(July 2020)

Joint Recommendation of the South Western Waters High-Level Group

Aiming to reduce small cetaceans accidental catches in the Bay of Biscay In application of: - articles 7.1, 7.2 and 18.7 of CFP basic regulation (1380/2013) - article 21 of technical measures regulation (2019/1241)

Abundance and conservation status of common dolphin in the North-East Atlantic

The ICES report published the 26th of May concludes that the conservation status of the population of common dolphin in North-East Atlantic is "unknown" or "unfavourable-inadequate".

This report indicates **the best available estimate of the abundance of this population at 634 286 individuals**, using data from SCANN III surveys and the OBSERVE project.

Event of strandings observed in the Atlantic area

Incidental catches have been observed since the 1970s and continue to be the main cause of anthropogenic mortality of small cetaceans. In Europe, the most exposed species are the harbour porpoise (*Phocoena phocoena*) and the Atlantic short-beaked common dolphin (*Delphinus delphis*). Incidental catches, together with depredation, are the main operational interactions of marine mammals with fishing.

Stranding events have been observed on the coast of France, Ireland, United Kingdom, Spain and Portugal.

- In the French Atlantic area, stranding events have occurred over the past thirty years. The French National stranding network (RNE), set up in 1972, is the main tool for monitoring marine mammals stranding. Over the 1990-2017 period, an average of 890 cetaceans have stranded per year on the French Atlantic coast (Pelagis, 2017). Most stranding occurred during the winter period, between December and April. Since 2017, massive stranding events have been observed during this period. The carcasses' analysis showed that the mortality of stranded individuals is mainly caused by incidental catches of fishing gears i.e. by-catch. During the past four winters, the stranding events have increased. During the winters 2018-

2019 and 2019-2020, 1200 and 1160 stranded cetaceans have been respectively estimated by RNE on the French Atlantic coast. The past winter 2019-2020, short-beaked common dolphins (*Delphinus delphis*) represented 90% of stranded including unidentified dolphins (*Delphinidae spp*) (Pelagis, 2020).

- Between 2002 and 2014, a total of 1770 cetacean have stranded on the Irish coast, with common dolphin the most frequently stranded (McGovern et al., 2018).

- For the United Kingdom, between 2013 and 2017, 687 common dolphins have stranded according the CSIP report of 2017 (CSIP, 2017).

- In the ICES WGBYC report (2018), 99 cetacean strandings were registered along the Portuguese mainland coast in 2016. 30–50% mortality was attributed to confirmed by-catch in fisheries, and most attributed to fixed net fisheries.

Interaction between cetaceans and fishing fleets

Incidental catches by fishing gear is estimated to be the main pressure for the common dolphin Atlantic population.

ICES identified fishing fleet of concern as those with any by-catch of common dolphins recorded by onboard observers from 2016 to 2018 in ICES subareas 6, 7, 8 and 9. The fishing gear identified are pelagic trawls, demersal trawls, nets and, less likely, purse seine (see Table 1).

Estimation of common dolphin by-catch mortality

The estimation of common dolphin by-catch is complex. Two sources of data can be used to estimate the by-catch mortality:
- stranding data collected by at-land observation systems;
- by-catch data collected by at-sea observer programs (monitoring program).
The ICES advice of the 26th of May used those two sources of data to compare the estimation for the winters 2016-2018.
This ICES report gives new estimations of by-catch but also the estimation of the contribution of each fleet of concern except OTT and OTB (Table 1).

Flottilles	Estimation of by-catch using data collected by observer programs	Estimation of by-catch using stranding data
PTM	481	802
PTB	775	1292
GTR	2061	3435
OTM	297	495
PS	213	355
GNS	137	228
Total	**3973** (1998-6598)	**6620** (4411-10827)

Table 1: Summary of mortality of common dolphins for fleet of concern from monitoring and stranding data raised using the annual mean of the available fishing effort data (RDB) for 2016-2018 (ICES, 2020)

Indicators identified to ensure good conservation status of the common dolphin population

Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS)
In 2016, the resolution No.3 of The Meeting of the Parties to ASCOBANS (MOP8) affirms the following position:

- the objective of ASCOBANS is to restore and/or maintain biological or management units of small cetaceans at the level they would reach when there is the lowest possible anthropogenic influence;
- in order to reach this objective, **the intermediate precautionary aim is to reduce by-catch to less than 1 per cent of the best available population estimate**;
- a total anthropogenic removal above 1.7 per cent of the best available estimate of abundance, i.e. including all factors causing mortality or reduced fecundity in small cetaceans in the Agreement area.

Moreover, ASCOBANS has launched a Species Action Plan (SAP) for North-East Atlantic Common Dolphin. A steering group for this SAP ("Common Dolphin Group") met for the first time on the 16th of September 2019 in Germany.

Within the MFSD, France has fixed an indicator of good environmental status of common dolphin population (criteria D1C1) based on this ASCOBANS resolution. France chose by ministerial decree[1] the level of 1% of the best available population estimation of common dolphin abundance as the limit of mortality by a fishing gear. The best estimation of this limit of 1% is **6 340** individuals.

ICES report of 26th May 2020

The Working group WKEMBYC worked on a different indicator: **the potential biological removal** (PBR). The PBR is the estimate level of anthropogenic mortality that ensures the long-term viability of the population and its good conservation status (ICES, 2020).

The estimation of PBR given by the ICES is **4 927** individuals.

Identification of relevant measures and action plan

All cetacean species are protected as species of community interest that require strict protection (Annex IV of the Habitats Directive 92/43/CEE). Member States should take appropriate measures to achieve the objective of maintaining or restoring the good conservation status of the species protected.

