

Annex A

PARTIAL REGULATORY IMPACT ASSESSMENT

TITLE

1. UK Small Cetacean Bycatch Response Strategy.

PURPOSE AND INTENDED EFFECT

(i) The objective

2. The incidental capture of non-target species, known as bycatch, is widely recognised as one of the most serious environmental impacts of modern commercial fishing¹. Bycatch may affect the structure and function of marine systems at the population, community and ecosystem levels. Long-lived vertebrate species with low reproductive rates, such as cetaceans (the scientific name for whales, dolphins and porpoises), are particularly vulnerable to depletion from bycatch.
3. The UK Government is concerned that the current level of small cetacean bycatch in certain UK and other European fisheries is unsustainable and is therefore threatening cetacean populations. In addition, there is widespread public concern about the bycatch of cetaceans.
4. For this reason, in 2000 the UK Government was instrumental in gaining approval at the third Meeting of the Parties to the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) to a resolution which identifies that small cetacean bycatch above 1.7% of the relevant abundance estimate constitutes an unacceptable interaction, as any take above this level would inevitably lead to population decline.
5. The UK is one of eight Parties to ASCOBANS. Under this Agreement, signatory countries are required to co-operate in research and management measures to conserve small cetaceans in the Baltic and North Seas. The UK applies the spirit of the Agreement to all its waters.
6. Following the 3rd ASCOBANS Meeting of Parties, the development of a small cetacean bycatch strategy was approved by relevant UK Ministers. A working group was therefore set up in July 2001 to develop this strategy, comprising representatives from Government, the statutory nature conservation agencies, the Association of Sea Fisheries Committees and a scientific expert on bycatch.
7. Together, the group produced the Government's UK Small Cetacean Bycatch Response Strategy. Its aim is to identify what measures can be

¹ Read, A.J., 2000. Potential Mitigation Measures for Reducing By-catches of Small Cetaceans in ASCOBANS Waters, Report to ASCOBANS.

taken to work towards reducing small cetacean bycatch to below the target set by the ASCOBANS Meeting of the Parties in 2000.

8. As its name suggests, the Strategy applies to the UK as whole, which includes all UK waters and UK fishing vessels operating in the waters of other Member States of the European Community. Using available data, it recommends a suite of measures, including the implementation of practical bycatch mitigation methods, monitoring and further research. Most of these proposals will have little or no direct impact on the public at large – but they do act as a statement of the Government’s policy position.
9. The Strategy may lead to regulation, for example, if the proposals that place an obligation on fishermen to deploy acoustic devices, or pingers, in certain fisheries are to be taken forward. It is for this reason that this partial Regulatory Impact Assessment (RIA) has been drafted. Any proposal in the Strategy that requires regulation will be accompanied by its own RIA, if taken forward.

(ii) Background

10. The UK Government has publicly stated its commitment to conserving the marine environment and its biological diversity. On 1 May 2002 the Government’s first Marine Stewardship Report, *‘Safeguarding our Seas’*, set out the Government’s strategy for the conservation and sustainable development of the marine environment based on a vision of clean, healthy, safe, productive and biologically diverse oceans and seas. It contains a clear commitment to conserve and, where possible enhance and restore, marine biodiversity. One part of this commitment was the development of the UK Small Cetacean Bycatch Response Strategy as the means through which UK would aim to reduce bycatch to below the limit agreed by ASCOBANS.
11. *‘Safeguarding our Seas’* recognises that fisheries have a major role in the sustainable development of the marine environment at a national, European and International level. It states the UK’s policy of promoting further integration of environment and fisheries and helping to “establish responsible and sustainable fisheries that ensure healthy marine ecosystems, maintaining the quality, diversity and availability of marine resources and habitats”.
12. The Common Fisheries Policy (CFP) provides the means to regulate fishing activities within EU waters with the aim of sustainable exploitation of living aquatic resources. As part of the 2002 review of the CFP, the Commission produced a Communication setting out a Community Action Plan to integrate environmental protection requirements into the CFP. The Action Plan included a target of identifying management measures to reduce cetacean bycatch by the end of December 2002. In January 2003, the Commission produced a working paper on cetacean bycatch, that suggested a number of measures which needed to be considered to monitor and reduce bycatch. Many of these measures are reflected in the Strategy.

