



House of Commons
Environment, Food and Rural
Affairs Committee

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

**Government Reply to the
Committee's Report**

Seventh Special Report

*Ordered by The House of Commons
to be printed 21 April 2004*

The Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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*These Members were nominated as members of the Sub-committee. Candy Atherton was the Chairman of the Sub-committee.

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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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SEVENTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee reported to the House on *Caught in the net: by-catch of dolphins and porpoises off the UK coast* in its Third Report of Session 2003–04, published on 30 January 2004 as HC 88. The Government's Reply to the Report was received on 31 March 2004.

Government response

Conclusions and recommendations

Recommendation 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

Recommendation 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)

It became clear in the New Year that the Irish Presidency intended to pursue the speedy adoption of the Commission's proposals. As the UK had welcomed the proposals in principle and was looking for their early implementation, we supported this timetable. A compromise proposal was subsequently agreed at the March Agriculture and Fisheries Council of Ministers Meeting on 22/23 March. We made a number of changes to our negotiating position and, in doing so, took on board many of the Committee's concerns.

The regulation will require:

- compulsory acoustic devices ('pingers') on fishing vessels over 12 metres using fixed gear in the North Sea, Channel and Celtic Sea;
- the use of observers on over 15 metre vessels in a wide range of fisheries to improve knowledge of by-catch across the Community;

- the setting up of pilot projects to monitor the impact of pingers and to monitor by-catch from under 15 metre vessels;
- annual reports from Member States on the data gathered from observations and pilot projects. This data will inform a review of the Regulation to be conducted by the Commission in 2007/08.

A copy of the current proposed text is attached (Appendix 1).

We will now implement the Regulation before considering whether further national measures are appropriate.

Recommendation 3

We urge the Government to continue to push for the speediest possible implementation of the Commission's proposals. (Paragraph 55)

Political agreement on an amended version of the Commission's proposals was reached at the Council of Ministers' meeting on 22 March. This proposal is expected to be adopted shortly.

Compulsory use of pingers on certain set net fisheries

Recommendation 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)

Recommendation 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)

The Government dropped its opposition to pingers in Area VIIId and inside 6 nm during negotiations. We argued against excluding vessels under 12 metres but there was not going to be majority support for including vessels below this length, and without this exemption the Council would have failed to reach agreement. Even the agreement eventually achieved was voted against by Spain and Italy.

Recommendation 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)

The Council regulation sets detailed technical requirements for pinger usage to be complied with by masters of vessels. As with any other fisheries regulation, these requirements will be subject to inspection by British Sea Fishery Officers at shore and at sea. Member States are also required by the Regulation to take the necessary steps to monitor and assess by means of scientific studies or pilot projects, the effects of pinger use over time in the fisheries and areas concerned. The results from these pilot projects are to be reported on annually by Member States to the Commission and, after the second annual report, the Commission will report to the Council and the European Parliament on the operation of the regulation, including the quality of the pilot projects and may make appropriate proposals to amend the Regulation in the light of the data received from Member States.

Recommendation 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)

The Council regulation makes observer coverage mandatory within a member states monitoring scheme on vessels over 15 metres and also as part of the pilot projects to review the effects of pinger usage and to monitor by-catch on under 15 metre vessels. These requirements give Defra powers to require any specified vessel to carry an observer. Masters of vessels not complying with the requirement to carry observers on board will be in breach of the Regulation.

Recommendation 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)

The Regulation commits Member States to monitor and assess by means of pilot projects or scientific studies, the effects of pinger use over time in the fisheries and areas concerned. If pingers are found to exclude harbour porpoises from key habitats, then the review process under the Regulation will provide the means to address this. However, current scientific advice is that widespread pinger usage is not thought to cause significant problems for porpoise populations.

Taking action in respect of pelagic fisheries

Recommendation 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)

Recommendation 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 number of years. (Paragraph 87)

The current Defra-funded trials at sea of the separator grid will continue until the end of the bass season, probably the end of April. We are looking to assess the results as soon as possible after that. This will give us sufficient time to act on the evidence before the bass fishery starts again in October/November. If the results of the current trial which restarted in November 2003, are as encouraging as in previous years, we would certainly consider how to introduce separator grids more widely and whether this can be best achieved by legislation. If the results show that separator grids are not effective then we will need to consider other measures.

We agree that scientific monitoring of any mitigation measure such as grids would need to be on-going to assess effectiveness in operating conditions.

