conclude our comments on the numbers of animals being taken we suggest that the greatest numbers of animals being taken in UK fisheries are harbour porpoises, and that present levels of porpoise bycatch are probably not sustainable in some areas. Lower numbers of common dolphins are taken but we cannot be sure of the conservation significance without better information from other European fleets. Judging the significance of any bycatch level is dependent upon having reliable and up to date assessments of animal abundance, and this is lacking in many areas.

CAUSES OF BYCATCH

25. There has been much speculation on this topic, but there is very little actual information. Bycatch events are very hard to observe, both because they occur out of sight under-water, and because they are “rare events”.

26. Bycatches of porpoises in gillnets have often been attributed to the animals’ inability to detect nylon nets. This is incorrect and several studies have shown them quite able to detect nets by echolocation clicks. It is possible that animals become caught because they fail to pay proper attention, or because they become careless or do not understand the possible consequences of becoming entangled. Our research has shown that porpoises are present close to bottom set gillnets in the Celtic Sea for a high proportion of the time, suggesting that they may be foraging around nets much of the time and that bycatches must therefore be exceptional outcomes of such interactions rather than the norm²⁰.

¹⁷ Northridge, S 2003. Further development of a dolphin exclusion device. Final report to the Department for Environment Food and Rural Affairs. August 2003.

¹⁸ See the following global reviews for some examples: <http://www.fao.org/DOCREP/003/X6860E/X6860E00.HTM>
<http://www.fao.org/DOCREP/003/T0452E/T0452E00.HTM>

¹⁹ Northridge, S and L Thomas, 2003. Monitoring levels required in European Fisheries to assess cetacean bycatch, with particular reference to UK fisheries. Final report to the Department for Environment Food and Rural Affairs, European Wildlife Division. August 2003.

²⁰ See SMRU, UCC, CFPO and ISWFO. 2001. Reduction of porpoise bycatch in bottom set gillnet fisheries. Report to the European Commission, Study Contract 97/095.

27. The causes of dolphin bycatch in pelagic trawlers are also unknown. There has been much speculation. Common dolphins do not feed on bass, but prefer smaller fish such as pilchards, mackerel and horse-mackerel. It is not yet clear whether animals are present inside trawl nets of their own volition or because they swim into the net unaware of its presence. The latter explanation is unlikely as trawls produce a lot of noise underwater, and common dolphins travel in groups, increasing their collective alertness, and they would easily be able to detect an oncoming trawl acoustically. They would also easily be able to evade such a net. If they are present inside the net of their own volition it is likely that they are using the net to assist in feeding on smaller fish corralled by the net but not retained. Why some animals choose to swim the length of the net, consequently drowning in the net tunnel that leads to the cod-end is unknown, but again it may be that they fail to understand the danger. There is no evidence in the bass fishery that dolphin bycatches only occur at night, nor that capture events are associated with vessel turning or net hauling.

EFFECTIVENESS OF THE GOVERNMENTS SMALL CETACEAN BYCATCH RESPONSE STRATEGY

28. SMRU have been consulted during the development of this strategy, and agree that it is an effective and practicable approach.

29. Any such plan will only work adequately, however, if the fishing industry can be persuaded that it is in their best interests to comply with the intent of the Strategy, or if they wish to assist in reducing cetacean bycatch. It is very important therefore that the industry is given every opportunity and incentive to co-operate with attempts to minimise cetacean bycatch. Labelling of cetacean-friendly fish products may be one way to proceed and needs further investigation. Conversely, penalising fishermen for coming forward with a bycatch problem will greatly diminish our chances of identifying or resolving any such problems in future.

30. It is clear that other European countries have not taken adequate steps as required by the Habitats Directive to monitor bycatch adequately in their fisheries, and pressure must be brought to bear through whatever channels are possible to change this.

31. As mentioned above, assessing the impact of any cetacean bycatch at a population level is not possible without reliable information on cetacean abundance. Co-ordination efforts are now underway to design and implement a major survey for estimating cetacean abundance in European Atlantic waters in 2005. The UK government has committed funding to this survey, but considerable additional funding will also be required from other European countries. Again pressure must be brought to bear to raise adequate funding for this survey, which is also a requirement under the Habitats Directive.

12 September 2003

Memorandum submitted by the Royal Society for the Protection of Birds (RSPB) (C11)

Thank you for your invitation to respond to this inquiry. The RSPB wishes to take this opportunity to make three points.

1. Many of the problems which have led to an unacceptable level of cetacean by-catch could have been foreseen and pre-empted by Environmental Impact Assessment (EIA) of the fisheries involved. We are concerned that there is insufficient provision for EIA of “new” fisheries, be they new gears or developments of existing gears (such as pair-trawling) or movement of existing fisheries into new fishing grounds. To fail to make such proactive assessments in future should be deemed contrary to Article 2(1) of the reformed Common Fisheries Policy (CFP) (Council Regulation (EC) No 2371/2002), which calls for progressive implementation of an ecosystem-based approach to fisheries management. In this regard, we note recommendation 12 in the Eighth Report from the Agriculture Committee, Session 1998–99, “Sea Fishing”, namely that: “We believe that it should be part of the role of CEFAS and FRS to assist in the development of new fishing grounds through proper stock assessments. We also believe that as part of that research the scientists should ensure that the environmental impact of fishing for new species or in new grounds should be fully taken into account.” The Government reply included the statement: “The Government agrees that the development of new fisheries can raise environmental issues which need to be properly assessed by the scientists.” The RSPB believes that implementing this commitment would help avert many of the difficulties that characterise the incidental capture of cetaceans and other marine wildlife.

