Fisheries Emergency Measures for the Baltic Sea harbour porpoise

July 2019

1. Summary

The Baltic Sea harbour porpoise is listed by IUCN and HELCOM as critically endangered. Today its geographical range is significantly smaller than what can be induced from historical records, and there are only a few hundred animals left. While pollution and disturbance through underwater noise may be contributing to the population failing to recover, bycatch is the one acute threat causing direct mortalities in significant numbers. Given the small size of the population, the sex ratio and age distribution and the proportion of females potentially infertile due to high contaminant load, there may be less than 100 fertile females in the Baltic Proper. Losing even one of those females could have a devastating effect on the ability of the population to recover or even stay stable at the low numbers of today.

Hence, to allow this critically endangered population to recover, bycatch must be reduced to an absolute minimum, ideally to zero. However, to date initiatives from Member States to minimize bycatch are very limited and there are currently no closures of areas for the purpose of protecting the Baltic Sea harbour porpoise. While Sweden has designated as Natura 2000 the main part of the porpoise breeding area in the central Baltic Proper in December 2017, the long and slow process for Member States to agree on joint measures for nature conservation purposes under the Common Fisheries Policy (CFP) is currently risking the survival of the population.

Therefore, we, a group of European NGOs, hereby request that the European Commission take the necessary emergency measures to 1) completely 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, based on Article 11(4) of the CFP, until site-specific assessments has been made of the impact of use of Acoustic Deterrent Devices (ADDs), as well as, 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, 4) require accurate data collection, monitoring and reporting in the whole Baltic Sea and 5) require monitoring and mitigation measures for gillnet fisheries, based on Article 12 of the CFP.

Such emergency measures would be put in place to ensure that bycatch is minimised until permanent and adequate measures are in place. If immediate action is not taken, we risk a situation where the population is further depleted, and fisheries have to be closed throughout the Baltic Sea.
2. The problem

Marine mammals have a significant effect on the ecosystems, both through their prey consumption and through other, behavior-driven roles (ICCB, 2017; Kiszka et al., 2015). In the Baltic Sea, the harbour porpoise is the only cetacean present year-round and in any significant numbers, and hence has a unique role in the Baltic Sea ecosystem.

The harbour porpoise, *Phocoena phocoena*, is a small cetacean present in shelf, and sometimes open high seas waters in most of the Northeast Atlantic. In the Baltic Sea Region, three distinct harbour porpoise populations are recognized: one in northern Kattegat, Skagerrak and the North Sea, one in southern Kattegat, Belt Sea and western Baltic, the so-called Belt Sea population, and one in the Baltic Proper (Fig. 1).

![Figure 1. Approximate distribution of the different harbour porpoise populations in the Baltic Sea Region. The overlap area between 13.5°E and the diagonal line between Sweden and Poland is thought to host some animals from the Belt Sea population during summer (May-October) and from the Baltic Proper population during the winter (November-April) (Carlén et al., 2018; Sveegaard et al., 2015)](image)

The Baltic Proper harbour porpoise population exhibits small but consistent differences compared to the Belt Sea population in genetics (Lah et al., 2016; Wiemann et al., 2010) as well as morphology (Galatius et al., 2012), and is spatially separated from it during the time of breeding in the summer months (Carlén et al., 2018; Sveegaard et al., 2015, Fig. 2 and 3). Hence, it is considered to be a separate population.
While historically the distribution of porpoises seems to have encompassed the entire Baltic Sea from the Bay of Bothnia in the north and Gulf of Finland in the east, today the main distribution occurs in the central Baltic Proper, with animals occurring as far north as the Finnish Archipelago Sea during winter (Fig. 2). The numbers are precariously low, with only a few hundred animals left (497, 95% ci 80-1091, Amundin, Carlström, Thomas et al, in prep., SAMBAH 2016). Hence, the Baltic Proper population of harbour porpoises are listed as Critically Endangered by IUCN (Hammond et al., 2016) and HELCOM, meaning that this population is facing extinction.

An important breeding area for the population was identified by the SAMBAH project to be situated in the central Baltic Proper (Fig. 2 and 3).