Recommendation 11

If by-catch of small cetaceans is to be addressed effectively, action must be taken at European Community level. (Paragraph 89)

We agree and Community action has now been taken. The new Council Regulation will ensure that observer monitoring is carried out by other member states with vessels operating in pelagic fisheries in Area VII as a priority, such as the pair trawl fishery for bass. We supported this prioritisation. If the observations provide data to support the case for further action to address problem fisheries, we would expect the Commission to present proposals to take action as part of the review process required under the Regulation. If not, we would press the Commission for action.

Recommendation 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)

We are working through our trials of the separator grid device to reduce the incidental by-catch of dolphins in the pelagic trawl fishery to meet our commitments under ASCOBANS (to which the UK is a party) and the EU Habitats Directive. If we are unable to reduce by-catch through the use of this device within the timescale recommended, we will need to consider other measures. As other Member States form a large part of this fishery, Community action will be needed if any targets for by-catch reduction are to be met.

Recommendation 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))

We are obliged under the agreed Regulation to report to the Commission on any research conducted to reduce the incidental capture of cetaceans in fisheries and the Commission is obliged to review this information and produce proposals as appropriate. This review process will provide an opportunity to press for the implementation of separator grids.

Recommendation 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))

If other Member States do not comply with the requirements of the Council regulation in relation to the use of pingers as mitigation devices, we will raise with the Commission and at Council. If separator grids prove to be successful, we would be seeking Community action to implement them on a mandatory basis. If they are not successful, we would need to consider further action, as outlined in response to recommendations 10 and 11 above.

Recommendation 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)

The Council Regulation requires all member states to introduce observer schemes for pelagic trawls in ICES sub areas VI, VII and VIII from 1 January 2005. These schemes must be sufficiently representative by spreading observer coverage over fleets, times and

fishing areas. We will be drawing up a sampling programme in the light of these requirements.

Considering restrictions on fishing effort

Recommendation 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)

The commitment to reduce by-catch to below the 1.7% target set by ASCOBANS is a more realistic approach to work to at present but we can reconsider this issue at the time of the review of the Regulation, due to take place in 2007/08. Community action would be required to implement such a scheme and improved by-catch and abundance data would be needed to support it, both of which are lacking at present.

Recommendation 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)

Member States are required to propose for listing as SACs sites which host species listed on Annex II of the Habitats Directive which includes the harbour porpoise. During 2001 and 2002 two contracts were let by the statutory conservation agencies to analyse the data on harbour porpoise with the purpose of identification of possible SACs for harbour porpoise. The conclusions of this work, together with any recommendations for harbour porpoise SACs in UK waters, are expected later this year.

Recommendation 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)

The UK is currently awaiting a response from the legal services of the European Commission to questions on the interaction between obligations for the protection of species and habitats under the Habitats Directive and competences for the fisheries conservation measures under the Common Fisheries Policy.

Need for further research and data collection

Recommendation 19

We agree with Defra that the Government should take action in order obtain more accurate estimates of small cetacean populations. (Paragraph 107)

Defra has committed 435k euros to a survey of abundance of small cetaceans in the North Sea and adjacent waters but the total projected cost of this project is of the order of 6 million euros. Defra has urged the Commission to join the UK in providing funding for this project which is being led by the Sea Mammal Research Unit and would provide reliable and up-to-date estimates of cetacean abundance. The study would also enable us to assess the significance of levels of by-catch in conservation terms.

Recommendation 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)**

(a) The Council regulation makes observer coverage mandatory within a Member States statistically based monitoring scheme. It requires that, “as a general rule, monitoring schemes shall be based on a sampling strategy designed to allow the estimation of the by-catch rates of cetaceans for the most frequent species in the by-catch per unit effort by a given fleet to achieve a coefficient of variation not exceeding 0.30”. Our scientists are content that this will ensure a statistically valid assessment. Where there is not sufficient good scientific data to give this level of confidence, the Regulation sets out minimum levels of fishing effort to be monitored for different fisheries. Again, we are content with the percentages agreed.

(b) The qualifications required of observers are set out in detail in the agreed Council Regulation at article 5. We, other Member States, will need to comply with these requirements in implementing a monitoring scheme.

Reporting back to the Committee

Recommendation 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.

The Council regulation requires member states to provide a comprehensive annual report on observations of by-catch. The UK also reports each year on its activities in relation to small cetaceans to ASCOBANS (Agreement on the Conservation of Small

Cetaceans of the Baltic and North Seas). We would be happy to provide similar reports or copies of these reports to the Committee.