2. In our view, the Government should use the opportunity of the current Commission proposal on cetacean by-catch to raise the issue of by-catch of other non-target species, and to highlight the need for further measures to address this wider problem. In this context, the UK should press the Commission to meet their commitment in the CFP reform (see Annex to the Community Action Plan to integrate environmental protection requirements: COM(2002)186 final) to propose legislation before the end of this year “to manage sharks and protect seabirds”, in keeping with the United Nations Food and Agriculture Organisation’s International Plans of Action (IPOAs) to minimise by-catch and other impacts on those species.

3. While we do not wish to make a submission on cetaceans in particular, we wish to bring to your attention a serious related issue of seabird by-catch in fisheries under the jurisdiction of UK Overseas Territories.

The UK Government has a unique responsibility for its Overseas Territories in the South Atlantic (Falklands, South Georgia, Tristan da Cunha) because they are major breeding strongholds for globally threatened albatrosses and petrels, including a number of species endemic to those islands. The declines of these species at the hands of longline fishing are causing grave concern. The problems result from the nature of the longline fishing operation, whereby each vessel sets tens of thousands of hooks daily, baited with squid and fish. In the brief interval before the hooks sink, they are all too accessible to albatrosses and petrels. Although many birds are successful in stealing bait unscathed, others are hooked and drowned.

In well managed fisheries, vessels can and do take measures to minimise this by-catch, but this is not the case for vessels fishing illegally, and typically without a licence—so called “pirate” vessels often fishing under a Flag of Convenience (viz the recent highly-publicised pursuit and seizure of the Uruguayan-flagged longliner “Viarsa”). Overall, in the course of a fishing season, the best available evidence is that the cumulative toll of albatrosses is unsustainable, outpacing the capacity of these slowly reproducing seabirds to replace their losses. Largely because of longline fishing, all albatross species are, by next year, to be listed by the World Conservation Union (IUCN) as threatened with extinction.

The RSPB has been instrumental (with Foreign Office funding) in helping to carry out new research on Tristan da Cunha (including Gough), which has shown alarming declines in the Tristan albatross and Atlantic yellow-nosed albatross (both endemic to Tristan) and the sooty albatross. Our results indicate the importance of promoting international compliance with agreements on albatross conservation, both by nations which deploy fleets and by those nations in whose waters fleets operate. The UK is believed to be on the verge of ratifying the new Agreement on the Conservation of Albatrosses and Petrels (ACAP). However, the RSPB is concerned that the necessary progress has not yet been made to enable the Falkland Islands, South Georgia and Tristan da Cunha to ratify along with metropolitan UK.

Ratification of ACAP by these UK Overseas Territories, and by Tristan in particular, is therefore a matter of the greatest urgency. We are aware that a number of unlicensed longline vessels appear to be operating with impunity in Tristan waters where there is very limited enforcement capacity, and hence little likelihood of preventing the attrition of fish stocks and seabirds alike.

I recognise that this problem does not strictly fall within the terms of reference of your inquiry. However, we feel it is an urgent and related matter nonetheless. If you feel you would like to address it in more detail, we would be happy to supply any further information you may require.

12 September 2003

Memorandum submitted by the RSPCA (C12)

1. The RSPCA welcomes the DEFRA Small Cetacean Bycatch Response Strategy. There is already a clearly identified threat to harbour porpoise populations from entanglement in bottom-set gill nets, which DEFRA aims to address with the compulsory application of acoustic deterrent devices. A commitment is needed to establish a management plan for the implementation of the Strategy and for the effective implementation of observer schemes in fisheries where a bycatch problem has yet to be quantified. The DEFRA strategy must not rely solely on a few quick-fix technical measures to address currently identified problems, but should commit to research into alternative fishing methods over longer time scales.

INTRODUCTION

2. The RSPCA is concerned by the high incidence of cetacean bycatch in some fisheries operating around the UK. As well as threatening the conservation of cetacean populations, incidental death in fishing nets has the potential to cause extreme suffering to these air-breathing mammals. When caught underwater a cetacean can induce the “dive response”—a physiological adaptation that conserves oxygen and enables the animal to remain conscious though it cannot reach the air. Post-mortem examinations have identified major traumas sustained by the animals during this time, including lacerations, muscle haemorrhaging, and broken teeth and jaws, indicating their violent attempts to escape.

3. Various cetacean species are known to die through entanglement in fishing gear. Small cetaceans such as harbour porpoises and, to a lesser extent common dolphins and bottlenose dolphins, become entangled in bottom-set gill nets. Common dolphins are known to die in towed trawl nets, which may also incidentally capture species such as white-sided dolphins and pilot whales. Larger whales such as the minke whale occasionally become entangled in discarded nets or in the float ropes of lobster pots, sustaining injuries or long-term entanglement, which may cause death through disease or infection.

4. Under the Habitats’ Directive the UK has a responsibility to monitor incidental cetacean mortality wherever such mortality is believed to potentially affect populations, and to take remedial action if a problem is discovered.

