

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

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

CC: Martin Selmayr, Secretary-General
Elisa Roller, Head of Unit, CFP and Structural Support, DG Fisheries and Maritime Affairs
Nicola Notaro, Head of Unit, Nature Protection, DG Environment

9th July 2019

Dear Mr Calleja Crespo and Mr Aguiar Machado,

Complaint against the breach of species protection obligations under Article 12 of the Habitats Directive in relation to cetaceans

Whale and Dolphin Conservation, ClientEarth, Seas At Risk, Coalition Clean Baltic, Coastwatch Europe, Danish Society for Nature Conservation, Ecologistas en Accion, Fundació ENT, France Nature Environnement, 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, Wildlife and Countryside Link Bycatch sub-group and WWF European Policy Office submit the attached complaint against the governments of Belgium, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, The Netherlands, Poland, Portugal, Spain, Sweden and The United Kingdom for being in breach of Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

The problem

Bycatch is considered the greatest global threat to the conservation of cetaceans. It is also the greatest threat to cetaceans in Europe, where incidental catches are of serious concern – and in many cases have population impact levels – for a number of cetacean species like the Baltic harbour porpoise and the Bay of Biscay common dolphin.

The aforementioned governments have systematically failed to implement conservation measures that ensure that bycatch does not have a significant impact on these species. The governments have also failed to establish and enforce monitoring systems that allow the necessary understanding of the impact of bycatch on many populations of cetaceans. In turn, this further impairs the ability of these governments to take the necessary measures to maintain or restore these populations at favourable conservation status.

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Breaches of law

Article 12 of the Habitats Directive establishes the following obligations for Member States in relation to cetaceans:

- a) Obligation to establish a system to monitor the incidental capture and killing of cetaceans [Art. 12(4) of the Habitats Directive],
- b) Obligation to, in light of the information gathered by the monitoring system, 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 [Art. 12(4) of the Habitats Directive],
- c) Obligation to establish a system of strict protection for cetaceans, prohibiting all forms of deliberate disturbance, capture and killing of cetaceans in the wild [Arts. 12(1)(a), 12(1)(b) and 12(3) of the Habitats Directive].

The governments of Belgium, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Spain, Sweden, and the United Kingdom are in breach of these obligations and have even failed to fully comply with Regulation 812/2004 – the minimum expected from Member States in relation to their duty to monitor and minimise the likelihood of killing, capture or disturbance to cetaceans by their fleets. None of the governments of these Member States has implemented concrete, specific, coherent and coordinated measures that prevent the killing, capture or disturbance of cetaceans in their waters or by their fishing fleets.

In consequence, we submit this complaint and urgently ask you to take infringement action against the governments of Belgium, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Spain, Sweden, and the United Kingdom for ongoing breaches of Article 12 of the Habitats Directive with regard to the strict protection of cetaceans and the obligations on the Member States to establish a system to monitor the incidental capture and killing of cetaceans and to 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.

We kindly request you to provide us with a written response to our complaint.

For further information regarding the complaint, your services can contact Sarah Dolman, Whale and Dolphin Conservation (sarah.dolman@whales.org) and/or Tatiana Lujan, ClientEarth (tlujan@clientearth.org).

Yours sincerely



Chris Butler-Stroud
Chief Executive
Whale and Dolphin Conservation



Douglas A. Rouley
Chief Counsel
ClientEarth

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WDC



ClientEarth

On behalf of:

Mikhail Durkin, Executive Secretary Coalition Clean Baltic
Karin Dubsky, International Coordinator, Coastwatch Europe
Morten Pedersen, Head of Department, Danish Society for Nature Conservation
Ana Aldarias, Coordinator of Marine Programme, Ecologistas en Accion
Lydia Chaparro Elias, Environmental Consultant, Fundació ENT
Michel Dubromel, President, France Nature Environnement
Seán Meehan, Chairman, Irish Wildlife Trust
Simon Berrow, Chief Executive Officer, Irish Whale and Dolphin Group
Allain Bougrain Dubourg, President, Ligue pour la Protection des Oiseaux
Sandy Luk, Chief Executive, Marine Conservation Society
Karin Lexén, Secretary General, Naturskyddsforeningen – Swedish Society for Nature Conservation
Anke Geeraerts, Policy Director, Natuurpunt
Floris van Heist, Executive Director, North Sea Foundation
Pascale Moehrle, Executive Director of Oceana in Europe, Oceana
Nicolas Entrup, Co-Director International Relations, OceanCare
Rebecca Hubbard, Program director, Our Fish
Gonçalo Ferreira de Carvalho, Executive Coordinator, Sciaena
Lamya Essemlali, President, Sea Shepherd France
Monica Verbeek, Executive Director, Seas At Risk
Sinead O'Brien, Coordinator, Sustainable Water Network SWAN
Jan Isakson, Director, The Fisheries Secretariat
Sarah Dolman, Chair, Wildlife and Countryside Link Bycatch sub-group
Samantha Burgess, Head of EU Marine Policy, WWF European Policy Office

Attached: Cetacean bycatch complaint (long version)
Cetacean bycatch complaint – electronic format (short version)
Annex 1 – Joint NGO briefing ‘Fisheries Emergency Measures for the North East Atlantic short-beaked common dolphin in the Bay of Biscay’
Annex 2 – Joint NGO briefing ‘Fisheries Emergency Measures for the Baltic sea harbour porpoise’