

**SUBJECT            EC request on cetacean bycatch Regulation 812/2004, Item 1****Advice Summary**

Annual reports and actions of Member States on the monitoring and mitigation of cetacean bycatch were found deficient in a number of aspects. Recommendations are made to overcome these deficiencies. An assessment of the bycatch of cetaceans in various EU fisheries, including species specific bycatch estimates is provided in Section 1.5.1.2 of this advice.

**Request**

*"As part of the Memorandum of Understanding between the European Commission and ICES, the Commission has a standing request to ICES to review the situation of incidental catches of cetaceans and the status of small cetaceans in European waters.*

*Beyond this standing request, ICES has been requested in 2008 to base its advice on the assessment of the Member States annual reports on the implementation of certain provisions of Council Regulation (EC) No 812/2004.*

*We would like to renew such request, and ask ICES to consider the following elements in the next assessment and advice:*

1. *Assessment of the national reports from 2007 and 2008, and specific scientific reports provided by Member States in the context of Reg. 812/2004;*

**ICES Advice**

ICES has examined all reports supplied by Member States to the European Commission for 2007 and 2008. An assessment of the bycatch of cetaceans in various EU fisheries, including species and taxa specific bycatch estimates, is provided in Section 1.5.1.2 of this advice. In relation to its assessment of the national reports, ICES advises that:

- i. The full provision of annual reports on the implementation of Regulation 812/2004 by all relevant Member States for 2007 and 2008, together with previous reports, has greatly improved knowledge of cetacean bycatch within the European Union.
- ii. The Black Sea Member States should be included in the requirements of 812/2004.
- iii. The variable level of detail and uncoordinated reporting make it impossible to assess the extent to which the Regulation has been implemented.
- iv. A standard reporting format needs to be implemented as soon as possible
- v. The monitoring obligations of Regulation 812/2004 have not been met by many Member States, including some that have yet to develop bycatch monitoring programmes.
- vi. Cetacean bycatch monitoring is insufficient in most fisheries and areas to enable sound management decisions to be made.
- vii. A more flexible approach to monitoring needs to be established to ensure that Member States are not forced to monitor fisheries with very low bycatch rates while ignoring others where rates may be much higher.
- viii. Current bycatch monitoring and reporting may not meet the requirements of Article 12 of the Habitats Directive or meet the need for providing best advice on ecosystem-based management as required under Regulation 2371/2002.
- ix. Plans need to be elaborated for monitoring the fleets of smaller vessels.
- x. A more flexible approach is required to ensure monitoring programmes are directed at fleets with the greatest impact on cetacean populations. Efficiency could also be enhanced through closer collaboration among Member States.
- xi. Greater clarity is needed on the objectives of 'scientific studies' and 'pilot projects' that are required under 812/2004.
- xii. Currently available pingers are generally too unreliable to be effective, or acceptable, in many EU fisheries. Development work is needed to improve pinger durability and ease of use.
- xiii. A greater flexibility in the choice of fisheries requiring mitigation measures against cetacean bycatch could enable a greater reduction in overall bycatch levels.
- xiv. Monitoring of pinger use is still problematic and further development and collaboration among Member States is needed.