13. The need to reduce the bycatch of small cetaceans in general, and the harbour porpoise in particular, was recognised to be a key priority in the Ministerial Declaration of the Fifth International Conference on the Protection of the North Sea (the "Bergen Declaration") of 20-21 March 2002. In this Declaration, Ministers urge the competent fisheries authorities to take all necessary measures to minimise incidental catches and/or damage of non-target organisms. Ministers also agreed to aim at reducing the bycatch of harbour porpoises to below 1.7% of the best population estimate. On the same basis they agreed on a precautionary objective to reduce the bycatch of marine mammals to less than 1% of the best available population estimate.
14. Biodiversity is under threat globally and there are serious issues for us to address here in the UK. The overall goal of the UK Biodiversity Plan is to "conserve and enhance biological diversity within the UK and to contribute to the conservation of global biodiversity through all appropriate mechanisms". Actions taken under the Strategy will assist in meeting the targets of the UK Biodiversity Action Plans for small dolphins and for the harbour porpoise. These Plans have targets to reduce bycatch, and maintain the range and abundance of these species in UK waters. In turn, these actions will also help our efforts towards the achievement by 2010 of a significant reduction in the current rate of loss of biodiversity as agreed by the World Summit on Sustainable Development.
15. In May 1999, the Government published *A better quality of life - a strategy for sustainable development in the UK*² which included indicators to help measure whether we are making progress towards meeting this goal. Indicators such as biodiversity in coastal/marine areas and levels of cetacean bycatch, for example, are being developed to assess progress on the protection of the marine environment. The conservation of small cetaceans and reduction of bycatch will contribute towards progress of the overall objective.

Legislative protection

16. All cetaceans are protected in Great Britain under the Wildlife and Countryside Act 1981 which makes it an offence to intentionally kill or injure all cetaceans. In Northern Ireland, cetaceans are afforded similar protection under the provisions of the Wildlife (Northern Ireland) Order 1985. In 2000, the Government strengthened the protection given to cetaceans in England and Wales, amending the 1981 Act by introducing an offence of reckless disturbance to cetaceans.
17. Cetaceans are also listed under Annex IV of the Council Directive (92/43/EEC) on the Conservation of Natural Habitats and of Wild Fauna and Flora (known as the Habitats Directive), as species in need of strict protection. The Directive also requires Member States to establish a system to monitor cetacean bycatch and carry out research or conservation measures needed to ensure that incidental capture and

² Department of the Environment, Transport and the Regions (May 1999). *A better quality of life: a strategy for sustainable development in the United Kingdom*. TSO, London (Command number 4345).

killing does not have a 'significant negative impact' on the species. This Directive is transposed into British law by the Conservation (Natural Habitats &c.) Regulations 1994 and in Northern Ireland by the Conservation (Natural Habitats &c.) Regulations (Northern Ireland) 1995.