Strandings have been observed for many years in the Atlantic area. Those stranding events are a common issue for Members states, contracting parties of the North and South Western Waters High-Level Groups, with active fishing fleet in this area during the winter period.

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1 https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039130954

The ICES reports tested 15 different scenarii based on NGO's proposals and estimated the by-catch reduction for each scenario.

For 2016-2018 periods, according the ICES advice:

- both PBR and 1% threshold (MSFD D1C1 in France) are not exceeded when using monitoring data by-catch estimates as a basis (4927 and 6340 versus 3973).
- PBR is not exceeded and the 1 % threshold (MSFD D1C1 in France) is slightly exceeded when using the stranding data by-cach estimates as a basis (4927 and 6340 versus 6620).

This joint recommendation proposes an action plan, based on ICES advice, to significantly reduce common dolphin by-catch from 2020 and ensure the good conservation status of the population.

This action plan is built around four axis:

- **Axis 1: Reduce common dolphin by-catch**. Precautionary measures relative to fishing activity, based on ICES advice, will be taken starting December 2020 1st in order to significantly reduce dolphin by-catch in the short term ;

- **Axis 2: Improve knowledge**. Actions relative to the knowledge of the dolphin population and its interactions with the different fishing activities shall be intensified ;

- **Axis 3: Find innovative solutions**. Innovative projects relative to technical solutions to reduce by-catch shall be supported.

- **Axis 4: Share the knowledge at the European level**. The success of this plan relies on a good communication between experts and policy makers at the European level.

While measures under axis 1 are taken as a short-term action to decrease bycatch by 2020/2021, axis 2, 3 and 4 are expected to provide the tools to build a long-term action plan based on refined measures.

As such, in accordance with Article 18 of Regulation (EU) No 1380/2013, the SWW group accepts to present this Joint Recommendation for a Delegated Act to implement new measures.

South Western Waters High-level group

Following Articles 7 (types of *conservation measures*) and 18 (*regionalisation*) of the Basic Regulation, the Fisheries Directors of South Western Waters (SWW) Members States Group have agreed the present Joint Recommendation.

Consultation of Advisory Councils

Being aware of the importance of solid input from stakeholders in the process of drawing up the proposal for a Regulation of the European Parliament and the Council on reducing the incidental capture of protected species and the negative impact of fisheries activities on

marine ecosystems, and in light of Article 18(2) of the Basic Regulation, relevant ACs were consulted.

Proposed measures

Axis 1: Reduce common dolphin by-catch

I. Equipment of mid-water pelagic trawls (OTM, PTM) and demersal twin trawls (PTB) with acoustic deterrent device in ICES subarea VIII during all year.

The use of pelagic and demersal twin trawls (PTM, PTB), and pelagic trawl (OTM) is prohibited all-year round within the ICES divisions VIII without the simultaneous use of active acoustic deterrent devices. [Considering the specificity of the area and its fishing activities, this also applies to demersal trawls (OTB) in ICES subarea VIIIc during all year.]

II. [2 weeks closure of ICES subarea VIIIa,b,[c],d for vessels using gears of concern (PTM, PTB, OTM, [PS], GTR, GNS) within the period between mid-January and end-February 2021

Any fishing vessel that wish to fish with gears of concern (PTM, PTB, OTM, , GTR, GNS) in ICES subarea VIIIa,b,[c],d between January, 15th 2021 and February, 28th 2021 has to stop any fishing activity using gears of concern (PTM, PTB, OTM, [PS], GTR, GNS) for 2 periods of 7 continuous days between January, 15th 2021 and February, 28th 2021.

The exact closure periods are chosen by the individual concerned vessels and shall be notified to the competent authorities at least one month ahead. The list of vessels/closures shall be shared between Member States.

This "rolling" system enables a reduction of fishing effort for gears generating bycatch (cf. ICES advice table 7) during the peak mortality period, while minimizing the disruption of port activity, fishing markets, etc.]

Measure I and II cover the combination of measures assessed by ICES. This combination of measures therefore would bea good balance between the need to reduce by-catch to protect the dolphin population and the need to take proportionate measures considering their direct socioeconomic impacts on the fishing industry.

Axis 2: Improve knowledge

III. Implementation of the obligation to report marine mammals by-catch by fishing vessel

It is compulsory for all EU fishing vessels to report in the logbook (electronic or paper format) any marine mammal caught incidentally by all fishing gear type in the southern western waters. The tagging of dead common dolphins, in association with scientific institutes, is also encouraged to improved knowledge on drifting processes and the estimation of total by-catches.

IV. Cetaceans by-catch observations at sea

Member states are encouraged to increase data collection on incidental catch through observations at sea, focusing on gear of concern identified by ICES. Collected data shall be transmitted to the ICES WGBYC.

Member states are encouraged to study the implementation of remote electronic monitoring to complete the coverage of on-board observers.

V. Improve the knowledge on the state of the common dolphin population and stranding events

Surveillance program to estimate the abundance of the common dolphin population should be intensified and coordinated at a European level.

Stranding events are not monitored with the same accuracy and exhaustivity amongst Member States. An European network to monitor stranding events "in real time" on the shore of North-East Atlantic has to be created.

Axis 3: Find innovative solutions

VI. Support and share innovation to find new technical solutions

Member states deploy their best efforts to support scientific experimentations aiming at developing and testing new technical solutions to reduce protected species by-catch by fishing gear.

Axis 4: Share the knowledge at the European level

A permanent working group, gathering experts and policy makers shall be constituted at the European level in order to share knowledge and solutions to address the cetacean by-catch issue.

Annex 1: References

Council Directive 92/43/EEC

Regulation (UE) 2019/1241

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