Figure 2. Probability of detection (colours) and density (black dots) of harbour porpoises in the SAMBAH study area in the Baltic Sea during a) May-October and b) November-April. In the map showing the distribution from May-October, the cluster in the southwest is interpreted as the Belt Sea population, and the cluster south of the island of Gotland is interpreted as the Baltic Proper population. The dotted line from Sweden to Poland denotes the estimated division between the Baltic Proper Population and the Belt Sea population during May-October.

Figure 3. Polygones showing the ≥20% probability of detection of porpoises for four quarters of the year. During May – October (areas in pink and yellow), this area of ≥20% probability of detection is estimated to encompass approximately 30% of the Baltic Proper harbour porpoise population during the reproductive season. This map can therefore be interpreted as showing the most important areas for the Baltic Proper harbour porpoise population.
2.1 Threats

The causes of the Baltic proper population decline since the 1960’s are mainly bycatch in fishing gear and environmental contaminants, although hunting and heavy ice cover during winters in the first half of the 20th century may have contributed. Nylon gillnets were introduced in the 1960’s, and this is believed to have increased the bycatch of harbour porpoises, both because the fishing effort increased with this new, affordable and easy-to-handle gear, and because the thin nylon strands of the nets seem to be more difficult for the porpoise to detect underwater through echolocation. The 1960’s and 70’s also saw a severe increase of environmental contaminants such as PCB in biota from almost all taxa. PCBs have been shown to cause reproductive impairment in female harbour porpoises in UK waters (Murphy et al., 2015), and given that the levels of PCBs have been shown to be up to 35 times higher in the Baltic Sea than in the North Sea (Karl and Ruoff, 2007), it is likely that this has significantly affected the Baltic proper population, too.

Today, the main threats to the Baltic Proper harbour porpoise population are bycatch in fishing gear, environmental contaminants and underwater noise. While pollution and disturbance through underwater noise may be contributing to the population failing to recover, bycatch is the one acute threat causing direct mortalities in significant numbers. Given the small size of the population, the sex ratio and age distribution and the proportion of females potentially infertile due to high contaminant load, there may be less than 100 fertile females in the Baltic Proper. Losing even one of those females could have a devastating effect on the ability of the population to recover or even stay stable at the low numbers of today. Additionally, from the German part of the Baltic Sea it has been shown that only approximately 27% of females reach reproductive age (Kesselring et al., 2018, 2017). If this is true for the entire Baltic Proper population, it would indeed be very worrying.

Bycatch

To allow this critically endangered population to recover, bycatch must be reduced to an absolute minimum, ideally to zero. This is also the main message in the ASCOBANS Recovery Plan for Baltic Harbour Porpoises (Jastarnia Plan) and the HELCOM Recommendation 17/2 on the Protection of harbour porpoise in the Baltic Sea Area. At a recent NAMMCO workshop, a Potential Biological Removal (PBR) analyses showed that the bycatch limit for the Baltic Sea harbour porpoise is 0.1 animals per year (North Atlantic Marine Mammal Commission and the Norwegian Institute of Marine Research, 2019). However, to date, initiatives from Member States to minimize bycatch are very limited. Although there are some recent local initiatives in the German Baltic Sea and in some marine protected areas (MPAs) in Poland to use different types of acoustic deterrent devices (ADDS, or “pingers”) to decrease bycatch, the spatial extent of these measures is not nearly enough, and there are currently no closures of areas for the purpose of protecting the Baltic Sea harbour porpoise.