SCALE OF THE PROBLEM

5. Incidental mortality of harbour porpoises in bottom-set gill nets is well documented and DEFRA's UK Small cetacean bycatch response strategy provides a comprehensive summary of known and extrapolated bycatch rates. The known rate of harbour porpoise bycatch is believed to be unsustainable and to inhibit population recovery.

6. There is a huge mortality of common dolphins in winter fisheries each year, though the specific fisheries causing the problem remain as yet unidentified. The only evidence of the scale of the problem currently comes from the increasing number of carcasses washing up on the coastlines showing evidence of net injuries (65% of those post-mortemed under DEFRA contract were clearly bycatch victims). Data on mortality rates of other small cetacean species are limited, and DEFRA's strategy document provides a comprehensive summary of all known cases.

ASSESSMENT OF THE UK STRATEGY

7. DEFRA has prepared a Strategy document that serves as a clear, well-illustrated presentation of current information on, some solutions to, and obligations regarding small cetacean bycatch in Europe. Sound recommendations include the need for gear research and development, for regular surveying of cetacean populations to determine trends, including a large scale survey (SCANS II); and a "cetacean-friendly" fish certification scheme. The RSPCA believes that a number of the recommendations do not, however, go far enough to ensure effective implementation of a bycatch reduction strategy.

ACOUSTIC DETERRENTS

8. The Strategy makes a clear commitment to the use of acoustic deterrent devices ("pingers") on bottom-set gill nets. These devices are known to be effective in reducing porpoise entanglements. Concerns over their use include both the potential for habituation by the animals and the potential exclusion of porpoises from areas where pingers are used. Pingers are widely acknowledged to be unsuitable as a long-term solution for bycatch in gill nets. DEFRA has therefore acknowledged the need for a programme of research to be carried out if pingers are deployed intensively in coastal waters and the RSPCA would like to see a commitment to this as part of a bycatch reduction management plan.

COASTAL OR LOW DENSITY CETACEAN POPULATIONS

9. Whilst the UK Strategy focuses on clearly identified bycatch problems in current fisheries, there appears to be no consideration of heavily depleted small cetacean populations and the Strategy lacks any recommendation on mechanisms to aid their recovery. In the case of the eastern English Channel, and waters within six miles of the coast, the cetacean population densities and resultant detected bycatch rates are not perceived to be high enough to warrant the application of mitigation methods (ie pingers). The RSPCA believes that there are potential problems with this: any inshore resident populations of cetaceans will sustain relatively very high bycatch rates; and any area devoid of cetaceans will not be repopulated if an animal entering such an area risks a relatively high entanglement probability. This may be particularly relevant if pinger placement elsewhere encourages movement of porpoises into these areas. The UK must therefore consider pinger deployment on all set nets that carry an entanglement risk, within the six mile limit and within ICES area VIId, the eastern English Channel.

BYCATCH RATE TARGETS

10. As a welfare organisation, the RSPCA believes that any level of cetacean bycatch carries with it an associated level of animal suffering that must be regarded as unacceptable. Therefore the ultimate aim of any strategy that addresses bycatch must be to eliminate incidental deaths entirely. However bycatch limits are necessary as targets against which to measure the success of mitigation proposals, and to ensure conservation of the cetacean species under threat.

11. The Agreement on the Conservation of Small Cetaceans in the Baltic and North Sea (ASCOBANS) has agreed that bycatch for harbour porpoise should be reduced to below 1.7% of the best estimate of abundance for a population, whilst also acknowledging that given the large uncertainties inherent in population estimates for many small cetaceans, a precautionary objective of reducing bycatch to below 1% should be recognised. These levels are dependent on current knowledge of survival and reproductive rates in healthy harbour porpoise populations and should not be generalised to situations in which the general health (eg through contaminant burdens) or size of a porpoise population is not well known. The DEFRA Strategy suggests that "where practicable, the strategy works towards the reduction of bycatch to the lowest possible level". The RSPCA would prefer the caveat of "where practicable" to be removed and for the UK to refrain from formalising a single acceptable level of bycatch.

12. The concept of a mortality limit schedule for cetacean bycatch does not satisfy the RSPCA's welfare aim of eliminating suffering, however it is a strategy that has been successfully adopted in other fisheries. To establish such a scheme in the UK, a management plan must be formulated that details a comprehensive observer programme to ensure any cetacean mortality limit is strictly adhered to, and clearly identifies an enforcement mechanism to close any fishery reaching its mortality limit.

OBSERVER SCHEME

13. Observer schemes are an essential component of this strategy. DEFRA has chosen to adopt voluntary observer schemes, which raises a number of concerns, for example that the required observer coverage may not be met. Voluntary observer coverage may diminish over time if bycatch levels reduce in the short-term and the problem is regarded as overcome. However it is essential to continue observer coverage to assess long-term efficacy of the mitigation method.

14. Therefore DEFRA should prepare a formal Observer Management Plan, based upon recommendations from a scientific advisory group, and managed by a bycatch reduction management group (as yet unidentified) to ensure regular review and assessment of information. DEFRA should establish some mechanism by which compulsory observer coverage is obtained if a voluntary scheme proves ineffective.