(iii) Risk assessment

18. Small cetaceans are vulnerable to bycatch. In some UK fisheries the level of cetacean bycatch is thought to be unsustainable. For example, in 1997 the Sea Mammal Research Unit (SMRU) completed research into the potential bycatch problem of gillnetting in the Celtic Sea hake fishery. The results of this indicated that the level of harbour porpoise bycatch by UK and Irish vessels amounted to at least 6% of the estimated population of the species in the area. This represents a minimum of three times the level which the International Whaling Commission, ASCOBANS and the UK Government consider acceptable.
19. Surveys carried out by the SMRU in 2001 produced evidence of a dolphin bycatch problem in the bass pair-trawl fishery off the south west coast of England. The pair trawling teams monitored caught common dolphins at a rate of a little in excess of one every three hauls. This is a cause for concern and there is no reason to suppose that similar fishing by vessels in other Member States' fleets is having a lesser effect.
20. The number of cetacean strandings reported over the past few years has attracted much media attention and public concern. Strandings are not, in themselves, an indication that cetacean mortality has worsened over recent years than in previous years. However, the interest generated by the frequency and cause of these incidents shows that the public are concerned about the conservation of these species and wish to see action being taken to protect UK populations. The production of the Strategy will better inform the public of the Government's plans to tackle the bycatch problem that has been shown, in general, to be the major cause of death of the stranded animals that have been subject to post-mortem.
21. The failure to address the problem of unsustainable small cetacean bycatch would be in contravention of the Government's commitment to marine species conservation and result in the UK disregarding its international obligations under ASCOBANS. It would also result in the UK failing to take action to reduce the incidental take of species that are protected under European and domestic legislation [see *paragraphs 16 and 17 for details of the level of legislative protection afforded to cetaceans*]. Several of the cetacean species covered by the Strategy feature on the IUCN Red List of Endangered Species.
22. The Habitats Directive³ requires Member States to establish a system to monitor the incidental capture of cetaceans and carry out research or implement conservation measures as needed to ensure that the levels of incidental capture do not significantly impact upon the species.

³ Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora.

Implementation of the recommendations of the Bycatch Response Strategy enhance the transposition of this Directive.

23. It is difficult to anticipate many risks of proceeding with a bycatch reduction strategy. If the recommendations in the Strategy as drafted are pursued, some of the economic burden of proceeding with the proposals will inevitably fall on the fishing industry. It is recognised that commercial fishing helps to maintain the economy of a number of coastal communities. The economic burden imposed will impact on the profitability of fishing operations but the use of existing funding mechanisms to partially offset this burden are being explored.
24. In view of the target in the CFP's Community Action Plan to mitigate cetacean bycatch, it could be argued that the development of a UK bycatch strategy is ill-timed and could pre-empt the Commission's proposals. However, it is likely to be some time before the Commission's bycatch reduction measures are finalised and it would not be right to delay taking appropriate unilateral action whilst waiting for EU proposals to be agreed. It is anticipated that the recommendations in the Strategy will compliment the Commission's thinking on this issue. In addition, it is possible that the Commission's proposed Regulation will require local adaptation to ensure proper implementation.

OPTIONS

25. Three options are available:

Option (i). Do nothing. As mentioned above in paragraph 12, as part of the CFP's Community Action Plan the Commission is developing its own cetacean bycatch reduction proposals. The December 2002 target for the introduction of these proposals was not met, but the Commission did produce by that date a discussion document on measures to reduce bycatch and convened an experts group to discuss this. It is apparent from these discussions that the agreement and implementation of community-wide measures may be not be possible in the short term. However, cetacean bycatch in UK waters continues to cause concern as demonstrated both by observed bycatch and strandings.

In lieu of community action, it is essential for the UK to consider unilateral action where this can be shown to be effective. Not to do so would be contrary to the Government's strategy for the conservation and sustainable development of the marine environment based on a vision of clean, healthy, safe, productive and biologically diverse oceans and seas. It would also mean that the UK would be unlikely to meet its commitments to reduce cetacean bycatch under ASCOBANS and the Bergen Declaration. **Option (i)** is therefore not recommended.

Option (ii). Proceed on a piecemeal basis. Current research contracts on bycatch mitigation methods and the monitoring of small cetacean bycatch levels would continue. However, it is unlikely that unsustainable levels of cetacean bycatch by UK fishing vessels will be tackled as quickly

or as effectively as they would be if part of a holistic UK-wide programme to tackle the issue.

Option (iii). Adopt a UK Small Cetacean Bycatch Response Strategy.