The Baltic Sea harbour porpoise is susceptible to bycatch in different types of gillnet fisheries, mainly surface set nets for salmonids as well as bottom set nets for cod and flatfish. Driftnets formerly used for salmonids had significant harbour porpoise bycatch. These nets were banned in 2008 by EC regulation 812/2004, but a form of semi-drift nets (also known as swing nets) are still used, and there is concern that these are still causing significant bycatch of harbour porpoises, e.g. in Polish waters (see Fig. 4 for total number of bycatches and strandings in Poland during the last decades). There is also significant bycatch occurring in German Baltic waters, but it is very likely that the large majority of these animals belong to the Belt Sea population rather than the Baltic Proper population.
Overall, there is basically no data on actual bycatch rates from the Baltic Sea. Monitoring programmes put in place by Member States for EC Regulation 812/2004 did not record any bycatch in the Baltic Proper population distribution range. This is at least partly due to the fact that the regulation demands monitoring of vessels >15 m, with the large majority of vessels using gillnets in the Baltic Sea region being smaller than that, but also the chances of observing bycatch in such a small population is very small. In Poland it has been calculated that 80% of the fishing effort would have to be monitored to achieve the goal set up in Annex III of EC regulation 812/2004 that monitoring schemes shall be designed to allow estimation of bycatch rates with a coefficient of variation not exceeding 0.30 for the most frequently bycaught species. The only known reported bycatch which can be interpreted as stemming from the Baltic Proper population since 2009 (according to the HELCOM/ASCOBANS harbour porpoise database) was one individual caught in Poland during 2014, and one in 2018. There is also a significant number of strandings along the Polish coast, with 14 animals found on Polish beaches only in 2018. For most of these animals the cause of death could not be determined, but it is likely that at least part of the stranded animals was bycaught. Additionally, a harbour porpoise was caught in a Finnish salmon net in the Archipelago Sea in December 2018, but could be released alive. This is the first recorded bycatch in Finland since 1999.

This shows that bycatch does occur, even as far north as Finnish waters, and given the low monitoring effort there is likely to be undetected bycatch throughout the population range. ICES WGBYC (ICES, 2018) concluded that several gear types, including set gillnets, are under-sampled in the Baltic Sea, in relation to Regulation 812/2004.

### 2.2 Natura 2000 sites for the Baltic Sea harbour porpoise

The main part of the important breeding area in the central Baltic Proper (Fig. 2 and 3) is situated in Swedish waters and was designated as an SCI for the Baltic Sea harbour porpoise in December 2017 (SE0330308, Fig. 4, Table 1). However, to date, there is no management plan, no conservation measures and no conservation objectives in place, and no process on joint measures under CFP art 11.2. Without immediate measures in this crucial breeding area, there is great risk that the population is further depleted both in numbers and genetic diversity.
In addition, there are 12 Natura 2000 areas (SCIs) which are at least partly within the distribution range of the Baltic Proper harbour porpoise population east of 13.5°E, in Swedish, Polish and German waters, where the harbour porpoise has been listed as present (table 1). Many of these areas were designated as SCIs well over six years ago, but have not yet been designated as SACs. No measures have been implemented for the purpose of harbour porpoise conservation. Management plans are available for five of the German sites, but not for any of the Polish and Swedish sites. No other Baltic Sea coastal states have Natura 2000 sites where the harbour porpoise is listed as present.

Table 1. Natura 2000 sites within the distribution range of the Baltic Proper harbour porpoise population (east of 13.5°E), with the harbour porpoise in the list of species present.

<table>
<thead>
<tr>
<th>Site code</th>
<th>Site name</th>
<th>Designation as SCI</th>
<th>Designation as SAC</th>
<th>Size marine area (ha)</th>
<th>Harbour porpoise listed as</th>
</tr>
</thead>
<tbody>
<tr>
<td>SE0330308</td>
<td>Hoburgs bank och midsjöbankarna</td>
<td>2017-12</td>
<td>Not designated</td>
<td>1051111</td>
<td>Permanent, common</td>
</tr>
<tr>
<td>SE0430187</td>
<td>Sydvästskånes utsjövatten</td>
<td>2017-12</td>
<td>Not designated</td>
<td>115127.6</td>
<td>Permanent, rare</td>
</tr>
<tr>
<td>PLH220023</td>
<td>Ostoja Słowińska</td>
<td>2008-02</td>
<td>Not designated</td>
<td>11613</td>
<td>Concentration, present</td>
</tr>
<tr>
<td>PLH220032</td>
<td>Zatoka Pucka i Półwysep Helski</td>
<td>2008-02</td>
<td>Not designated</td>
<td>26566</td>
<td>Concentration, common</td>
</tr>
<tr>
<td>PLH320019</td>
<td>Wolin i Uznam</td>
<td>2008-02</td>
<td>Not designated</td>
<td>5499</td>
<td>Concentration, present</td>
</tr>
<tr>
<td>PLH990002</td>
<td>Ostoja na Zatoce Pomorskiej</td>
<td>2009-03</td>
<td>Not designated</td>
<td>243059</td>
<td>Permanent, present</td>
</tr>
<tr>
<td>DE1251301</td>
<td>Adlergrund</td>
<td>2007-11</td>
<td>Not designated</td>
<td>23397</td>
<td>Permanent</td>
</tr>
<tr>
<td>DE1249301</td>
<td>Westliche Rönnebank</td>
<td>2007-11</td>
<td>Not designated</td>
<td>8601</td>
<td>Permanent</td>
</tr>
<tr>
<td>DE1652301</td>
<td>Pommersche Bucht mit Oderbank</td>
<td>2007-11</td>
<td>Not designated</td>
<td>110115</td>
<td>Permanent</td>
</tr>
<tr>
<td>DE1749302</td>
<td>Greifswalder Boddenrandschwelle und Teile der Pommerschen Bucht</td>
<td>2009-12</td>
<td>2016-08</td>
<td>39872</td>
<td>Concentration, present</td>
</tr>
<tr>
<td>DE1747301</td>
<td>Greifswalder Bodden, Teile des Strelasundes und Nordspitze Usedom</td>
<td>2004-12</td>
<td>2016-08</td>
<td>Concentration</td>
<td></td>
</tr>
<tr>
<td>DE1346301</td>
<td>Steilküste und Blockgründe Wittow</td>
<td>2004-12</td>
<td>2016-08</td>
<td>1631.9688</td>
<td>Permanent, present</td>
</tr>
<tr>
<td>DE1345301</td>
<td>Erweiterung Libben, Steilküste und Blockgründe Wittow und Arkona</td>
<td>2009-12</td>
<td>2016-08</td>
<td>7570.213</td>
<td>Concentration</td>
</tr>
</tbody>
</table>

