



JOINT NATURE CONSERVATION COMMITTEE, NATURAL RESOURCES WALES AND SCOTTISH NATURAL HERITAGE CONSULTATION: POSSIBLE SPECIAL AREAS OF CONSERVATION (SACs) FOR HARBOUR PORPOISE

A joint response from Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and the Northern Ireland Marine Task Force

April 2016

Introduction

Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and the Northern Ireland Marine Task Force work together to achieve better protection for marine wildlife and effective management of all UK seas. Each is a coalition of environmental voluntary organisations, united by their common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment.

This response is supported by the following members of the Environment Links UK (formerly known as Joint Links):

- ClientEarth
- Environmental Investigation Agency
- Friends of the Earth England
- Greenpeace UK
- Hebridean Whale and Dolphin Trust
- Humane Society International - UK
- International Fund for Animal Welfare
- The Mammal Society
- Marine Conservation Society
- MARINELife
- ORCA
- Royal Society for the Protection of Birds
- Whale and Dolphin Conservation
- The Wildlife Trusts
- WWF- Cymru
- WWF- UK

Environment Links UK welcome the opportunity to respond to the joint consultation between Joint Nature Conservation Committee (JNCC) and Natural Resources Wales (NRW) on the scientific basis for designating five possible SACs (pSACs) for harbour porpoise under the EU Habitats Directive, and the parallel Scottish Natural Heritage (SNH) consultation on a further pSAC, as well as views on the accompanying impact assessments. The Habitats Directive was enacted in 1994; twenty two years ago and so these sites are long overdue in fulfilling the requirements of the Directive. They are also essential to filling one of the key

gaps in the completion of an ecologically coherent network of Marine Protected Areas in UK waters, as well as contributing to the coherence of the OSPAR network of MPAs and Good Environmental Status under the Marine Strategy Framework Directive (MSFD). They should also complement other conservation measures to protect harbour porpoise in UK seas, and we are glad to see further measures and guidance referenced as forthcoming in the consultation documents.

As such, we strongly welcome these sites for English, Welsh, Northern Irish and Scottish waters. We consider them to be scientifically justified and based on best available evidence, and we would like to see them designated at the earliest possible opportunity, supported by clear conservation objectives and effective management at the site level to ensure maintenance of favourable conservation status (FCS).

We are grateful for the hard work of the Interagency Marine Mammal Working Group (IAMMWG) in getting to this stage, and we welcome the clear and peer-reviewed process set out in the supporting technical documentation to identify these sites. We also would like to take this opportunity to recognise the enormous contribution of NGOs to providing the majority of data (both from land and at sea, and over the 18 years between 1994 and 2011) underpinning the site proposals, in some areas up to 90% of data. Collectively, these data provide one of the best available datasets on cetaceans in European waters.

These sites will not be enough on their own, however, and further sites will also be required to reach the necessary sufficiency thresholds set by the Interagency Marine Mammal Working Group (IAMMWG) based on Commission guidance. We note that the same process to identify these six sites being consulted upon also identified further Scottish sites, including the Outer Moray Firth draft SAC and an extension of the North Channel pSAC into Scottish Waters (North Channel and Outer Solway draft SAC). Exclusion of these areas from the process risks the UK not meeting the requirements of the European Commission. Further, we are deeply concerned that a new selection process has been identified by the Scottish Government to take place in 2017 and 2018 that will involve starting from scratch and calling for new submissions of harbour porpoise data and undertaking new data modelling.

Our joint answers to specific consultation questions are provided in [Annex A](#). For detailed comments on individual sites, please see supporting responses from the individual Link organisations covering the relevant pSACs. For any questions about this response, please contact Sarah Stuart-Smith, Marine Policy and Campaigns Manager, Wildlife and Countryside Link, on 0207 820 8600 or Sarah.Stuart-Smith@wcl.org.uk

Privacy and Data Use

We agree to the following:

- *All responses to this consultation, including the names of respondents, will be considered public.*
- *With the exception of contact information and other personal details, consultation responses and the names of respondents will be made publicly available if required.*
- *We will not share any details beyond your response and you or your organisation's name.*

- *Please ensure you do not mention other individuals by name, or include any personal information within the body of your response.*
- *We may also share any responses that we receive with other statutory nature conservation bodies, UK and devolved Governments in order to help ensure a coordinated approach to this consultation.*
- *Any personal information you provide to JNCC will be used and stored in line with the requirements of the Data Protection Act 1998.*

Answers to specific questions – JNCC & NRW Consultation

- **North Anglesey Marine pSAC**
- **West Wales Marine pSAC**
- **Bristol Channel Approaches pSAC**
- **Southern North Sea pSAC**
- **North Channel pSAC**

Q7. Do you support the designation of the possible harbour porpoise SACs included in this consultation?