## Basis of advice

- i. ICES notes that in 2009 all relevant member states supplied reports on their activities conducted under regulation 812/2004 for 2008. Nine member states also provided reports for 2007 that had not been available to ICES in 2009. ICES thus reviewed reports for 2007 and 2008 from all 20 relevant member states. This reporting (taken together with less complete national reporting on 812/2004 from previous years) enabled a more complete understanding of cetacean bycatch in EU waters than was the case prior to 2004.
- ii. Neither of the EU Black Sea Member States has provided reports on the implementation of Regulation 812/2004. This is because the Regulation does not mandate any monitoring or bycatch mitigation in this region. Yet the provisions of Article 12 of Directive 92/42/EEC (the EU Habitats Directive) apply to these member states as to others, and the stated objective of the Regulation is to ensure that monitoring of incidental catches is undertaken. It is known that cetacean bycatch occurs in Black Sea fisheries (see Advice Section 1.5.1.2) and therefore appropriate monitoring, reporting and mitigation programmes should be established by EU Member States in that Sea.
- iii. The current mixture of reporting formats makes it impossible to make general comparisons between Member States' monitoring programmes, while the lack of detail in some Member States' reports makes it impossible to determine the extent to which the obligations for monitoring, or for the deployment of mitigation strategies, have been met.
- iv. ICES reiterates its advice given in 2008 and 2009 that reporting by relevant member states of the European Union should follow a standardised format and that the national reports should be made available to ICES in English and in a timely manner. A standard reporting format needs to be adopted as quickly as possible. The standardised reports should be reviewed after all reports for 2009 have been submitted with the aim of assessing how well the proposed format enables an overview of monitoring and bycatch assessment, and with a view to making incremental improvements in the reporting format if necessary.
- v. Some Member States have not implemented any cetacean bycatch monitoring scheme in response to Regulation 812/2004. Some others have relied predominantly or exclusively on discard monitoring or other schemes to fulfil their obligations under Regulation 812/2004, while others have implemented dedicated schemes that partially or largely fulfil their monitoring obligations. Several Member States also report on scientific and pilot studies to examine bycatch in under 15m fleets or in sea areas where monitoring was not obligatory but in response to perceived issues, as is required by Article 12 of the Habitats Directive.
- vi. A comprehensive assessment of which fisheries require further monitoring is not possible without more detailed work. Nonetheless, gillnet and other fisheries in the southern North Sea (especially in view of the high number of harbour porpoises exhibiting evidence of bycatch on the coasts of The Netherlands and Belgium) and the under 15m sector are candidates for better coverage.
- vii. Even when bycatch monitoring has yielded no cetacean bycatch, this information can be useful in delimiting areas of potential concern. However, adherence to the monitoring scheme mandated under Regulation 812/2004 in fisheries where bycatch rates are now known to be low is not a sensible use of resources, especially when bycatch is known to be occurring more frequently in other fisheries or areas where there is no mandated monitoring under Regulation 812/2004.
- viii. Monitoring of bycatch by Member States is required under Article 12 of the Habitats Directive and is needed if sound advice is to be provided to help implement the ecosystem-based management requirements of the CFP Regulation 2371/2002. The European Commission could remind Member States of these obligations.
- ix. Under-15m vessels constitute the majority of vessels in the gillnet fleets of all Member States, but monitoring of under 15m vessels is poorly specified in Regulation 812/2004. Fleets of these vessels require a sampling strategy. Research into new monitoring technologies and techniques suitable for fleets of smaller vessels should be encouraged.
- x. The determination of monitoring requirements on the basis of targeted precision (as required by Article 4 and Annex III of the Council Regulation 812/2004) is not always the best way to apportion sampling effort in fisheries where bycatch events may be infrequent. A more flexible approach would be to base sampling levels on achieving a specified level of certainty that bycatches do not exceed some predefined threshold. Closer collaboration among Member States is required in determining appropriate levels of bycatch monitoring and in implementing observer schemes. In some cases, more effective monitoring could be achieved by sharing responsibilities for monitoring when vessels from one Member State land fish in the ports of another Member

State. Tools and guidelines to help Member States to decide on how best to target monitoring resources could be developed.

- xi. The use of catch-all obligations to conduct 'scientific studies' and 'pilot projects' relating to bycatch monitoring and mitigation under Regulation 812/2004 is not helpful to Member States. Greater clarity and specific recommendations are needed on how to undertake such tasks.
- xii. Currently available acoustic deterrent devices (pingers) are not reliable, and are therefore ineffective in minimising bycatch in many fisheries. Further development work is needed to improve the reliability, durability and cost of pingers.
- xiii. There is too much reliance under Regulation 812/2004 on the successful deployment of pingers to minimise bycatch. Those fisheries currently specified as requiring pingers are not necessarily those with the highest bycatch rates or the ones capturing the greatest numbers of cetaceans. A more adaptive and responsive approach to determining mitigation requirements should be developed, wherein Member States are required to demonstrate that overall bycatches fall below specific target levels.
- xiv. Monitoring of pinger use has been problematic, although new technologies are being developed. Further work is needed to help facilitate enforcement, and enforcement agencies of the Member States could collaborate on this issue more effectively.

### **Sources**

ICES. 2010. Report of the ICES Study Group of Bycatch of Protected Species (SGBYC). ICES CM 2010/ACOM:25.