Hence, in none of the Natura 2000 areas have steps been taken to avoid disturbance, or even accidental killing, of the harbour porpoise, as stipulated by Art 6(2) of the Habitats Directive, resulting in direct breach of this article.

According to the Habitats Directive, a management plan should be in place at most 6 years after designating an area as an SCI. Given the critically endangered status of the Baltic Sea harbour porpoise and the fact that site SE0330308 encompasses its most important breeding ground, waiting another 3.5 years before putting in place the necessary conservation measures could seriously endanger further this population and risking its very survival. Therefore, putting the necessary conservation measures and appropriate management plans in place for this SCI according to Art 6(1) of the Habitats Directive should be of highest priority. For the areas in Poland and Germany, the...
implementation of management plans and conservation measures is already very much behind schedule and should be carried out immediately.

3. Emergency Measures

3.1 Proposed measures

To minimize the impact of bycatch on the Baltic Sea harbour porpoise, we propose two levels of emergency measures:

1) Measures within Natura 2000 areas in Sweden, Poland and Germany, with reference to Article 11(4) of the CFP and Article 6 of the Habitats directive (see section III). Swedish, Polish and German waters are considered key areas for the Baltic Proper harbour porpoise population, and are also high-risk areas for harbour porpoise bycatch.

2) Measures outside Natura 2000 sites, with reference to Article 12 of the Habitats directive, as well as Article 12 of the CFP (see section III). The Baltic Proper harbour porpoise population is highly vulnerable, and bycatch risk has to be minimized throughout its entire range.

The proposed measures are described below.

Figure 5. The areas where use of ADDs is mandatory according to Regulation 812/2004, in relation to the Natura 2000 areas with the harbour porpoise listed as present within the range of the Baltic Proper population (east of 13.5°E), as well as the Northern Midsea bank which is proposed for total fisheries closure.
3.1.1 Measures within Natura 2000 areas

a. **Closure of the Northern Midsea Bank for all fisheries.**

The Northern Midsea bank is situated in the large Natura 2000 area designated for the important breeding area for the Baltic Proper harbour porpoise population (SE0330308). One of the Swedish harbour porpoise monitoring stations in this area has the single most acoustic detections of porpoises in the entire SAC. The Northern Midsea bank has been pointed out by the Swedish Agency for Marine and Water Management to be set aside as an area without local human impacts. We propose that this area is closed for all fisheries with effect immediately (see Fig. 5).

b. **Closing of gillnet fisheries in the rest of the Natura 2000 area Hoburgs bank och Midsjöbankarna (SE0330308) as well as in all other Natura 2000 areas east of 13.5°E where the harbour porpoise is listed as present, until site-specific assessments has been made of the impact of use of ADDs.**

