

BSAC recommendations concerning mitigation measures for harbour porpoise

Background

On 26th May 2020, ICES produced a Special Request Advice¹ in response to an EU request with respect to emergency measures to prevent bycatch of common dolphin (*Delphinus delphis*) in the Bay of Biscay and the Baltic Proper harbour porpoise (*Phocoena phocoena*).

ICES presented its advice at a BALTFISH Forum meeting on 8th June 2020. **The BALTFISH Forum** had an exchange of views on the advice, as reflected in the BSAC report from this meeting².

A draft **BALTFISH** Presidency Joint Recommendation for conservation and technical measures to reduce by-catches of harbour porpoise and alleviate further risk to this population, prepared on the basis of the ICES advice, was submitted to the BALTFISH Forum on 1st September, in advance of the Forum meeting which took place on 7th September 2020. On 18th September 2020, the BALTFISH Presidency sent a revised draft Joint Recommendation to the **BSAC** for consultation, with a deadline for submitting comments by 30th September 2020³.

The BSAC Ecosystem Based Working Group, at its meeting on 21st and 22nd September 2020, discussed the ICES Special Request Advice, which was presented by ACOM vice-chair Henn Ojaveer. The group also discussed the draft revised BALTFISH Presidency Joint Recommendation Mitigation measures to prevent bycatch of Baltic Proper harbour porpoise (*Phocoena phocoena*) in the Baltic Sea fisheries.

The BSAC recommendations concerning management measures to avoid bycatch of harbour porpoise in the Baltic were developed after the EBM working group and adopted in written procedure by the BSAC Executive Committee and sent to the BALTFISH Presidency on Monday 5th October 2020.

On 24th September 2020, DG Mare Director General wrote to the BSAC Chair asking to hear the view of the BSAC on this matter.⁴

¹ www.ices.dk/sites/pub/Publication%20Reports/Advice/2020/2020/eu.2020.04.pdf

² BSAC Secretariat report from BALTFISH <http://www.bsac.dk/getattachment/BSAC-Resources/Documents-section/Letters-to-ExCom/BALTFISH070920reportbySecretariatFINAL.pdf.aspx?lang=en-GB>

³ <http://www.bsac.dk/getattachment/Meetings/BSAC-meetings/Ecosystem-based-working-group/harbour-porpoises-JR-draft-rev-BSACPDF.pdf.aspx?lang=en-GB>

Sent in line with Article 18 (2) and Article 44 (3) of Regulation (EU) no 1380/2013

⁴ Correspondence with DG Mare here <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/Letter-to-BSAC-from-DG-Mare-about-harbour-porpoise>

Introductory comments from the BSAC

The BSAC is aware of the requirements with respect to the measures required by Member States to protect cetacean populations.

The BSAC calls on Member States to meet the obligations in the legislation.

In relation to both the ICES special request advice and the BALTFISH presidency revised draft proposal, it is difficult to find common ground in the BSAC. Nevertheless, the BSAC would like to highlight the following consensus points:

- the BSAC supports continued monitoring, in order to clearly establish the size of the porpoise population and its development. At the same time, the BSAC would like to highlight that monitoring should be done in a different way to SAMBAH. The monitoring based on the principles of the SAMBAH project was not sufficient, because it was unable to assess the harbour porpoise population, even with a low degree of probability.
- the BSAC accepts MPAs, until appropriate measures such as acoustic deterrent devices are able to achieve the same effect in order to meet both the objectives of nature conservation and fishing as a protective measure for harbour porpoise, whilst underlining the importance of taking an adaptive approach to changed realities and conditions.⁵
- the BSAC underlines that any measures taken must include both commercial and recreational fishing, and that other activities that could pose a threat to the harbour porpoise population, such as windmills and gravel extraction in or around protected areas, must be addressed.
- the BSAC will consider the use of acoustic deterrent devices, if this allows for continued use of gillnets, and after clarifying all details about their use and their costs of operation. In order to speed this up, the BSAC requests an independent study of the ADDs available on the market, so they can be used as quickly as possible.
- the BSAC recommends that all Member States support any measures with funding from the EMFF, so as to make sure that the financial burden put on fishermen using passive gear is alleviated.

⁵ BSAC basic principles on fisheries management measures in NK2 and protected areas
<http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-basic-principles-on-fisheries-management-meas>

Measures to avoid accidental bycatch of harbour porpoise

The BSAC is fully supportive of long-term, workable and adaptive measures to ensure that harbour porpoise are not caught as bycatch, and to restore the harbour porpoise population in the Baltic.

In the view of **some fisheries representatives**, it is also important to tailor any measures to specific areas in the Baltic.

