



House of Commons

Environment, Food and Rural  
Affairs Committee

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

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**Third Report of Session 2003–04**





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

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**Third Report of Session 2003–04**

*Report, together with formal minutes, oral and  
written evidence*

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## Environment, Food and Rural Affairs Committee

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A list of Reports of the Committee in the present Parliament is at the back of this Report.

### Committee staff

The current staff of the Committee are Gavin Devine (Clerk), Fiona McLean (Second Clerk), Dr Kate Trumper and Jonathan Little (Committee Specialists), Andy Boyd and Louise Combs (Committee Assistants), Anne Woolhouse (Secretary) and Rebecca Flynn (Intern).

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## Summary

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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

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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.<sup>1</sup> In July 2003, the European Commission adopted a draft regulation intended to curb by-catch of small cetaceans.<sup>2</sup> 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.

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<sup>1</sup> Available at [www.defra.gov.uk/corporate/consult/cetacean/index.htm](http://www.defra.gov.uk/corporate/consult/cetacean/index.htm)

<sup>2</sup> 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

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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.<sup>3</sup>

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.<sup>4</sup> 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

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

<sup>4</sup> Defra strategy, para 9

numbers”.<sup>5</sup> 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.<sup>6</sup>

### **Bottlenose dolphin**

9. Bottlenose dolphins appear to spend much of their time inshore.<sup>7</sup> Defra estimates that there are between 300 to 500 individuals in UK inshore waters.<sup>8</sup> The JNCC estimates that there are probably fewer than 300 individuals in UK inshore waters.<sup>9</sup> 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.<sup>10</sup> 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”.<sup>11</sup> Nick Tregenza told us that the bottlenose dolphin population off south-west England could be critically endangered if even one dolphin were caught.<sup>12</sup>

### **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.<sup>13</sup> 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.<sup>14</sup> Nick Tregenza comments that “little is known of the geographical extent of the population from which ‘our’ common dolphins come”.<sup>15</sup>

### **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.<sup>16</sup> 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

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<sup>5</sup> Defra strategy, para 9

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

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

<sup>8</sup> Defra strategy, para 12

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

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

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

<sup>12</sup> Ev 10 [Nick Tregenza]

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

<sup>14</sup> Defra strategy, para 11

<sup>15</sup> Ev 10 [Nick Tregenza]

<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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”.<sup>23</sup>

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<sup>17</sup> 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.

<sup>18</sup> Ev 21 [The Wildlife Trusts]

<sup>19</sup> Ev 89 [Nick Tregenza]

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

<sup>21</sup> 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

<sup>22</sup> Defra strategy, para 71

<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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".<sup>30</sup> 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".<sup>31</sup>

### **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.<sup>32</sup> Mr Tregenza told us that bottlenose dolphins have been known to be caught in nets in Scotland, Ireland and Wales.<sup>33</sup> 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

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

<sup>25</sup> Ev 83 [International Fund for Animal Welfare]

<sup>26</sup> Q 158 [National Federation of Fishermen's Organisations]

<sup>27</sup> Ev 83 [International Fund for Animal Welfare]

<sup>28</sup> Defra strategy, para 35

<sup>29</sup> Defra strategy, para 73

<sup>30</sup> Ev 69 [Joint Nature Conservation Committee]

<sup>31</sup> *Ibid.*

<sup>32</sup> Q 89 [The Wildlife Trusts]

<sup>33</sup> 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.<sup>34</sup>

### **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.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> Nick Tregenza states that, in the first two weeks of January 2004, seven common dolphins were washed ashore on the Cornish coast.<sup>40</sup>

### **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-

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<sup>34</sup> Ev 12 [Nick Tregenza]

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

<sup>36</sup> Ev 22 [The Wildlife Trusts]

<sup>37</sup> Q 257 [Ben Bradshaw MP]

<sup>38</sup> 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'.

<sup>39</sup> Information supplied by Linda Hingley, 19 January 2003.