This would lead to a suite of co-ordinated and proactive measures being taken in the UK to address the problem of small cetacean bycatch. This would be accompanied by research into bycatch mitigation methods, cetacean population and abundance and levels of bycatch. The findings of this work would be used to feed into and inform the implementation of the Strategy's recommendations so that improvements could be made, where appropriate. In this way, actions taken under the Strategy could be amended to reflect any new relevant data that might become available in the future.

BENEFITS

26. The benefit of adopting a co-ordinated programme to tackle the problem of small cetacean bycatch under **option (iii)** above is that this provides a strategic, cohesive and considered solution comprising a combination of research and practical mechanisms to mitigate incidental capture in fishing nets. A Bycatch Response Strategy offers a public declaration of Government policy on small cetacean bycatch and a statement of the action it aims to take to address it, subject to the results of the consultation exercise. In this way, the Strategy informs the public, non-Governmental conservation organisations and potentially affected areas of the fishing industry of the Government's thinking on this issue. **Option (i)** offers no conservation benefit as it would put an end to the Government's ongoing efforts to improve cetacean conservation once existing research contracts came to an end. **Option (ii)** to continue with the existing approach would be beneficial to cetacean conservation but would lack the integrated and comprehensive framework proposed under the Strategy.
27. As the *raison d'être* of the UK Small Cetacean Bycatch Response Strategy is one of species conservation, it is clear that the resultant benefit is predominantly environmental. However, it could be argued that economic wealth could be improved through the adoption of the Strategy through its indirect impact upon the tourist industry, more specifically whale-watching.
28. In a 2001 report on whale-watching⁴, it is estimated that in remote coastal areas whale-watching related tourism may account for as much as 12% of the area's total tourism income. The direct economic income from whale-watching activities in rural West Scotland is estimated to be £168,000 per annum; in the same area the total income generated by whale-tourism is estimated to be £7.8 million per annum. In time, therefore, whale-watching tour operators and the associated tourist industry could benefit from the conservation efforts made to maintain our cetacean populations.

Business sectors affected

⁴ Whale-watching in West Scotland, July 2001. A report by the Hebridean Whale and Dolphin Trust for the Department for Environment, Food and Rural Affairs.

29. The proposals in the Strategy, if implemented, will primarily affect the fishing industry. The sectors targeted by the Strategy's recommendations include parts of the bottom-set gill net fishery operating off the east coast of England and in the south west. A number of the recommendations could benefit pinger manufacturers by increasing the demand for their product. The proposed accreditation scheme may stimulate demand for cetacean-friendly fish products.

Issues of equity and fairness

30. The impact of the proposals contained within the Strategy will fall mainly upon the fishing industry. Although it is recognised that the main burden of the recommendations will be borne by the fisheries required by the Strategy to use pingers, these are fisheries that are known to have unsustainable levels of cetacean bycatch and for which there is a practical and effective mitigation method to address this. For these reasons, these fisheries are targeted by the Strategy. It would be unfair and inappropriate to target mitigation measures at fisheries without known cetacean bycatch.

COSTS

Compliance costs for business

31. **Option (i).** There would be no implementation costs.

32. **Option (ii).** There may be additional compliance costs to the fishing industry, depending on what bycatch mitigation action was taken. It is difficult, at this stage, to state exactly what measures would be taken to tackle bycatch without the framework of the Strategy but it is likely that any such action would lead to some costs to the fishing industry. It is not possible, at this stage, to estimate what these costs would be.

33. **Option (iii).** The costs incurred in implementing the Strategy's recommendations are estimated in section 7 of the document. These are summarised as follows:

I. The total cost of deploying pingers in the fisheries identified by the Strategy in recommendations 1-3 is estimated to be in the region of £650,000 to £900,000. This is the total estimated policy (ie directly attributable to implementation) cost of placing pingers on the bottom set gillnet fleet in the Celtic Sea (ICES areas VII e, f, g, h and j), set net fisheries using a mesh size greater than 220mm in the North Sea (ICES areas IVb and IVc) and the North Sea wreck fishery (adopting a requirement similar to that set up by the Danish Government).