The BSAC strongly underlines the need to take into account **the socio-economic consequences** of any measures implemented to protect harbour porpoise in the Baltic.

Representatives of OIG in the BSAC fully endorse the mitigation measures proposed in the ICES advice as a package, and point out that it is clear in the ICES advice that in order for the Baltic Proper harbour porpoise management unit to meet the management objective of achieving bycatches below PBR (<0.7 individuals per year, which would allow *full* population recovery), all static net fisheries should be closed. The protective measures suggested by ICES are proportionate and reasonable.

Marine protected areas / closures

The BSAC agrees that marine protected areas (MPAs) or closures can be safe havens for harbour porpoises. Before defining and implementing them, it must be established that they have a clear purpose. Plans to establish and develop MPAs need to be introduced and discussed with fishermen at an early stage. There must also be an adaptive approach to any MPAs that are created; they cannot be carved in stone.

In 2019, **the BSAC** produced recommendations on nine basic principles on fisheries management measures in Natura 2000 and protected areas. One key point here was the call for more open and transparent work by Member States and the involvement of Advisory Councils from early implementation stage.⁶

A representative of German small scale fishermen is of the opinion that a much more adequate alternative to total area closures is the use of acoustic deterrent devices such as PAL on static nets. Experience by German fisheries with this device is highlighted. Member States should co-operate to find the optimal technical solution and test the devices.

Members of the OIG point out that the PALs are not sufficiently evaluated to be considered effective. PALs are not using a generic deterring sound like the “pinger,” but instead try to mimic a warning call of the porpoise.

⁶ <http://www.bsac.dk/BSAC-Resources/BSAC-Statements-and-recommendations/BSAC-basic-principles-on-fisheries-management-meas>

With respect to **the closures advised by ICES**⁷ (Table 4, page 7 of the ICES advice, measures 1-5), the BSAC members have divergent views, as follows:

Measure	Consensus views	Fisheries reps views	OIG views
1. Closure of the Northern Midsea Bank to all fisheries, with the exception of passive gears proven not to bycatch harbour porpoise	The BSAC agrees that closures must also be seen in the context of other sea uses (gravel extraction, windmill parks), and should not only be directed at fisheries.	Some fisheries representatives could accept temporal closures (eg. of nursery areas during the breeding season), but they do not see the reason to close the area all year-round. In their view, permanent closures of large areas have a destructive economic impact on fishermen. Representative of the Swedish and Polish small-scale fishermen do not support the proposed closures, and note that the proposal to close several Natura 2000 sites in the coastal waters for gillnet fishery will be devastating for fishermen. Measures in force to protect the cod stocks have already reduced their fishing opportunities to flatfish.	Representatives of OIG support this closure, as well as other measures proposed in Table 4 of the ICES advice as a package, implemented year-round. According to ICES, this area has the highest detection rate of harbour porpoise year-round.
Measure	Consensus	Fisheries reps views	OIG views
2a and 2b. Closure of the Natura 2000 site		Some fisheries representatives question the need to ban gillnet	Representatives of OIG support these closures as part of the ICES advice as a package, highlight the

⁷ Table 4, p. 7 www.ices.dk/sites/pub/Publication%20Reports/Advice/2020/2020/eu.2020.04.pdf

“Hoburgs Bank och Midsjöbankarna” and the Southern Midsea Bank for fishing with static nets.		fisheries if they use acoustic deterrent devices (ADDs), and if ADDs are shown to be efficient.	high density of harbour porpoise in these areas, the need to create refuges for them, and thus core areas to be clear of certain metiers, as well as pingers, which are not 100% efficient.
Measure	Consensus views	Fisheries reps views	OIG views
3. Closure of the Natura 2000 sites Adlergrund, Westliche Rönnebank, Pommersche Bucht mit Oderbank, Greifswalder Boddenrandschwelle und Teile der Pommerschen Bucht, Ostoja na Zatoce Pomorskiej, Wolin i Uznam, and the SPA site Pommersche Bucht for fishing with static nets during Nov – Jan.		With respect to the closure of the Natura 2000 sites in the Polish and German coast ⁸ for fishing with static nets during November–January (advice number 3), some fisheries representatives agree that these areas require protection by means of seasonal closures due to the by-catch of birds. These closures should be implemented according to best available scientific advice, in the period from November until January, as advised by ICES.	Representatives of OIG support these closures as part of the ICES advice as a package, and highlight that these closures should be in effect from November to April.
Measure	Consensus views	Fisheries reps views	OIG views
4. Obligatory use of pingers on static nets in the area west of the sandbank Ryf Mew		With respect to the obligatory use of ADD on static nets in the area of the Puck Bay and Hel Peninsula, with the concurrent	Representatives of OIG support this ICES measure. In addition, one OIG representative suggests that the closure of the static net fishery would be the best-