Environment Links UK strongly support these sites for English, Welsh and Northern Irish waters. The UK has special responsibility for harbour porpoise in European waters with UK waters accounting for a high proportion of the European population of the species. (Evans and Prior, 2012¹) and we have collectively advocated for the need for such sites for many years, in order to protect the most important areas for these unique cetaceans. These sites will also complement other conservation measures to protect harbour porpoise populations, as set out in the UK Conservation Strategy for Harbour Porpoise, which we note will be updated to reflect the advances in technology, protections and policy since its creation in 2000.

Table 1. Designated Harbour Porpoise SACs in 2011 (from Dolman et al, 2013). Further sites have been designated since then.

Country	Grade				total
	A	B	C	D	
Belgium	0	3	1	1	5
Germany	2	3	5	0	10
Denmark	0	3	13	26	42
Spain	0	2	7	3	12
France	1	1	20	16	38
Rep. Ireland	0	0	2	0	2
Netherlands	0	4	0	0	4
Poland	1	3	0	0	4
Portugal	0	0	0	1	1*
Sweden	0	1	5	0	6
UK	0	0	0**	27	27

*Portugal has one ungraded site

**Northern Ireland designated a grade C site for harbour porpoise since 2011

These sites are also needed to protect harbour porpoise on a wider scale across the Greater North Sea and Celtic Seas subregions, given their mobile nature. They add to over 200 sites already designated for this charismatic species across Europe across all conservation grades under the Habitats Directive², and the UK has notably lagged behind other countries in the designation of sites with Grade A or B (reflecting their special importance), as the Table 1 shows.

These sites also fill one of the key gaps in the ecologically coherent network of Marine Protected Areas, which the joint

¹ http://assets.wwf.org.uk/downloads/protecting_the_harbour_porpoise_in_uk_seas_aug2012.pdf

² <http://eunis.eea.europa.eu/species/1510#protected>

UK Governments have committed to³, as well as the UK's contribution to wider OSPAR network coherence. It will also contribute to meeting (the unfortunately unambitious) targets relating to Good Environmental Status for cetaceans under the Marine Strategy Framework Directive (MSFD).

As such, we would like to see them submitted to the Commission and then designated at the earliest possible opportunity. Further, clear and effective management measures must be introduced promptly to ensure that requirements under the Habitats Directive related site integrity tests are met.

We are grateful to the Interagency Marine Mammal Working Group (IAMMWG) for taking these sites forward to public consultation. We welcome the clear and peer-reviewed process used to standardise the Joint Cetacean Protocol dataset for both land based and at sea sightings data, as well as the clear process to identify the sites set out in the IAMMWG paper⁴, based on (but not exclusively relying on) analysis by Heinänen and Skov (2015)⁵.

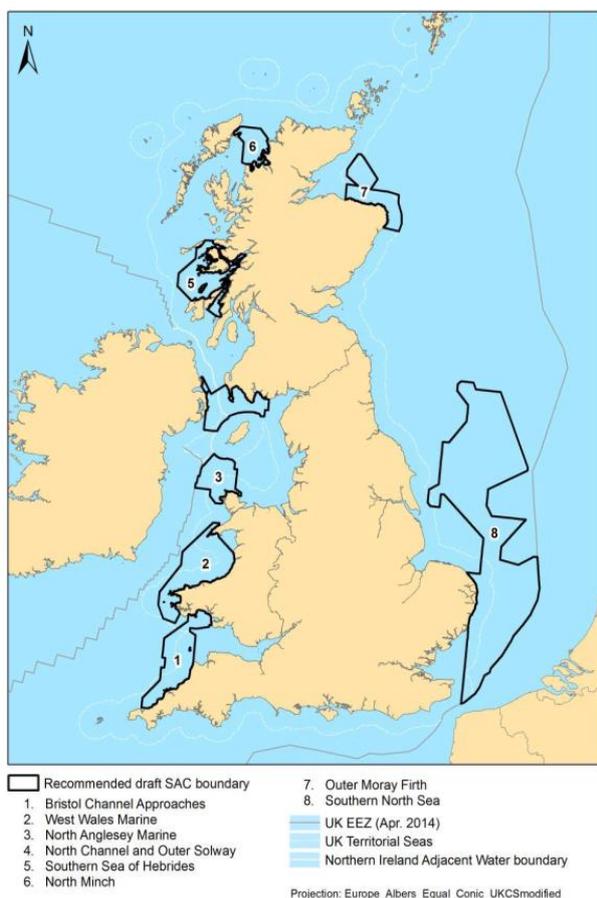


Figure 1. Map of 8 original pSACs proposed by IAMMWG process.

We also wish to highlight the enormous contribution of NGOs and the volunteers that have worked with them in providing the majority of data to support the pSAC proposals. This is a testament to the long-standing interest in the conservation of this species.