Department for Environment, Food and Rural Affairs
April 2004

APPENDIX 1

Proposal for a
COUNCIL REGULATION
laying down measures concerning incidental catches of cetaceans in fisheries and
amending Regulation (EC) No 88/98

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The objective of the Common Fisheries Policy, as defined in Article 2 of Council Regulation (EC) No 2371/2002¹, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. To this end, the Community shall, among other things, minimise the impact of fishing activities on marine ecosystems, and the Common Fisheries Policy shall be consistent with other Community policies, in particular with environmental policy.

(2) Council Directive No 92/43/EEC on the conservation of natural habitats and of wild fauna and flora² gives strict protection status to cetaceans and requires Member States to undertake surveillance of the conservation status of these species. Member States shall also establish a system to monitor the incidental capture and killing of these species, to take further research and conservation measures as required to ensure that incidental capture or killing does not have a significant impact on the species concerned.

(3) The scientific information available and the techniques developed to reduce incidental capture and killing of cetaceans in fisheries justify additional measures being taken to further the conservation of small cetaceans in a consistent and cooperative manner at Community level.

(4) Some acoustic devices have been developed to deter cetaceans from fishing gear, and have proven successful in reducing by-catch of cetacean species in static net fisheries. The use of such devices should therefore be required in areas and fisheries with known or foreseeable high levels of by-catch of small cetaceans, **and taking into**

¹ OJ L 358, 31.12.2002, p. 59.

² OJ L 206, 22.7.1992, p. 7. Directive as last amended by Council Directive No 97/62/CE, OJ L 305, 8.11.1997, p. 42.

account the cost/efficiency of such requirement. It is also necessary to establish the technical specifications for the efficiency of the acoustic deterrent devices to be used in such fisheries. **Scientific studies or pilot projects are needed to increase knowledge about the effects over time of the use of acoustic deterrent devices.**

(5) Scientific and technical research, in particular on new forms of active deterrent devices, should not be hindered by this Regulation. While Member States should, therefore, be allowed, for the purpose of this Regulation, to authorise the use of newly developed and efficient types of acoustic deterrent devices not in conformity with the technical specifications laid down in this Regulation on a temporary basis, it is also necessary to provide for technical specifications of acoustic deterrent devices to be brought up to date as soon as possible in accordance with Council Decision No 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission ³.

(6) Independent observations of fishing activities are essential to provide reliable estimates of the incidental catch of cetaceans [...]. It is therefore necessary for monitoring schemes with independent on-board observers to be set up and for the designation of the fisheries where such monitoring should be given priority to be coordinated. In order to provide representative data on the fisheries concerned, the Member States should design and implement appropriate monitoring programmes for vessels flying their flag engaged in these fisheries. For small-sized fishing vessels **less than 15 m overall length, which usually are unable to allow an additional person permanently on board as an observer, data on incidental catches of cetaceans should be collected through scientific studies or pilot projects.** Common monitoring and reporting tasks also need to be set.

(7) To enable regular evaluation at Community level and thorough assessment in the medium term to take place, the Member States should report annually on the use of pingers and the implementation of the on-board observer programmes and include all information collected on the incidental capture and killing of cetaceans in fisheries.

(8) The risk created by driftnet fishing to the critically endangered population of harbour porpoise in the Baltic Sea area requires the use of driftnets in this area to be stopped. [...] Community vessels which fish with driftnets in this area will be subject to economic and technical constraints necessitating a phasing-out period before a total ban on this gear by 1 January 2008. Council Regulation (EC) No 88/98 laying down technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound ⁴ should be amended to incorporate these measures,

HAS ADOPTED THIS REGULATION:

³ OJ L 184, 17.7.1999, p. 23.

⁴ OJ L 9, 15.1.1998 p.1. Regulation as last amended by Council Regulation (EC) No 48/99, OJ L 103, 18.1. 1999, p. 1.

Article 1 Subject Matter

This Regulation lays down measures aimed at mitigating incidental catches of cetaceans by fishing vessels in the areas indicated in Annexes I and III.