<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

### 3 Fisheries implicated in cetacean by-catch

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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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup>
- (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,

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<sup>41</sup> Ev 26 [Whale and Dolphin Conservation Society]

<sup>42</sup> Defra strategy, para 44

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

<sup>44</sup> Defra strategy, para 34

<sup>45</sup> 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).<sup>46</sup>

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”.<sup>47</sup> 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”.<sup>48</sup>

### 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).<sup>49</sup>

### *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.<sup>50</sup> Linda Hingley told us that it is only in

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<sup>46</sup> Defra strategy, para 35

<sup>47</sup> Q 114 [Whale and Dolphin Conservation Society]

<sup>48</sup> Q 48 [Nick Tregenza]

<sup>49</sup> Ev 76 [Natural Environment Research Council]

<sup>50</sup> Ev 21 [The Wildlife Trusts]

the winter months that she sees common dolphins washed ashore.<sup>51</sup> 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”.<sup>52</sup>

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.<sup>53</sup>

## 4 UK’s legal position

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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

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<sup>51</sup> Ev 50 [Linda Hingley]

<sup>52</sup> Ev 50, 53, 54 [Linda Hingley]

<sup>53</sup> Ev 77 [Natural Environment Research Council]

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

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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> Of the 65 candidate marine SACs currently designated in the UK:

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<sup>54</sup> 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.

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

<sup>56</sup> These are listed in Annex II to the Habitats Directive.

<sup>57</sup> 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.<sup>58</sup> One of these sites is off the Scottish coast and the other two are off the Welsh coast;<sup>59</sup>
- 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.<sup>60</sup> 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.<sup>61</sup>

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”.<sup>62</sup> 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.<sup>63</sup>

### *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.<sup>64</sup> 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.<sup>65</sup> It

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<sup>58</sup> As at 24 October 2003

<sup>59</sup> 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.

<sup>60</sup> Article 4(1)

<sup>61</sup> 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.

<sup>62</sup> Article 12(4)

<sup>63</sup> Ev 27 [Whale and Dolphin Conservation Society]

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

<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup>

## 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".<sup>70</sup> 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.<sup>71</sup> Any measures imposed

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

<sup>67</sup> 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

<sup>68</sup> These arrangements are specified in Annex I of 2002 Council Regulation.

<sup>69</sup> *Ibid.*

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

<sup>71</sup> 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”.<sup>72</sup> Any measures imposed may last up to three months and cannot be renewed.

## 5 Assessing the Government’s proposals

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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.

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<sup>72</sup> 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".<sup>73</sup> 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.<sup>74</sup> 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]".<sup>75</sup> 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

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<sup>73</sup> Q 211

<sup>74</sup> Q 212

<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup>

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.<sup>78</sup>

### 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.

<sup>76</sup> Defra strategy, paras 47, 99–101

<sup>77</sup> Defra strategy, para 110

<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup>

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.”<sup>81</sup>

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”.<sup>82</sup> 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.<sup>83</sup> 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

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<sup>79</sup> Ev 28, 85 [WDCS; International Fund for Animal Welfare]

<sup>80</sup> Defra strategy, para 72

<sup>81</sup> Ev 28 [International Fund for Animal Welfare]

<sup>82</sup> Q 114 [Whale and Dolphin Conservation Society]

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

waters.<sup>84</sup> 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".<sup>85</sup> 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.<sup>86</sup>

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.<sup>87</sup> 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".<sup>88</sup>

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

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<sup>84</sup> Qq 234–35 [Ben Bradshaw MP]

<sup>85</sup> Ev 70 [Joint Nature Conservation Committee]

<sup>86</sup> Ev 3 [Association of Sea Fisheries Committees]

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

<sup>88</sup> 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:<sup>89</sup> prior to 1990, these dolphins had not been seen off Cornwall for about 20 years.<sup>90</sup> 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

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<sup>89</sup> Defra strategy, para 19

<sup>90</sup> 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.<sup>91</sup>

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.<sup>92</sup> 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.<sup>93</sup>

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.