ENVIRONMENTAL IMPACT ASSESSMENTS

15. The Strategy lacks any reference to Environmental Impact Assessment (EIA). Such assessment should be obligatory for the fishing industry in the same way as it is applied to other industries known to cause detrimental change to the environment. When the ban on pelagic drift nets came into effect, fishing effort was displaced into other metiers, for example pelagic trawling. No EIA was carried out, resulting in the widespread adoption of a fishing technique now suspected of being responsible for large scale common dolphin mortalities. An EIA process should ensure that problem fishing techniques are identified and mitigation methods developed prior to widespread introduction.

CERTIFICATION SCHEME

16. The concept of a certification scheme is a good one: the success of the "Dolphin-friendly" tuna fisheries in the Eastern Pacific was brought about by consumer choice for a clearly identifiable product. DEFRA should develop this concept further, by allocating funds to a dedicated responsible body to establish, administer and monitor the scheme. Promotion of the scheme should be widespread, with responsibility for this falling to all stakeholders.

MANAGEMENT OF THE STRATEGY

17. To progress this Strategy, it is essential that a clearly identified coordination process is established. The involvement of stakeholders and their various responsibilities must be formalised and timetables established to ensure that the Strategy progresses efficiently. Project areas that the RSPCA believes should come under the management framework, which do not yet have lead partners identified in the DEFRA strategy, include: the observer scheme; environmental impact assessment process; cetacean population monitoring scheme; technological research and development into alternative gear types (a priority issue); and fish certification scheme. A management group for this process has not been identified in the DEFRA Strategy and should be done so as a priority, ensuring the involvement of all relevant bodies from industry, Government, research institutes and animal care and conservation groups representing the general public.

TIMETABLE

18. The Strategy lacks an overall timetable and the RSPCA believes that some of the proposed timescales are very generous. The target of purchasing and attaching pingers to set nets on the Celtic Shelf should be achievable within one to two years rather than the three years specified. Precise timetabling is required for various parts of this Strategy as part of an overall management plan.

19. DEFRA makes no reference to the need for a medium-term management plan: the RSPCA believes that such a plan should be drafted and finalised by autumn 2004. It should clearly identify, with temporal targets where appropriate: the number and composition of groups necessary to oversee various components of the Strategy; a management plan for an observer scheme; identification of areas for technological advance; and a management plan for a certification scheme.

OTHER MARINE WILDLIFE

20. Whilst fisheries impacts have been clearly identified as having significant impact on small cetaceans around the UK, other species such as marine turtles and baleen whales also occasionally incur injuries or death through entanglement. Any strategy for small cetaceans should, wherever possible, take an inclusive approach to providing guidance, monitoring and recommendations on gear modification to reduce all incidental wildlife bycatch.

INTEGRATION WITH EU STRATEGY

21. The European Commission has recently prepared a draft Regulation on incidental catches of cetaceans in fisheries (COM(2003) 451 final). Some of the proposed measures are not covered by the DEFRA strategy and the RSPCA believes that this should not lead to conflict. Rather, the UK should encourage adoption of those measures in the draft Regulation that are more precautionary than its own strategy.

22. The draft Regulation calls for compulsory observer monitoring of fisheries with a suspected cetacean bycatch problem. The levels of observer coverage specified in the draft Regulation are more limited than those recommended by the EU Scientific, Technical and Economic Committee for Fisheries (STECF) report (SEC(2002)1134). Though the DEFRA Strategy states that its bycatch monitoring scheme will be expanded to a “statistically valid level”, an assurance from DEFRA should be sought that the levels applied will concur with the recommendation from STECF.

23. The DEFRA Strategy may cause conflict between the UK and other Member States over the proposed scale of pinger deployment. The RSPCA welcomes the Commission’s draft Regulation and notes that it calls for the application of pingers to all bottom-set gill nets or tangle nets in ICES area VIIId. This area is specifically omitted from the UK Strategy. The RSPCA believes that DEFRA should support and adopt the recommendation on pinger deployment in the Commission’s draft Regulation in full.

CONCLUSION

24. DEFRA must not view the Strategy as a “quick fix” for currently identified bycatch problems for which potential mitigation methods are known. Instead, it must develop a mid- to long-term plan to evaluate and reduce cetacean bycatch problems through the development of alternative fishing gear technology and bycatch mitigation methods. Such commitments will require funding.

25. Additionally, DEFRA can play a role in raising awareness in the fishing industry of the need for responsible management of the marine environment, rather than viewing cetacean bycatch as a short-term problem that will be addressed through the adoption of simple technical measures.

12 September 2003

Memorandum submitted by the International Fund for Animal Welfare (IFAW) (C14)

INTRODUCTION

1. The International Fund for Animal Welfare (IFAW) is grateful for the opportunity to submit evidence to the recently established EFRA sub-committee on cetacean bycatch. We welcome the establishment of this sub-committee to fully assess the devastating effects that the accidental entanglement of cetaceans in fishing nets is having on both the populations of small cetaceans in UK and EU waters and the welfare threats facing small cetaceans as a consequence of this.

2. We would note that Article 12 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats and Species Directive) outlines specific requirements for Member States to “. . . establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In 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 negative impact on the species concerned.” Annex IV includes all cetacean species, however, there are currently no mechanisms in place to monitor the incidental capture of cetaceans in nets effectively.