II. The cost of placing pingers on the over 10m fleet of these fisheries is thought to be an average of £4,000 per boat. For the under 10m fleet, this is estimated at approximately £750 per vessel. These costs will vary depending on the length of net used and at what spacing the pingers are placed.

III. These estimates are based on each pinger costing £60 and one pinger being placed on every 200m of net. These policy costs cover the initial

purchase of the pingers, not subsequent maintenance and servicing nor the cost of attending training on how to use them.

IV. Following consultation, consideration will be given to how these costs will be met. It is possible that some of these costs could be met by funding under the EU Fisheries Instrument for Fisheries Guidance (FIG). This is the main instrument for Community aid to the fisheries sector. UK funding under the EU FIG programme is available to encourage fishermen to adopt more selective fishing methods. This includes funding to alter fishing practices to reduce cetacean bycatch, such as the cost of purchasing pingers. *[We would be grateful for any other suggestions on how you think the deployment of pingers and subsequent maintenance should be funded.]*

V. The Strategy recommends that consideration should be given to providing an accreditation scheme for those fisheries adopting, or providing assistance in researching cetacean-friendly fishing methods. *[The example of possible costs in attaining such accreditation is given in the Strategy by way of the Thames herring fishery – this amounted to an estimated £8,000 with an ongoing surveillance cost of £1,500 per annum. We would welcome suggestions on possible costs of setting up and attaining accreditation under the suggested cetacean-friendly scheme.]*

34. In order to place some of the above costs in context, it is useful to look at the profitability of the fisheries involved. The last economic survey of the UK fishing fleet was conducted in 2001. The report of this '2001 Economic Survey of the UK Fishing Fleet' stated that in year 2000/2001, gill netters made an average profit of £17,527 per boat, per year. It should be noted however that these vessels catch predominantly whitefish and so, given the continued decline in these stocks and lack of a compensatory increase in price, profit per vessel is likely to have declined since the survey was carried out.
35. Detailed information on the earnings and costs in the pelagic sector were not available for this survey. However, strong prices at that time indicated a relatively healthy financial position for this sector overall. For this reason, this sector may be better placed to cope with any additional costs incurred as a result of any future measures to reduce bycatch.

Costs to charities and voluntary organisations

36. It is not expected that there will be any compliance costs under any of the proposed options to charities or voluntary organisations.

Other costs

37. A proportion of the costs of implementing the Strategy's recommendations would be met by the Government. For example, the Department for Environment, Food and Rural Affairs (Defra) has agreed to contribute €435K towards a major cetacean abundance survey, known as SCANS II (Distribution and Abundance of the Harbour Porpoise and other Small Cetaceans in the North Sea and Adjacent Waters) that is planned to take

place in 2004-2005. Also, the Government will continue to fund work into fishing gear modifications to reduce the incidental capture of cetaceans in nets, for example, research into separator grids and reflective nets. It is estimated that for the next five years, research in this area will cost Defra approximately £100K per annum.

38. **Option (iii)** will place additional administrative costs on Government Departments, the Devolved Administrations including their Agencies, particularly in relation to the enforcement of any regulations. It is not possible to quantify these at this stage.

CONSULTATION WITH SMALL BUSINESS: The Small Firms' Impact Test

39. We estimate that 98% of vessels using gill nets could be classed as small firms. The proposals in the Strategy will be subject to discussion by a fisheries group set up under the auspices of the UK biodiversity action plan process. The group comprises representatives of the fishing industry and others who will be asked to give their opinions on the Strategy and this RIA and voice any concerns. We would welcome the views of small businesses on the content of this partial Regulatory Impact Assessment, particularly on the assessment of costs and benefits, and the impact on business.
40. To help with this, you will find a list of questions at the end of this document (called the Small Firms' Impact Test) that aim to assess the impact of the Strategy's proposals on small businesses operating in the affected sectors. We invite your comments in answer to any/all of the questions listed. You will need to consider your answers in light of the recommendations summarised in section 7 of the Bycatch Response Strategy.