⁸ Adlergrund (DE1251301), Westliche Rönnebank (DE1249301), Pommersche Bucht mit Oderbank (DE1652301), Greifswalder Boddenrandschwelle und Teile der Pommerschen Bucht (DE1749302), Ostoja na Zatoce Pomorskiej (PLH990002), Wolin i Uznam (PLH320019), and the SPA site Pommersche Bucht (DE1552401)

<p>within the Zatoka Pucka i Półwysep Helski Natura 2000 site, with the concurrent closure of static net fisheries in the area east of the sandbank within the site.</p>		<p>closure of static net fisheries in the area⁹, the representative of the Polish small-scale fishermen does not support the proposed measures; he draws attention to the rare occurrence of harbour porpoise in the area. With respect to pingers, in his view fishermen are ready to use them, but it must be remembered that ADDs also attract seals.</p>	<p>targeted measure only if adequate concurrent measures are implemented in the area covering the rest of the Puck Bay, outside the Natura 2000 site. This area is just as important for harbour porpoises, and it might be expected that the static net fishing effort will be completely transferred to this area, significantly increasing the risk of bycatch for porpoises before they can swim into the safer Natura2000 area in Puck Bay.</p>
<p>5. Prohibit the use of static nets without the simultaneous use of pingers with the exception of areas where static net fisheries have been closed.</p>		<p>Some fisheries representatives are reluctant about the widespread use of ADDs. They highlight practicalities and challenges of their use on all gillnets and recommend their use in specific areas. There is a need to have a discussion on their application in an operational way. With respect to the use of ADD, some representatives of recreational fishery mention the challenges, such as high costs, and associated problems of monitoring and control.</p>	<p>Representatives of OIG support this widespread use of ADD in low density areas and covering larger parts of the Baltic as necessary to protect the population in its entire range, and underline that recreational fishing with nets should by no means be excluded from such demands.</p>

⁹ Obligatory use of pingers on static nets in the area west of the sandbank Ryf Mew within the Zatoka Pucka i Półwysep Helski Natura 2000 site (PLH220032), with the concurrent closure of static net fisheries in the area east of the sandbank Ryf Mew within the Zatoka Pucka i Półwysep Helski Natura 2000 site

- **The use of acoustic deterrent devices ADDs**

With respect to the obligatory use of pingers on static nets in the Baltic (Table 4 of the ICES advice)¹⁰, **the BSAC has divergent views.**

The BSAC notes a considerable development and improvement in acoustic deterrent devices. They used to be big and heavy and attracted seals, with the result that fishermen refused to use them. New deterrent devices are smaller and lightweight, and can be attached to static gears without attracting seals.

Provided they do not hinder fishing operations, deterrent devices have the full support of fishermen. Handling of acoustic devices is an increased workload for fishermen. **The BSAC supports** their use, so that static nets can continue to be used in certain fisheries.

The technical specification of the functionality of deterrent devices should be established in a broad technical way, in terms of size, specifications, operability, etc, and not lay down specific brands or makes. The effectiveness of the devices is key, not the design or brand.

The BSAC takes note of and supports the proposed measure to the HELCOM BSAP: Guidelines and regulation of the design and use of acoustic deterrent devices¹¹ as a way of designing a set of smart design rules for ADDs, but without specifying brands or makes.

Representatives of OIG support the view that measures to avoid bycatch should be applied in the entire range of the Baltic Proper harbour porpoise. They draw attention to the fact that, according to NAMMCO & IMR, as cited in the ICES advice,¹² catching even one harbour porpoise per year is detrimental to the critically endangered population.

In the view of **some fisheries representatives**, deterrent devices should only be obligatory on static nets in the high-risk areas, where there is a high density of harbour porpoise. Member States have the prerogative to implement additional measures.

The fisheries representatives draw attention to the expert concerns that large scale use of acoustic deterrent devices might have a negative impact on marine mammals and the environment, as well as negative socio-economic impacts.

One BSAC member highlights the risk of seal predation on harbour porpoise. He calls for the implementation of management measures for the seal populations in the Baltic.

ICES Special Advice Table 5

¹⁰ www.ices.dk/sites/pub/Publication%20Reports/Advice/2020/2020/eu.2020.04.pdf

¹¹ <https://portal.helcom.fi/workspaces/BSAP%20UP%20NEW%20ACTIONS-183/Shared%20Documents/Synopses%20-%20proposals%20received/Guidelines%20and%20regulation%20of%20the%20design%20and%20use%20of%20acoustic%20deterrent%20devices.pdf>

¹² NAMMCO & IMR 2019. Report of Joint IMR/NAMMCO International Workshop on the Status of Harbour Porpoises in the North Atlantic. Tromsø, Norway, 2019.