Article 2 Use of acoustic deterrent devices

1. Without prejudice to other Community provisions, it shall be prohibited for vessels of 12 m or over in overall length to use the fishing gear defined in Annex I in the areas, for the periods, and as from the dates indicated therein without the simultaneous use of active acoustic deterrent devices.
2. The masters of the Community fishing vessels shall ensure that the acoustic deterrent devices are fully operational when setting the gear.
3. By way of derogation, paragraph 1 shall not apply to fishing operations conducted solely for the purpose of scientific investigation which are carried out with the authorisation and under the authority of the Member States or Member States concerned and which aim at developing new technical measures to reduce the incidental capture or killing of cetaceans.
4. Member States shall take necessary steps to monitor and assess, by means of scientific studies or pilot projects, the effects of pinger use over time in the fisheries and areas concerned.

Article 3 Technical specifications of acoustic devices and conditions of use

1. Acoustic deterrent devices used in application of Article 2(1) shall comply with one set of the technical specifications and conditions of use defined in Annex II.
2. By way of derogation to paragraph 1, Member States may authorise the temporary use of acoustic deterrent devices which do not fulfil the technical specifications or conditions of use defined in Annex II, provided that their effect on the reduction of incidental catches of cetaceans has been sufficiently documented. An authorisation shall be valid for no more than two years.
3. Member States shall inform the Commission of the authorisations in accordance with paragraph 2 within two months of the date of issue. They shall provide the Commission with technical and scientific information on the acoustic deterrent device authorised and its effects on incidental catches of cetaceans.

Article 4
Requirement for at-sea observer schemes

1. Member States shall design and implement monitoring schemes for incidental catches of cetaceans using observers on board the vessels flying their flag and with an overall length of 15 m or over, for the fisheries and under the conditions defined in Annex III. The monitoring schemes shall be designed to provide representative data of the fisheries concerned.
2. Member States shall take the necessary steps to collect scientific data on incidental catches of cetaceans for vessels with an overall length less than 15 m and involved in fisheries defined in Annex III paragraph 3 by means of appropriate scientific studies or pilot projects.

Article 5
Observers

1. In order to discharge their obligation to provide observers, Member States shall appoint independent and properly qualified and experienced personnel. In order to carry out their tasks the personnel selected must have the following qualifications:
 - (a) sufficient experience to identify cetacean species and fishing practices;
 - (b) basic maritime navigation skills and appropriate safety instruction;
 - (c) the capacity to accomplish elementary scientific tasks, for example taking of samples where necessary and making accurate observations and records in that connection;
 - (d) a satisfactory knowledge of the language of the flag Member State of the vessel being observed.
2. The task of observers is to monitor incidental catches of cetaceans and to collect the data necessary to extrapolate the by-catch observed to the whole fishery concerned. In particular, designated observers shall:
 - (a) monitor the fishing operations of the vessels concerned and record the appropriate data on fishing effort (gear characteristics, location and timing of beginning and end of effective fishing operation);
 - (b) monitor incidental catches of cetaceans.

Observers may also carry out such other observations, as may be determined by Member States, for the purposes of contributing to the scientific understanding of the catch composition of the vessels concerned and the biological status of fishery stocks.

3. The observer shall send a report containing all the data collected on the fishing effort and observations on incidental catches of cetaceans, including a summary of his main findings, to the competent authorities of the flag Member State concerned.

The report shall contain in particular the following information for the period in question:

- (a) the vessel's identity;
- (b) the name of the observer and the period during which the observer was on board;
- (c) the type of fishery concerned (including gear characteristics, areas with reference to the Annexes I and III and target species);
- (d) the duration of the fishing trip and the corresponding fishing effort (expressed as total net length x fishing hours for passive gear and numbers of fishing hours for towed gear);
- (e) the number of incidentally-caught cetaceans, including species and where possible additional information on size or weight, sex, age, and, where appropriate, indications on animals lost during hauling the gear or released alive;
- (f) any additional information the observer deems useful to the objectives of this Regulation, including any failure of acoustic deterrent device during a fishing operation, or any additional observation on cetacean biology (such as sightings of cetaceans or particular behaviour in relation with the fishing operation).

The master of the vessel may request a copy of the observer's report.

4. The flag Member State shall keep the information contained in observer's reports for at least five years after the end of the relevant reporting period.

Article 6 Annual reports

1. Each year, Member States shall send the Commission, by 1 June at the latest, a comprehensive annual report on the implementation of the Articles 2, 3, 4 and 5 during the previous year. The first report shall cover both the remaining part of the year following the entry into force of this Regulation and the entire year that follows.

