

Mr Aguiar Machado
Director-General
Directorate-General for Maritime Affairs & Fisheries
European Commission

Mr Calleja Crespo
Director-General
Directorate-General for Environment
European Commission

CC: Elisa Roller, Head of Unit, CFP and Structural Support, DG Fisheries and Maritime Affairs
Nicola Notaro, Head of Unit, Nature Protection, DG Environment
Matjaž Malgaj, Head of Unit, Marine and Water Industry, DG Environment

Subject: Urgent European Commission action needed to stop cetacean bycatch in Europe under Articles 11(4) and 12 of the Common Fisheries Policy Basic Regulation

Brussels, 9 July 2019

Dear Mr Aguiar Machado,
Dear Mr Calleja Crespo

Seas At Risk, Whale and Dolphin Conservation, ClientEarth, Coalition Clean Baltic, Birdwatch Ireland, Coastwatch Europe, Danish Society for Nature Conservation, Ecologistas en Acción, Fundació ENT, France Nature Environnement, Humane Society International/Europe, International Fund for Animal Welfare, Irish Wildlife Trust, Irish Whale and Dolphin Group, Ligue pour la Protection des Oiseaux, Marine Conservation Society, Natuurpunt, North Sea Foundation, Oceana, OceanCare, Our Fish, Sciaena, Sea Shepherd France, Swedish Society for Nature Conservation, Sustainable Water Network SWAN, The Fisheries Secretariat, WWF Baltic Ecoregion Programme and WWF European Policy Office hereby request the application of emergency measures under Articles 11(4) and 12 of the Common Fisheries Policy Basic Regulation to stop the unacceptable levels of bycatch of the common dolphin population in the Bay of Biscay and eliminate the risk of bycatch of the critically endangered Baltic Sea harbour porpoise population that are not in line with European legal requirements

Bycatch is the greatest threat to the conservation of cetaceans, globally and in European waters. Commercial fishing is the last human activity targeting wildlife on a grand scale where the killing of other large sapient wildlife occurs on such a regular basis.

Article 12 of the Habitats Directive mandates that Member States establish a system of strict protection for cetaceans prohibiting all forms of deliberate capture or killing of specimens of these species in the wild and that conservation measures are taken to ensure that bycatch does not have a significant negative impact on these species. The Habitats Directive also mandates that Member States take appropriate steps to avoid the disturbance of the cetacean species for which Natura 2000 areas have been designated.

To date, however, Member States have failed both to implement and enforce a general system of measures to reduce bycatch and to manage cetaceans' Natura 2000 sites to make them safe spaces contributing to restoring these populations to favourable conservation status. As a result, cetacean populations in Europe are under great stress.

Two cetacean populations are in particularly imminent danger from bycatch. There has been strong scientific concern from the ICES Bycatch Working Group and International Whaling Commission Scientific Committee about the levels of bycatch impacting their conservation status, and even chances of survival for the Baltic porpoise in the near future, if the Commission does not take urgent action:

- The Baltic harbour porpoise is **critically endangered** and only a few hundred animals remain today. Bycatch is the most acute threat to the population as a single incidental killing of a fertile female could have a devastating effect on the ability of the population to recover or even survive in the long term.

- The North East Atlantic short-beaked common dolphin, which has an unfavourable conservation status in the European Atlantic, has been experiencing a dramatic increase in levels of bycatch rates in recent years culminating this past winter in **1,200 dolphins washing ashore** along the French coastline, over 80% of which were diagnosed as having been bycaught. In June 2019, the Scientific Committee of the International Whaling Commission recognised the urgency of the situation and the threat caused by bycatch to the conservation status of the NE Atlantic common dolphins.

Therefore, we, the undersigned NGOs, urge the European Commission to use the powers under Articles 11(4) and 12 of the Common Fisheries Policy Basic Regulation (Regulation 1380/2013) to urgently address the imminent threat to these populations and the marine ecosystem posed by the unacceptable and unsustainable levels of bycatch of these two cetacean populations, while the Member States put in place robust and adaptive permanent conservation measures.

Specifically, we urge the European Commission to take a number of specific actions, including:

- For the Baltic harbour porpoise: 1) close all fisheries on the Northern Midsea Bank within the Swedish Natura 2000 area "Hoburgs bank och Midsjöbankarna"; 2) close all gillnet fisheries in the rest of the Swedish Natura 2000 area "Hoburgs bank och Midsjöbankarna" and in all Natura 2000 areas east of 13.5°E where the harbour porpoise is listed as present, until site-specific assessments have been made of the impact of the use of Acoustic Deterrent Devices (ADDs); and 3) require mandatory use of ADDs outside of Natura 2000 areas in the entire range of the Baltic Proper harbour porpoise population, i.e. east of 13.5°E.
- For the North East Atlantic Common Dolphin: 1) close the fisheries that are responsible for the common dolphin bycatch in the North East Atlantic between the beginning of December 2019 and the end of March 2020, including, ad minima, the pair-trawl and gillnet fisheries; and 2) implement real time monitoring and dynamic mitigation measures on a permanent basis, as per the recommendations of the IWC Scientific Committee advice.

These measures should be taken immediately as a matter of precaution. In the alternative, the population of the critically endangered Baltic harbour porpoise could follow in the steps of the Vaquita towards extinction, at which stage fisheries will have to be closed throughout the Baltic Sea. Similarly, if urgent measures are not taken, the NE Atlantic common dolphins will continue to wash up on European coastlines, their populations declining, and fisheries may have to be closed throughout the region for a much longer period of time.

This letter is accompanied by two briefings providing information on the critical situation of the two populations in relation to fisheries bycatch, the emergency measures requested and the legal basis for their adoption.

We would welcome the opportunity discuss our views on the dramatic situation of cetaceans in Europe and the actions needed to ensure that no further harm is done to these vulnerable populations.

For further information, your services can contact Alice Belin (abelin@seas-at-risk.org).

Yours Sincerely,



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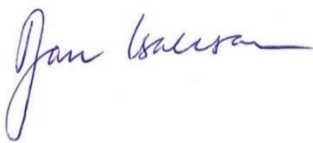
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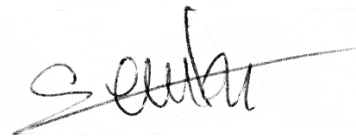
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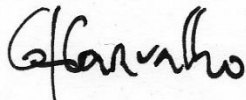
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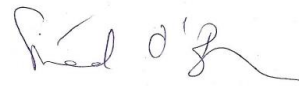
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Annexes:

- Annex 1 – Joint NGO briefing ‘Fisheries Emergency Measures for the North East Atlantic short-beaked common dolphin in the Bay of Biscay’, July 2019.
- Annex 2 – Joint NGO briefing ‘Fisheries Emergency Measures for the Baltic sea harbour porpoise’, July 2019.