Natura 2000 areas where the harbour porpoise is listed as present should be closed for gillnet fisheries, unless it can be proven beyond scientific doubt that the integrity of the respective site (including it being an environment with conditions that promote the porpoise population to achieve a favorable conservation status) is not adversely affected or reduced by the use of gillnets when those have ADDs. If assessments show that some gillnet fishing using ADDs could be allowed, this needs to be subject to a strict permitting procedure, and with mandatory use of ADDs and AIS/high res VMS as well as REM monitoring.
3.1.2 Measures outside Natura 2000 areas

a. Mandatory use of ADDs in all commercial gillnet fisheries outside Natura 2000 areas

Mandatory use of ADDs east of E13.5° and north to the Finnish Archipelago Sea at N 60.0°, to minimise bycatch risk in the entire range of the population.

b. Accurate recording of fishing effort and gear type used

Accurate data on fishing effort is crucial for calculating bycatch rates, which in turn is necessary to take conservation action.

c. Dedicated electronic monitoring on all gillnet vessels in the region

Remote Electronic Monitoring for monitoring of bycatch, for example using cameras on board, should be mandatory for all gillnet vessels, for example in relation to the size and setup of the vessel. Detailed positioning of the vessel at all times, using for example high resolution VMS or AIS, should be mandatory in all cases.

d. Monitoring and adaptive management/mitigation measures of gillnet fisheries

Monitoring on all gillnet vessels should be made mandatory. If bycatch is observed, an assessment should be made and adaptive management such as alternative gear or time-area closures implemented. Gillnet effort as well as harbour porpoise presence is comparably high in the Polish EEZ, and it is therefore necessary to implement full-scale monitoring to get better understanding of where the two overlap and bycatch risk is high.

3.2 Legal basis for the adoption of emergency measures

The harbour porpoise is a species listed under Annexes II (animal species of Community interest whose conservation requires the designation of special areas of conservation) and IV (species of Community interest in need of strict protection) of the Habitats Directive; they enjoy dual protection under the law and the Commission is empowered to implement different kinds of urgent measures to ensure that the population will be maintained for a period that can allow Member States to implement conservation measures while there are still possibilities that these measures can restore the population to Favourable Conservation Status (FCS).

3.2.1 Measures inside Natura 2000 sites

Article 6 of the Habitats Directive

Article 6 of the Habitats directive calls for Member States to establish necessary conservation measures corresponding to the ecological requirements of the species listed in Annex II present in a Natura 2000 area, to avoid the deterioration of the sites or the significant disturbance of the species for which the sites were designated. Article 6 of the Habitats Directive also mandates that plans or projects not directly connected with or necessary to the management of the site but likely to have a significant effect thereon be only authorised when the authorities "have made certain that it will not adversely affect the integrity of the protected site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects." 1

1 Case C-142/16, Commission v Germany p. 33
Article 11 of the CFP

Article 11 of Regulation 1380/2013 (the CFP) establishes the process for adopting measures to comply with Article 6 of the Habitats Directive for Natura 2000 sites in which several Member States have a direct management interest in the fishery to be affected by such measures.

Article 11 of the CFP precludes a Member State from adopting unilaterally, with respect to the waters under their sovereignty or jurisdiction, measures which apply to fishing vessels of other Member States. In those instances, the measures should be adopted by the Commission, upon the submission of a joint recommendation by the initiating Member State and the other Member States having a direct management interest. If the Member States cannot agree on sufficient measures, the Commission may submit a proposal in accordance with the treaty (Article 11(3) of the CFP).

In the absence of joint recommendations and in cases of urgency, the Commission shall adopt emergency measures to apply for a maximum of 12 months, which can be extended for an additional period of 12 months, provided that the conditions that granted the adoption of the measures continue to exist. (art 11(4) and 11(5)). The measures adopted by the Commission shall be limited to those in the absence of which the achievement of the objectives associated with the establishment of the conservation measures in accordance with the Directives referred to in paragraph 1 and the Member State's intentions, is in jeopardy.

In the site evaluation for the species in Annex II of the Habitats Directive, the standard data form of the site Hoburgs bank och Midsjöbankarna (SE0330308) lists the permanent presence of a population of harbour porpoise on the site of about 400 individuals and states that the site is “the core area of the Baltic Sea population of porpoises”.