2. On the basis of the observers' reports provided according to Article 5(3) and all other appropriate data, including those on fishing effort collected in application of Council Regulation (EC) No 1543/2000, the annual report shall include estimates of the overall incidental catches of cetaceans in each of the fisheries concerned. This report shall include an assessment of the conclusions of the observers' reports and any other appropriate information, including any research conducted within the Member States to reduce the incidental capture of cetaceans in fisheries. When reporting on the results of scientific studies or pilot projects as provided for in Articles 2(4) and 4(2), Member States shall ensure that sufficiently high quality standards are reached in their design and implementation and shall provide detailed information concerning those standards to the Commission.

Article 7

Overall assessment and review

One year at the latest after the submission by Member States of their second annual report, the Commission shall report to the European Parliament and the Council on the operation of this Regulation in the light of the information available as a result of the application of Article 6 and of the assessment by the Scientific, Technical and Economic Committee for Fisheries of the reports of the Member States. The report shall consider in particular the application of this Regulation to types of vessel and areas, the quality of information derived from observer schemes and the quality of pilot projects and may be accompanied by appropriate proposals.

This report shall be updated following the submission of the fourth annual report by Member States.

Article 8

Adaptation to technical progress and additional technical guidance

1. The following shall be adopted in accordance with the management procedure laid down in Article 30(2) of Council Regulation (EC) No 2371/2002:

- (a) operational and technical guidance on the tasks of the observers as set out in Article 6;
- (b) detailed rules on reporting requirements as set out in Article 6.

2. Amendments to Annex II which are necessary in order to adapt it to technical and scientific progress shall be adopted in accordance with the regulatory procedure laid down in Article 30(3) of Council Regulation (EC) No 2371/2002.

Article 9
Amendment of Council Regulation (EC) No 88/98

The following Articles 8a and 8b are inserted in Council Regulation (EC) No 88/98:

Article 8a
Restrictions on drift-nets

1. From 1 January 2008, it shall be prohibited to keep on board, or use for fishing, driftnets.
2. Until 31 December 2007, a vessel may keep on board, or use for fishing driftnets if authorised to do so by the competent authorities of the flag Member State.
3. In 2005, the maximum number of vessels which may be authorised by a Member State to keep on board, or use for fishing, driftnets shall not exceed 60% of the fishing vessels which used drift-nets during the period 2001 to 2003.

In 2006 and 2007, the maximum number of vessels shall not exceed 40% and 20% respectively of the fishing vessels which used driftnets during the period 2001 to 2003.

4. Member States shall communicate to the Commission by 30 April of each year, the list of vessels authorised to carry out fishing activities using driftnets; for 2004, the information shall be sent not later than 31 August 2004.

Article 8b
Conditions for drift-nets

1. Floating buoys, with radar reflectors, must be moored to each end of the netting, so that its position can be determined at any time. The buoys must be permanently marked with the registration letter(s) and number of the vessel to which they belong.
2. The master of a fishing vessel using driftnets shall keep a logbook in which he must record the following information on a day-to-day basis:
 - (a) the total length of the nets on board;
 - (b) the total length of the nets used in each fishing operation;
 - (c) the quantity of by-catches of cetaceans;
 - (d) the date and position of such catches.

3. All fishing vessels using driftnets shall keep on board the authorisation referred to in Article 8a (2)."

Article 10
Entry into force

This Regulation shall enter into force on 1 July 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

Fisheries in which the use of acoustic deterrent devices is mandatory

Area	Gear	Period	Starting date
A. <u>Baltic Sea</u> Area delimited by a line running from the Swedish coast at the point at longitude 13° E, thence due south to latitude 55° N, thence due east to longitude 14° E, thence due north to the coast of Sweden; and, Area delimited by a line running from the eastern coast of Sweden at the point at latitude 55° 30' N, thence due east to longitude 15° E, thence due north to latitude 56° N, thence due east to longitude 16° E thence due north to the coast of Sweden	a) Any bottom-set gillnet or entangling net	All year	1 June 2005
	b) Any drift-net	All year	1 June 2005
B. ICES sub area IV and division III a	a) Any bottom-set gillnet or entangling net, or combination of these nets, the total length of which does not exceed 400 metres	1 August - 31 October	1 August 2005
	b) Any bottom-set gillnet or entangling net with mesh sizes \geq 220 mm	b) All year	1 June 2005
C. ICES divisions VII e, f, g, h, and j	a) Any bottom-set gillnet or entangling net	a) All year	1 January 2006
D. ICES division VII d	a) Any bottom-set gillnet or entangling net	a) All year	1 January 2007
E. Baltic Sea subdivision 24 (except for the area covered under A)	a) Any bottom-set gillnet or entangling net	a) All year	1 January 2007
	b) Any drift-net	b) All year	1 January 2007