3. Furthermore, we would stress that The World Conservation Union (IUCN) classifies the harbour porpoise as “vulnerable species” (VU A1cd), hence facing “a high risk of extinction” in the medium-term future.

EXECUTIVE SUMMARY

4. Each year thousands of small cetaceans are accidentally caught and killed in EU fisheries. Scientific studies, often supported by European Commission funding, have identified this incidental capture, or bycatch, as probably the most acute threat facing cetaceans in European waters.

5. IFAW will primarily highlight here the serious animal welfare and conservation concerns related to cetacean bycatch and in particular on populations of harbour porpoises in the Celtic Shelf, the North Sea and the Baltic Sea. However, we also raise to your attention that there are very significant concerns about the levels of bycatch of common dolphins (and other species) in pelagic trawls in the Celtic Sea, Biscay and Channel area; the evidence indicates that *immediate* action is required for the compulsory deployment of observers within the fishery.

6. The research referred to in this document highlights the unacceptably high level of bycatch, which are occurring in EU waters, including around the UK. The impact that this is having on populations of harbour porpoises (and other small cetaceans) is a major concern, and, as yet, the Government has done little to combat the problem of cetacean bycatch within the UK.

7. In terms of the likely effectiveness of the UK Bycatch Response Strategy, IFAW welcomes it as an important preliminary step. However, this IFAW document outlines some of the concerns that we have in relation to the implementation of the Strategy. It furthermore suggests future steps that should be taken by the UK Government and European Commission to better address the problem of bycatch.

8. Of particular concern is what we believe to be an over-reliance on the use of acoustic deterrent devices (or pingers) as an effective mechanism to reduce cetacean bycatch. We would stress that whilst we understand the potential short-term benefits of pinger deployment in certain circumstances, they should not be relied upon as a long-term strategy to mitigate cetacean bycatch. Ultimately, adequate research into effective, long-term mitigation measures and alternative fishing practices needs to be funded at both UK Government and Community level. There is also a need for monitoring schemes, where observers not only monitor the level of bycatch but also evaluate the deployment, efficacy and potential negative impacts of pinger use.

RESEARCH ON BYCATCH

9. Harbour porpoises are generally believed to feed mainly near the seabed and so are particularly prone to being caught in bottom-set nets including various types of gill nets and tangle nets that are anchored on the bottom. These nets are used to catch fish such as hake, cod, sole and turbot. High bycatch rates have been recorded throughout the harbour porpoises' European range in these types of fishing gears.

10. To date, one of the worst fisheries identified is the bottom-set gill net fishery for hake on the Celtic Shelf. Observations from UK and Irish vessels between August 1992 and March 1994 estimated bycatch of some 2,200 harbour porpoises per year (the true figure is likely higher as some animals may drop out of the nets undetected and several sections of the fishing fleet, such as vessels under 15m in length, were not included in the study) (Tregenza *et al*, 1997). This figure represents over 6% of the estimated population raising serious concerns about the ability of the population to sustain such levels. To date, no active measures have been taken by Government to reduce porpoise bycatch in this area. Moreover, there are significant gillnet fisheries operations which have never been sampled, and for which there are no estimates of small cetacean bycatch.

11. In the North Sea the Danish bottom-set gill net fleet, the largest in the European Community, fishes mainly for cod, sole, plaice and turbot. Observer monitoring during the early 1990s enabled researchers to estimate the total number of porpoises caught in the various Danish North Sea gill net fisheries. These peaked at 7,366 animals in 1994, which represents 4.3% of the estimated local population. Between 1987 and 2001 the average annual bycatch rate was estimated at 5,591 porpoises (Vinther and Larsen, 2002) or 3.3% of the population estimate from the SCANS survey in 1994 (Hammond *et al*, 2002) These bycatch estimates did not take into account the use of acoustic alarms which became mandatory in the Danish cod wreck-net fishery in August 2000. Nevertheless, there are concerns about the ability of the population to sustain such levels of mortality.

12. UK vessels also use bottom-set gill and tangle nets in the central North Sea. These are estimated to catch 1,000 porpoises per year (Northridge and Hammond, 1999) exacerbating an already critical problem. While the UK Government has acknowledged that bycatch levels due to the UK fleet in the North Sea are too high, it has not yet taken any practical measures to reduce these levels.

13. The harbour porpoise population in the Baltic Sea is believed to have declined dramatically in recent years, leading to concern about the species status there (ASCOBANS 1997; 2000; Berggren and Arrhenius, 1995a & b): a 1995 survey estimated as few as 599 animals (Hiby and Lovell, 1996). Surveys by IFAW's research vessel *Song of the Whale* in previously unresearched Polish waters in 2001 resulted in only one acoustic and one visual porpoise detection from over 2,000km of track surveyed. In 2002, larger scale surveys by IFAW and others led to the conclusion that the Baltic population is in a critical state and may

become extinct within 20 years unless immediate action is taken to prevent bycatch. The current minimum estimated number of porpoises bycaught in the Baltic “proper” each year is seven. This is more than three times higher than the estimated level that such a small population can withstand. (Berggren *et al*, 2002).