- **Control, monitoring and enforcement (Accurate spatio-temporal recording of fishing effort, increased dedicated monitoring of bycatch of PETS, monitoring of harbour porpoise occurrence, compliance control of mitigation measures)**

The BSAC is not in consensus on the monitoring measures recommended by ICES.

The BSAC agrees that control and long-term monitoring are important ingredients. However, the BSAC is not unanimous on the means: fishermen see cameras as an invasive tool, whereas some representatives of the OIG consider them useful. This requires further discussion, and the BSAC is committed to find workable solutions.

On GPS tracking, **fisheries representatives** do not see this having a direct impact on reducing the bycatch of harbour porpoise, and they therefore do not see the need to include this in the emergency measures for harbour porpoise.

The coastal fishermen recommend that any form of tracking device must be robust, so it is possible to use it safely on open boats.

With respect to the occurrence of harbour porpoise, there is full agreement on the need for continued long-term monitoring.

A fisheries representative highlights the need to improve the methodology for assessing the density of harbour porpoise population in the Baltic in a SAMBAH II project. This includes strong support for a SAMBAH II project.

Improved, transparent and honest reporting of bycatch must be accompanied by an understanding that the individual fisherman will not be punished, or that reporting of such rare events will not result in immediate closure of operations, but instead have a detailed discussion on what more can be done to avoid this or to change location and timing of fishing. The key requirement is dialogue and the need to always collect all data on bycatches. If such trust and mutual understanding works, it is helpful; if trust is broken it will mean total closures and bans as a result. Fisheries representatives want to avoid this. Experience to date with certification schemes has demonstrated active participation by fishermen in improved reporting.

- **Funding**

The BSAC strongly recommends that financial support is provided for the purchase of acoustic deterrent devices. The costs must be covered by the European Maritime Fisheries Fund. The BSAC also recommends aiming for coordinated orders and purchase of acoustic deterrent devices in order to lower the costs.

Revised draft BALTFISH Presidency Joint Recommendation on Mitigation measures to prevent bycatch of Baltic Proper harbour porpoise (*Phocoena phocoena*) in the Baltic Sea fisheries ¹³ – BSAC comments [Secretariat: this can be separated later]

The BSAC EBM working group considered the BALTFISH Presidency revised draft paper, and took note of the changes compared to the first version [presented at the BALTFISH Forum on 7th September 2020. Discussions focused mainly on the ICES special request advice, and the revised BALTFISH proposal was compared to the ICES advice.

A majority of the fisheries representatives support the proposals put forward in the revised draft BALTFISH Presidency Joint Recommendation. They support the introduction of obligatory use of acoustic deterrent devices only in the areas of the highest risk of bycatch of harbour porpoise, and to limit the number of closures. One fisheries representative opposes the conservation measure 2 to completely close Natura 2000 areas in the Swedish EEZ without the opportunity to use gillnets with acoustic deterrent devices.

The fisheries representatives recommend that the obligatory use of ADDs in the BALTFISH Presidency proposed conservation measure 4 (ADDs used in 7 named Natura 2000 sites in the “Polish/German cluster” in Pomeranian Bay) should be applied according to the ICES advice (i.e. during November – January).

Representatives of OIG are of the opinion that the draft BALTFISH Presidency Joint Recommendation is not ambitious enough to secure the adequate protection of the critically endangered population of harbour porpoise throughout the entire Baltic Sea. The proposal leaves large parts of the population range without any measures at all, not only significant areas in Swedish waters (such as Hanö Bight) and Polish waters but also the entire coastline of Finland, as well as the three eastern Baltic states coastlines. The measures proposed in the draft will not be sufficient to restore the population, and thus not sufficient for the Member States to fulfil their legal obligations under e.g. the Habitats Directive. They strongly support the package of measures proposed in the ICES advice, which they consider to currently be the best available scientific advice.

¹³ <http://www.bsac.dk/getattachment/Meetings/BSAC-meetings/Ecosystem-based-working-group/harbour-porpoises-JR-draft-rev-BSACPDF.pdf.aspx?lang=en-GB>

Final issues

In addition to the above BSAC views to the BALTFISH presidency draft proposal, the Baltic Member States should take note of the issues raised by the BSAC in connection with the ICES special request advice on measures to protect Baltic harbour porpoise.

These concern:

- marine protected areas,
- use of acoustic deterrent devices,
- improved data collection,
- monitoring and control,
- socio-economic impacts,
- funding.