ANNEX II

Technical specifications and conditions of use of acoustic deterrent devices

Any acoustic deterrent devices used in application of Article 2(1) shall meet one of the following sets of signal and implementation characteristics:

	Set 1	Set 2
	SIGNAL CHARACTERISTICS	
* Signal synthesis	Digital	Analogue
* Tonal/wide band	Wide band / tonal	Tonal
* Source levels (max - min) re 1 μ Pa@1m	145 dB	130-150 dB
* Fundamental frequency	a) 20 - 160 KHz wide band sweeps b) 10 kHz tonal	10 kHz
* High-frequency harmonics	Yes	Yes
* Pulse duration (nominal)	300 ms	300ms
* Interpulse interval	a) 4 - 30 seconds randomised; b) 4 seconds	4 seconds
	IMPLEMENTATION CHARACTERISTICS	
* Maximum spacing between two acoustic deterrent devices along nets	200 m, with one acoustic device fixed at each end of the net (or combination of nets attached together)	100 m, with one acoustic device fixed at each end of the net (or combination of nets attached together)

ANNEX III

Fisheries to be monitored and minimum level of fishing effort subject to on-board observers

1. General monitoring obligations

Monitoring schemes shall be designed on an annual basis and established to monitor cetacean by-catch, in a representative manner, in the fisheries defined in the table in paragraph 3.

Monitoring schemes shall be made sufficiently representative by adequately spreading observer coverage over the fleets, time and fishing areas.

As a general rule, monitoring schemes shall be based on a sampling strategy designed to allow the estimation of the by-catch rates of cetaceans, for the most frequent species in the by-catch per unit effort by a given fleet to achieve a coefficient of variation not exceeding 0.30. The sampling strategy shall be designed on the basis of existing information on the variability of previous by-catch observations.

2. Pilot monitoring schemes

Where, due to absence of information on variability of by-catch, the sampling strategies cannot be designed to achieve the coefficient of variation within the limit set in paragraph 1, Member States shall implement pilot on-board observer schemes for two consecutive years, starting at the dates in paragraph 3 for the concerned fisheries.

These pilot observer schemes shall be based on a sampling strategy aimed at determining the variability of by-catch which will provide the basis for the design of subsequent sampling strategies under the conditions of the paragraph 1, and shall also provide estimates of by-catch of cetaceans per unit effort, broken down by species.

The pilot schemes shall cover, at least, the following minimum value of fishing effort:

- a) For all fisheries defined in paragraph 3, with the exception of pelagic trawls (single and pair) from 1 December to 31 March in ICES sub areas VI, VII and VIII:

	Fleets of more than 400 vessels	Fleets of more than 60 and less than 400 vessels	Fleets of less than 60 vessels
Minimum effort covered by the pilot schemes	The fishing effort of 20 vessels	5% of the fishing effort	5%, covering at least 3 different vessels

b) For pelagic trawls (single and pair) from 1 December to 31 March in ICES sub areas VI, VII and VIII:

	Fleets of more than 60 vessels	Fleets of less than 60 vessels
Minimum effort covered by the pilot schemes	10% of the fishing effort	10%, covering at least 3 different vessels

3. Fisheries to be monitored and monitoring starting dates

Area	Gear	Starting date
A. ICES sub areas VI, VII and VIII.	Pelagic trawls (single and pair)	1 January 2005
B. Mediterranean Sea (of the east of line 5°36' west)	Pelagic trawls (single and pair)	1 January 2005
C. ICES divisions VIa, VII a and b, VIIIa, b and c, and IXa	Bottom-set gillnet or entangling nets using mesh sizes equal to or greater than 80 mm	1 January 2005
D. ICES sub area IV, division VIa, and sub area VII with the exception of divisions VIIc and VIIk	Driftnets	1 January 2006
E. ICES sub areas III a, b, c, III d south of 59°N, III d north of 59°N (only from 1 June to 30 September), IV and IX	Pelagic trawls (single and pair)	1 January 2006
F. ICES sub areas VI, VII and VIII and IX	High-opening trawls	1 January 2006
G. ICES sub area III b, c, d	Bottom-set gillnet or entangling nets using mesh sizes equal to or greater than 80 mm	1 January 2006