14. Baltic harbour porpoises continue to be caught, particularly in cod gill net and salmon drift net fisheries. The Baltic is currently exempt from the EU drift net ban and from the length restriction of 2.5km that applies to other salmon nets in the EU. Boats are allowed to use up to 21km of netting in the Baltic. It is fundamental that the proposed Commission Regulation on restricting the length of drift nets in the Baltic and subsequent implementation of a ban on drift nets within this area from January 2007 should be strongly endorsed by the UK Government, particularly as the UK Government were instrumental in the introduction of the EU ban at the time of its EU Presidency.

Please see Appendix I, which details the levels of harbour porpoise bycatch as recorded in EU fisheries.

The likely effectiveness of the Government's UK small cetacean bycatch response strategy, and further steps to be taken by the Government and the European Union to address the problem

15. The UK Bycatch Response Strategy produced by the UK Government formally acknowledged the significance of fisheries bycatch as a major threat to the conservation of small cetaceans and the need for urgent mitigation action. It also set out the need for improved monitoring and for increased research effort. Given the urgency of the problems to be addressed we are strongly of the view that there should be no delay in adopting and implementing a Bycatch Response Strategy and that the specified timeline of three years should be reduced to allow for immediate action.

16. IFAW welcomed the document produced by the UK Government, but did not consider that the proposed targets and objectives identified by the UK Government adequately reflected the need for effective precautions as identified by ASCOBANS. As well as defining the “unacceptable interaction” as above 1.7% of the relevant abundance estimate, the third Meeting of the Parties to ASCOBANS, including the UK agreed a precautionary objective to reduce bycatches to less than 1% to allow for uncertainty. This should be acknowledged, along with the general aim agreed by ASCOBANS at the Second Meeting of the Parties to minimise (ie to ultimately reduce to zero) bycatch removals.

17. Given the extremely wide confidence limits of the available population estimates, the fact that they are very dated, the lack of knowledge of the population structures and geographical limits and the incompleteness of bycatch level estimates, we consider that the precautionary objective to reduce bycatches to less than 1% of abundance must be the minimum basis for the targets identified in this Strategy.

18. The UK Strategy acknowledges that the most effective method of bycatch reduction is the closure of the offending fishery with no displacement of fishing effort elsewhere. The document also refers to the provisions in Article 7 of Regulation (EC) 2371/2002, basic text of the CFP Reform, that allow Member States to take emergency measures to restrict or close fisheries “*if there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action . . .*”. We consider it essential that provisions are made within the UK Strategy for the emergency restriction or closure of fisheries in circumstances, for instance, where critical new problems are identified or bycatch reduction targets are not met, until effective alternative mitigation measures or fishing methods can be implemented.

19. We were also concerned that the Regional Advisory Councils (RACs), as presently conceived, are inadequate to evaluate problem fisheries for bycatch or to develop suitable responses.

20. We consider that the proposed mitigation measures set out in Section 4 of the UK Strategy represented an over-reliance on the use of pingers to address the harbour porpoise bycatch problems in the Celtic Sea and North Sea. As the document acknowledged, there remains to be serious concerns about the use of pingers relating to:

- (a) their unpopularity with fishermen as a result of cost, maintenance requirements and practicalities of use that call into question their potential to be deployed and enforced effectively;
- (b) their efficacy in commercial use and in the longer-term. Experience in the Gulf of Maine gillnet fishery was that efficacy dropped quite rapidly over a two year period although it is not known whether this was a result of the pingers not functioning or the porpoises habituating to them (Read, 2000);
- (c) their potential, when used intensively or over wide areas, to exclude porpoises, and possibly other species, from favoured or even critical habitats, with negative consequences for their conservation status.

21. While we acknowledge the potential for effective pinger deployment to dramatically reduce harbour porpoise bycatches in gillnets under certain circumstances, we do not believe that they should be considered or presented as a long-term solution. Much greater emphasis should be placed on research and development of alternative mitigation measures and more selective fishing methods in both the UK and at Community level. Specifically, we would like to see alternative fishing practices in place once the ban on drift nets is in force.

22. Where pinger use is specified, we suggest that far greater attention should be given to monitoring their deployment, efficacy and potential negative impacts. In particular, we do not view the proposed voluntary arrangements with fisheries obliged to use pingers to take observers onboard as adequate. We consider that monitoring should be compulsory wherever pingers are in use. In addition, programmes of research to identify any potential problems with habitat exclusion should not be limited to coastal areas but should be undertaken in all areas where there is widespread pinger use.

For further information, please see Appendix II [not printed], “*Acoustic alarms (pingers)—a review of application and uncertainties relating to reducing the incidental capture of porpoises in fisheries*”. This study provides a comprehensive review of the efficacy of pinger use, research undertaken and expert (international) opinion on their use.

23. With regard to incentives outlined in the UK Strategy, we suggest that any financial incentives to fishermen under the FIFG be focused on long-term solutions to bycatch, such as changes in fishing methods and practices to protect small cetaceans. In addition, we suggest that if these funds are not being taken up at present, then perhaps they are not acting as incentives, and need to be reconsidered and improved to encourage further applications.

24. We note that the aim of the Strategy is *to work towards* reducing bycatch to below the target level, and *where practicable* to also *work towards* reduction to the lowest possible level. However, we consider that the Strategy should set firm targets and timeframes and identify a clear and uncompromising course of action to be taken if the targets are not met by the measures specified.