The other Natura 2000 areas listed in table 1 list the harbour porpoise as one of the key Annex II species present in the sites. As was explained in section I of this briefing, bycatch is an acute threat to this population of Harbour Porpoise and losing even one of those females could have a devastating effect on the ability of the population to recover or even stay stable at the low numbers of today.

Article 3 of the Habitats Directive explains that the purpose of the Natura 2000 network is to enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

If measures are not taken urgently to protect the Harbour porpoise population for which the sites were designated, the achievement of the objectives associated with the establishment of the sites and the conservation measures that could later be implemented via the procedure set in Article 11(2) of the CFP will be in jeopardy. If the Commission does not take urgent action, under Articles 11(4) and 11(5) CFP, it may not be possible to, at a later date, restore the population of Baltic Harbour porpoise to favourable conservation status in their natural range.

3.2.2 Measures outside Natura 2000 sites

Article 12 of the Habitats Directive

Article 12(4) of the Habitats Directive requires Member States to establish a system to monitor the incidental capture and killing of all species of cetaceans – including the Harbour porpoise – and, in the light of the information gathered, take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.
As was explained in section I of this briefing, bycatch is having such a significant impact on the Baltic Proper harbour porpoise population that the population cannot be expected to recover unless incidental catches can be reduced to close to zero. According to a PBR carried out by the NAMMCO & IMR workshop (2019), for the Baltic Proper harbour porpoise population to recover, no more than 0.1 porpoises per year, i.e. 1 animal per decade, can be lost to bycatch.

Article 12(1)(a) of the Habitats Directive establishes the obligation of Member States to take the requisite measures to establish a system of strict protection for cetaceans (including the harbour porpoise) in their natural range prohibiting all forms of deliberate capture or killing of specimens of these species in the wild.

This prohibition is not subject to the capture or killing having a significant negative impact on the species concerned. All deliberate captures or killings of cetaceans in the wild are prohibited in the EU.

What is understood by ‘deliberate’ has been defined by the Court of Justice of the European Union (CJEU) in Commission v Spain, which establishes that “For the condition as to ‘deliberate’ action in Article 12(1)(a) of the directive to be met, it must be proven that the author of the act intended the capture or killing of a specimen belonging to a protected animal species or, at the very least, accepted the possibility of such capture or killing.”

In Commission v Cyprus, the CJEU found that Article 12(1) imposes the obligation to Member States to go beyond the simple transposition of EU law and adopt a coherent and coordinated set of measures to enable the effective avoidance of all forms of deliberate capture or killing of specimens of animal species listed in Annex IV(a) of the Habitats Directive in the wild. This same interpretation of the duties of Member States under Article 12(1) of the Habitats Directive is found in Commission v Hellenic Republic and Commission v Ireland.

Regulation 812/2004 (now ‘Technical Conservation Measures’ regulation)

Regulation 812/2004 lays down measures to monitor and minimise the incidental catches of cetaceans. Regulation 812/2004 has been integrated into the broader regulation on ‘Conservation of fisheries resources and the protection of marine ecosystems through technical measures’ (‘Technical Conservation Measures’ regulation), which has recently been adopted by the European Parliament. The measures on cetacean bycatch in the ‘Technical Conservation Measures’ regulation are the minimum expected from Member States to comply with the obligation under article 12 of the Habitats Directive in relation to cetaceans.

Unfortunately, the mitigation measures in the Regulation are not sufficient to prevent bycatch having significant impact on the population of harbour porpoise. For example, Regulation 812/2004 (and the new Technical Conservation Measures regulation) mandates the use of Acoustic Deterrent Devices (ADDs) in the fishing nets in some areas. However, the spatial specifications on mandatory use of ADDs in the Baltic Sea do not correspond to the main distribution range of the population as found in the SAMBAH project (Carlén et al., 2018, Fig. 4). Much of the fishing taking place in the Baltic proper, where the population of Baltic harbour porpoise lives, is carried out by small vessels.