COMPETITION ASSESSMENT

41. It is recognised that adoption of the Strategy's recommendations may lead to regulatory proposals that will impact on the fishing industry (and also possibly on other markets such as the market for the supply of pingers). At this stage, in the absence of any detailed proposals or costings, it is impossible to assess the potential impact of competition in such markets as may be affected. However, potential competition issues will be kept under consideration as the Strategy is developed. If firm regulatory proposals emerge from the Strategy and are taken forward, such proposals will be the subject of a separate RIA which will contain its own competition assessment.

ENFORCEMENT, SANCTIONS, MONITORING and REVIEW

42. It is envisaged that the enforcement of any regulations that might result from the implementation of the recommendations within the Strategy will be carried out using the existing fisheries enforcement mechanisms and organisations.

43. The targets in the Strategy will be regularly reviewed to ensure that, on the basis of any new available evidence, they are set at an appropriate level. To assist with this, the Strategy recommends that an expanded bycatch monitoring scheme should be developed to assess bycatch in UK fisheries at a statistically valid level. It also proposes that a voluntary arrangement should be entered into whereby those fisheries obliged to use pingers take observers on board their vessels to record the level of small cetacean bycatch. However, if the level of coverage achieved by such a voluntary arrangement is considered inadequate, legal measures to ensure this will be taken.
44. The effectiveness of the Strategy will be subject to review three years after publication.

CONSULTATION

45. (i) Within government

Defra developed the Strategy in partnership with the devolved administrations and the Statutory Nature Conservation Agencies.

- (ii) Public consultation

Annex B lists the organisations invited to comment by means of this public consultation. The Sea Mammal Research Unit and the Association of Sea Fisheries Committees were members of the working group that developed the Strategy.

SUMMARY and RECOMMENDATION

46. It is recommended that the UK should adopt a UK Small Cetacean Bycatch Response Strategy, that is, **option (iii)**. This will best satisfy international and domestic commitments to reduce small cetacean bycatch. In view of these commitments, it is not an option to do nothing as advocated under **option (i)**.
47. Following this public consultation, the Government will decide whether to adopt the Strategy's recommendations as a whole, in part, or amended to reflect the consultation responses.

Contact point

48. If you have any comments on the content of this partial RIA or the UK Small Cetacean Bycatch Response Strategy, please send them to Stacey Hughes at Zone 108b, European Wildlife Division, Department for Environment, Food and Rural Affairs, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB, telephone (0117) 372 8141, or by e-mail to Stacey.Hughes@defra.gsi.gov.uk.

Small Firms' Impact Test

Introduction

The following questions form part of a small firms' impact test that aims to establish the likely impact of the Strategy's proposals on small businesses operating in the potentially affected sectors. This consultation is being undertaken with stakeholders likely to be affected by the proposals, including representative bodies as well as small businesses themselves. If you think that we have omitted anyone or any organisation/s from this consultation that should be included, please let us know.

Areas on which we would welcome your comments -

1. From what has been provided so far, have you been able to understand what effect the Strategy's proposals will have on your business?
2. What is your view of the overall concept of the Government's proposals?
3. If implemented, what plans does your business have before and after implementation to comply with the proposed measures?
4. Will it change how your business operates generally, and how it relates to other businesses and consumers?
5. Do you consider the proposals to be a challenge or a threat to your business/ the industry as a whole?
6. Who will be in a better position to adapt to the changes proposed in the Strategy – small businesses or larger organisations?
7. Is the sector you work likely to expand or contract as a result of introducing the proposals – will there be new entrants or mergers?
8. What affect do you think it will have on income/profit both within the industry and your firm? What are the implications of this for your business, the industry and the consumer?
9. How do you think your business will operate in five years time? (ie. After the proposed measures, if implemented, have been operational for some time).
10. Are there any other matters you wish to raise in connection with these proposals?