25. The Strategy proposes that in the Celtic Sea pinger use should only be a legal requirement for UK fishing vessels using bottom set gillnets beyond the 6 mile limit. This appears to be an arbitrary geographic limitation that will leave a great many gill nets in use and liable to catch harbour porpoises and other inshore species such as bottlenose dolphins in these waters. We would draw attention to the Strategy’s stated aim to “*where practicable . . . work towards the reduction of bycatch to the lowest possible level*”. We do not believe that allowing high levels of bottom set gillnetting effort to continue unmonitored and unrestricted in inshore waters in this area of known high porpoise bycatch is consistent with this stated aim.

26. The UK Strategy stated that it would assist in meeting targets to maintain the range and abundance of small cetacean species in UK waters. We are concerned that it does not address the recovery of populations in areas where they have been depleted. For example, the English Channel is identified as an area where the large amount of set net fishing may act as a barrier to recovery. We cannot accept the assertion that bycatch of harbour porpoises in the English Channel is “*negligible*”. Although bycatch rates may be very low, the impact may be significant. In a population as small as that found in the Channel, any bycatch is likely to have a significant effect.

27. We note that contrary to many recommendations and the experience from other countries such as the USA, the UK document presented only a single set of management, research and monitoring recommendations but failed to make provisions for a framework or process that would enable the continuous monitoring, evaluation and adjustment that is likely to be required to achieve effective bycatch reduction. The document stated that a formal review of the effectiveness of the measures should be undertaken within three years of publication and that this does not preclude adjustments in the intervening period. However, we maintain that a formal but dynamic process has to be established for proper evaluation and timely adjustment of bycatch response and mitigation is to occur.

28. Summary of recommendations:

- Recommendation One: That there should delay in adopting the bycatch response strategy, and that the timeline of three years should be reduced.
- Recommendation Two: That the precautionary objective to reduce bycatch to less than 1% should be acknowledged.
- Recommendation Three: That the UK Government should facilitate research and development into alternative mitigation measures (other than pingers) and into more selective fishing methods.
- Recommendation Four: That compulsory observer schemes should be in place wherever pingers are in use.
- Recommendation Five: That incentives should be focussed on long term solutions to bycatch, as outlined in Recommendation Three.
- Recommendation Six: That there should be a review of the six mile limit on pinger use for bottom set gill nets in the Celtic Sea.
- Recommendation Seven: That the levels of bycatch in the English Channel, although low, should still be addressed.

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18 September 2003

APPENDIX I

HARBOUR PORPOISE BYCATCH RECORDED IN EU FISHERIES

| <i>Fishery</i> | <i>Fleet studied</i> | <i>Target Sp</i> | <i>Other fleets in fishery</i> | <i>Year of bycatch study</i> | <i>Problem identified</i> | <i>Mitigation</i> |
|----------------------------------|----------------------|---------------------------------------|--------------------------------|------------------------------|---|---|
| Celtic Shelf Gill and Tangle net | UK and Irish vessels | Primarily Hake | Spanish | 1992–94 | 2,200 harbour porpoises estimated caught annually representing > 6% of population | Pingers trialled in 1998, pingers malfunctioned, trials halted. Further trials conducted 1999–2000—93% bycatch reduction reported. No current mitigation measures |
| Central North Sea | Danish vessels | Cod, turbot, variety of other species | | 1994–98 | 6,785 harbour porpoises estimated bycaught annually, representing approx 4% of population | Pingers trialled, compulsory use introduced seasonally in wreck fishery. Echo enhanced nets trialled—reduction in bycatch and fishing efficacy reported. Awaiting official conclusion of overall bycatch mitigation |

| <i>Fishery</i> | <i>Fleet studied</i> | <i>Target Sp</i> | <i>Other fleets in fishery</i> | <i>Year of bycatch study</i> | <i>Problem identified</i> | <i>Mitigation</i> |
|--|----------------------|--------------------|--------------------------------------|------------------------------|---|---|
| North Sea | UK vessels | Variety of species | Danish Belgian German Dutch | 1995–97 | 1,000 harbour porpoises estimated bycaught each year, likely impacting on same population as Danish and other vessels | None |
| Western Isles of Scotland | UK vessels | Dogfish and others | | 1995–97 | 750 harbour porpoises estimated caught each year in fishery. | None |
| Dutch Gillnet Fishery | N/A | Variety of species | | None | No study of impact although some bycatch likely. Voluntary reporting scheme. | None. Apparent view—no need to react to lack of demonstrable problem. |
| Swedish part of Skagerrak & Kattegat. | Swedish vessels | Cod and Pollock | Danish Norwegian | 1995–97 | Approximately 114 and 50 porpoises in respective areas each year. Former figure represents over 2% of population | Pingers trialled in 1997—no conclusive reduction in bycatch demonstrated. No further reduction measures implemented |
| Swedish Baltic Drift and Set Net Fisheries | N/A | Cod and Salmon | Number of other fleets | 1995 | 3–5 porpoises reported annually through voluntary scheme. Unsustainable. | No mitigation trialled to date |
| Kiel and Mecklenburg Bights set nets | German vessels | Cod and Flatfish | | 1995–96 | Voluntary scheme reported 6 porpoises bycaught in 1996. Likely unsustainable. | None. Apparent view—no need to react to lack of demonstrable problem. |

N.B. The Scientific Committee of the International Whaling Commission agreed that porpoise populations are unlikely to be capable of sustaining levels of anthropogenic removal (bycatch being only one form of this) above 1% of a given population. Where the population concerned is heavily depleted or is under threat from other sources, bycatches of much lower levels can have a debilitating effect.