When it comes to bycatch monitoring, Regulation 812/2004 (and the new Technical Conservation Measures regulation) requires that vessels with an overall length of less than 15 m, collect data on incidental catches through scientific studies or pilot projects (these pilot projects should cover a

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2 Case C-221/04, Commission v Spain, para. 71
3 Case Case C-340/10, Commission v Cyprus, para. 59 - 62
4 Case C-518/04 Commission v Hellenic Republic, para. 16.
5 Case C-183/05 Commission v Ireland, para. 29, 30.
minimum percentage of the fishing effort of each Member State). However, little has been done regarding this matter in the Baltic Proper until today.

In consequence, it is hard to establish with certainty which vessels and gears are causing the bycatch of the Baltic Harbour porpoise, which in turn reduces the possibility to adopt more targeted conservation measures and increases the need for closures to all vessels and all fishing gear in order to allow the possibility of the population of Baltic harbour porpoise to be restored to FCS.

**Article 12 of the CFP**

Under Article 12 of the CFP, on duly justified imperative grounds of urgency relating to a serious threat to the conservation of marine biological resources or to the marine ecosystem based on evidence, the Commission, at the reasoned request of a Member State or on its own initiative, may, in order to alleviate that threat, adopt immediately applicable implementing acts applicable for a maximum period of six months.

The Baltic Proper harbour porpoise population is critically endangered and any bycatch incidence may impede the restoration of the species to FCS. On these grounds, the Commission is justified to take measures outside Natura 2000 sites in the Baltic, while the Member States improve their monitoring systems and implement a coherent and coordinated set of measures to effectively prevent bycatch of Baltic harbour porpoise.

The lack of compliance by the Member States with vessels carrying their flag that fish in the Baltic with their bycatch monitoring obligations and the failure by the Member States to adopt a system of strict protection for the Baltic harbour porpoise is currently risking the survival of this population. If immediate action is not taken, we risk a situation where the population is further depleted and fisheries have to be closed throughout the Baltic Sea in order to ensure its conservation.

### 4. Socio-economic impacts of the measures

For Baltic Sea fishermen, the proposed closure would have a rather small impact in Swedish waters. A limited number of fishermen would be affected and they would very likely be able to move to other areas close by. The impact of seasonal closures in Polish waters may be greater, because more fishermen (Poland had 423 gillnet vessels registered in 2018) and a larger proportion of available sea area would be affected (Fig. 7), which would make it more difficult for fishermen to find alternative areas to fish.

Figure 6 shows the average fishing effort with static gear in the Baltic Sea during 2012-2015. The fishing effort is higher in the southern parts of the Baltic Proper, while the effort further north is comparably low. In general, gillnet fishing effort across ICES subdivisions 22-28 has declined over the period 2003-15 (ICES, 2017). In the northern areas, this is partly driven by the increase in numbers and range of grey seal, which can take or destroy large parts of the catch, slowly forcing fishermen to change gears or quit. The gillnet fisheries taking place within the SAC seems to be a consequence of fishermen avoiding coastal areas with higher seal densities, and where the problem with seal damage is smaller.

The proposal for mandatory use of ADDs (outside MPAs) would entail a cost for fishermen, which may potentially be difficult to bear.
Figure 7. Spatial distribution of average fishing effort (mW fishing hours) with static gear in the Baltic Sea during 2012–2015. Fishing effort data are only shown for vessels >12 m carrying VMS. Estonian fishing effort is not included due to incompatible data, and Russian data are absent as they were not received (Source: ICES, 2017).

Figure 8. Map of the ICES Area subdivisions of the Skagerrak, Kattegat, Belt Seas and Baltic Proper, for the reporting of catch statistics (Source: ICES).
5. Proposed measures to address social impacts

Funding has to be provided for programmes aiming at developing and testing alternative gear which potentially can replace gillnets. Such programmes have been conducted in for example Germany and Sweden to design and test gear such as pots, automated jigging machines, automated long-lines. Currently, the German Thünen Institute is developing more acoustically reflective types of gillnets. The European Maritime and Fisheries Fund (EMFF) is one potential funding source for such programmes.

For more effective implementation of ADDs in Baltic Proper gillnet fisheries, we would suggest that the EMFF and other similar funds can provide funding for fishermen to purchase ADDs.

It is of utmost importance to involve all stakeholders into a process that is meant to transform local fisheries with the aim to make marine resource usage sustainable. Therefore, funding should also be provided to increase cooperation and dialogue between fishermen, scientists, managers and environmental NGOs.

6. Signatories

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7. References


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