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<sup>91</sup> Defra strategy, para 102

<sup>92</sup> 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.

<sup>93</sup> 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.<sup>94</sup>

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.**

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<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup>

#### 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.<sup>97</sup>

<sup>95</sup> Defra strategy, para 112

<sup>96</sup> Defra strategy, para 114

<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup> 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.<sup>102</sup> The Minister told us that,

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

<sup>99</sup> Defra strategy, paras 60 and 61

<sup>100</sup> Defra strategy, para 62

<sup>101</sup> 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.

<sup>102</sup> 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.<sup>103</sup> We note that, under the EU FIGG grant programme, fishermen should be eligible for funding to cover the cost of purchasing separator grids.<sup>104</sup>

### *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.<sup>105</sup> 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.<sup>106</sup>

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.<sup>107</sup> 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.**

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<sup>103</sup> Q 252 [Ben Bradshaw MP]

<sup>104</sup> Defra strategy, para 91

<sup>105</sup> Ev 49 [Linda Hingley]

<sup>106</sup> Q 81 [Nick Tregenza]

<sup>107</sup> 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.<sup>108</sup> 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."<sup>109</sup>

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."<sup>110</sup> 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

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<sup>108</sup> Qq 143-47 [National Federation of Fishermen's Organisations]

<sup>109</sup> Q 205 [Linda Hingley]

<sup>110</sup> 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.<sup>111</sup>

## 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 (WDCS) 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 WDCS 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.<sup>112</sup>
- 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

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<sup>111</sup> Q 143 [National Federation of Fishermen's Organisations]

<sup>112</sup> 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.<sup>113</sup>

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.<sup>114</sup>

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.<sup>115</sup> 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”.<sup>116</sup>

### ***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.”<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

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

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<sup>113</sup> Ev 11 [Nick Tregenza]

<sup>114</sup> Defra strategy, para 44

<sup>115</sup> Q 90 [Whale and Dolphin Conservation Society]

<sup>116</sup> Ev 77 [Natural Environment Research Council]

<sup>117</sup> Ev 11 [Nick Tregenza]

<sup>118</sup> Q 205 [Linda Hingley]

<sup>119</sup> 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.<sup>120</sup>

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.<sup>121</sup>

#### 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.<sup>122</sup>

<sup>120</sup> Defra strategy, para 103

<sup>121</sup> Defra strategy, para 104

<sup>122</sup> 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.<sup>123</sup>

### **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.<sup>124</sup> 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.<sup>125</sup>

### **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**

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<sup>123</sup> *Ibid.*

<sup>124</sup> Ev 23 [The Wildlife Trusts]

<sup>125</sup> 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.”<sup>126</sup> 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.<sup>127</sup>

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”.<sup>128</sup> 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.**

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<sup>126</sup> Emphasis added.

<sup>127</sup> 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

<sup>128</sup> 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.<sup>129</sup>

Further research is needed into small cetacean population structure and seasonal movement.<sup>130</sup>

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

### 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.<sup>132</sup>

### 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

<sup>129</sup> Defra strategy, para 106

<sup>130</sup> Defra strategy, para 107

<sup>131</sup> Defra strategy, para 109

<sup>132</sup> 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.<sup>133</sup>

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”.<sup>134</sup> 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”.<sup>135</sup>

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.<sup>136</sup> 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.<sup>137</sup> 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.

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<sup>133</sup> 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)

<sup>134</sup> Q 250 [Ben Bradshaw MP]

<sup>135</sup> Q 225 [Ben Bradshaw MP]

<sup>136</sup> Qq 226–29 [Ben Bradshaw MP and Martin Capstick]

<sup>137</sup> 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

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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

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**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

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## Monday 3 November 2003

Page

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

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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

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### 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

|                |  |        |
|----------------|--|--------|
| 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 |