The above table represents the information gathered, and action taken to date with respect to those EU fisheries which have been investigated for porpoise bycatch. In many instances the figures may underestimate the levels of overall bycatch in these areas. The true number of porpoises killed today can only be verified by an independent observer programme in the same fishery.

There have been no attempts made to mitigate the problem of bycatch in the majority of fisheries where it has been found. Importantly, many more fisheries remain unobserved. Worldwide, where gillnets and porpoises exist in the same area of water, porpoises are known to be caught and killed.

Immediate measures must be taken to reduce the levels of porpoise bycatch in fisheries where a problem has been identified, and comprehensive information must be obtained on bycatch levels from other fisheries.

18 September 2003

Memorandum submitted by the Scottish Pelagic Fishermen's Association (C15)

INTRODUCTION

A small number of our members have been involved in the bass pair trawl fishery over the last decade. The number of vessels is unlikely to be more than four in future but it is a very important element of the fishing calendar to those boats involved. The length of member vessels now participating in this fishery is typically 15 metres.

It is accepted that there has been a cetacean by-catch in the bass fishery; however the high figures quoted by some campaign groups bear no resemblance to the experience of our members. Members of the Association do however take the issue seriously and have co-operated with the Sea Mammal Research Unit (SMRU), at St Andrews University over the past four years to assist in their efforts to establish the true extent of common dolphin by-catch and to develop mitigation measures—first by experimenting with acoustic deterrents and more recently with the separator grid system.

Cetacean by-catch is not an issue in the main Scottish pelagic fisheries. SMRU and other independent observations support this.

OUR PROPOSALS

Dealing with the issue of cetacean by-catch is not easy. No definite spatial or temporal pattern has been established for the problem. The only way to mitigate by-catch in the fishery is to either deter them from entering the net or assist them to exit it. Given the complexities, the Association believes that a four-pronged approach is necessary. This consists of:

- Continued development of the separator grid system.
- Continued carriage of SMRU observers by vessels.
- Introduction of a bass trawl licensing scheme for vessels.
- Extend measures to other Member State fleets.

SEPARATOR GRID

The grid trials have come a long way in a short period of time. Bear in mind that the actual vessel charter period has been only a little over two weeks over two years. The 2003 trials were successful in that the participating vessels had a zero by-catch during the trial and although, regrettably, two dolphins perished in the net after the charter ended, camera footage proved that they were still alive when they approached the grid.

Further refinements are required to the system to ensure dolphins escape without fish loss and our members are committed to carrying on this work with SMRU this year. We are also willing to consider the use of any new acoustic deterrents.

OBSERVERS

It is imperative that vessels involved in this fishery continue to co-operate with and carry SMRU observers in order that as clear a picture as possible is built up of the problem and to enable continued liaison on how best to deal with it.

LICENSING SCHEME

Experienced skippers will always take steps to avoid fishing in areas where dolphins are present and when dolphins enter an area that is already being fished they will move away. There are three reasons for this: fishermen like dolphins and don't want to harm them, fishing is normally poor when dolphins are present, and it is a nuisance when dolphins are snagged in their nets. Our members have many years of experience of the sea bass fishery, they know the fishing grounds and wherever possible they take avoiding action.

It is the view of this Association that the time has come to introduce a new level of regulation into this fishery. The sea bass fishery may not withstand any significant increase in effort and displaced effort from other fisheries could have very serious repercussions for both the sea bass stock and dolphin by-catch. With this in mind, it is proposed that Fisheries Departments take steps to limit the number of vessels allowed to target this stock by licensing the trawl fishery. Permits should only be issued to those with a proven track record of prosecuting the fishery in recent times. This could be achieved by limiting it to those showing a consistent pattern of landings over say the last five years.

SUMMARY

Scottish Pelagic Fishermen's Association members take the cetacean by-catch issue seriously and are proactively working with experts to find a practical solution. It is not a simple problem to solve however and it needs to be tackled on a number of fronts including further grid development, an observer scheme and licensing measures.

It must also be borne in mind that only a small amount of the effort on sea bass comes from the UK fleet and to make real progress all measures need to be applied evenly to vessels from other Member States, including France.

24 October 2003

Further supplementary memorandum submitted by Nick Tregenza (C3e)

CETACEAN STRANDINGS—NUMBERS FOR JANUARY 2004

In Cornwall this year we have had:

- 33 porpoises (an unprecedented number);
- seven common dolphins; and
- two unidentified species.

Those are the figures from the Environmental Records Centre for Cornwall and the Isles of Scilly, and will be animals notified to the Natural History Museum who hold the national database. 17 porpoises and two common dolphins have gone for post-mortem under the Defra scheme operated by the Institute of Zoology.

Stranded animals are now generally marked with cable ties to avoid double-counting. Three have been reported today, but until they have been seen we will not know that they are actually new strandings.

Nick Tregenza

15 January 2004