These sites will not be enough on their own, however, and we are disappointed to see that the sites identified in Scottish waters (Fig. 1) as part of the same joint agency process have not been taken forward at this stage. We understand that this is due to concerns from Marine Scotland about aspects of the site selection, the majority of which have been in our view adequately addressed by the IAMMWG.

The additional sites in Scottish waters will also be required to reach the minimum recommended sufficiency thresholds of 10-14% habitat and 20% abundance per national portion of each Management Unit, that the Interagency Marine Mammal Working Group (IAMMWG) has set based on Commission feedback. Therefore, while

³ <https://www.gov.uk/government/publications/2010-to-2015-government-policy-marine-environment/2010-to-2015-government-policy-marine-environment#appendix-4-marine-protected-areas>

⁴ Inter-Agency Marine Mammal Working Group, (2015), The use of harbour porpoise sightings data to inform the development of Special Areas of Conservation in UK waters., JNCC Report 565, ISSN 0963 8091

⁵ Heinänen, S. & Skov, H. , (2015), The identification of discrete and persistent areas of relatively high harbour porpoise density in the wider UK marine area, JNCC Report 544, ISSN 0963 8091

we support the designation of the Inner Hebrides and the Minches pSAC as consulted on by Scottish Natural Heritage as fulfilling these sufficiency requirements for the West Scotland Management Unit (given that this larger area was previously identified as an Area of Search in the same IAMMWG analysis), we also note with concern that the Scottish sections of the North Sea and Celtic and Irish Sea Management Units were specifically excluded by Marine Scotland's request to Scottish Natural Heritage.⁶

Exclusion of these areas from the process will fail to provide adequate protection for the species and risks the UK not meeting the requirements of the European Commission. Further, we are deeply concerned that a new selection process has been identified by the Scottish Government to take place in 2017 and 2018 that will involve starting from scratch and calling for new submissions of harbour porpoise data and undertaking new data modelling.

Q11. Do you agree that the analysis and evidence underpinning the proposed sites support and justify their designation?

Environment Links UK agree that the analysis and evidence underpinning the proposed sites support and justify their designation. We welcome the thorough and peer-reviewed nature of both the underlying evidence and predictive modelling, and we are satisfied that the process to select the sites as set out in IAMMWG (2015)² is robust.

We support the approach to link sightings with environmental variables at the time of observation, and subsequently using those variables to predict areas of persistent high density across UK waters, subsequently refined to remove areas of low confidence or high temporal variability. We also support the inclusion of spatial and temporal variables at a time-smoothed level to help explain movements of harbour porpoise distribution that cannot be explained by environmental variables alone, such as for the southward movement of harbour porpoise in the North Sea.

We also emphasise that these pSACs can only be selected on scientific criteria, according to the requirements of the Habitats Directive, and that socio-economic considerations (including views on the impact assessment) can only be considered if deciding between site management options that meet the legal tests.

As part of this, we would like clarity on the way in which shipping as an anthropogenic pressure is included in the predictive modelling by Heinanen and Skov (2015), which was used as a basis for site selection. This seems to contradict the requirement to only consider scientific information on habitats and species when selecting sites. Further, we note that the draft advice on operations for each site contain no indicative management measures for shipping, despite the fact that shipping is used as a proxy for adverse anthropogenic pressure.

The final sites within the English, Northern Irish and Welsh consultation (i.e. within the Celtic and Irish Sea and North Sea Management Units) represent around 13% of the total harbour porpoise habitat and 16% of estimated harbour porpoise populations. Together with the

⁶ <http://www.snh.gov.uk/docs/A1917857.pdf>, p. 5

Inner Hebrides and the Minches pSAC being consulted on by Scottish Natural Heritage and including the existing Skerries and Causeway SAC (Grade C), this totals 12.8% of the available UK habitat and 18.5% of the UK harbour porpoise population. These figures are based on SCANSII survey figures from 2005, collected during the summer season, and assuming uniform density across the UK marine area within 200m depth. These figures are therefore likely to be underestimates of the site-based populations, given that these areas by their very identification have been shown to have higher densities than the waters around them. These figures should be reassessed.

However, even if site populations are underestimated, the revised calculations in the IAMMWG supplementary note⁷ mean that the sites in the consultation are likely to be insufficient to meet the recommended minimum threshold on abundance for the UK as a whole, as set by the SNCBs (of 20% population within the UK's part of each Management Unit) based on Commission guidance. We further note that the same scientific process to identify these five pSACs also created further sites in Scottish waters, as well as extending the North Channel pSAC into Scottish waters. Given the importance of Scottish waters for this species and the need to reach greater sufficiency of the North Sea Management Unit, **further sites in Scottish waters, in addition to being important in their own right, will be essential to complete the list of SACs in UK waters.** We welcome the proposed Inner Hebrides and the Minches pSAC on the west coast of Scotland, but given that the Southern North Sea pSAC does not meet the minimum recommended threshold for abundance for the North Sea on its own, it is disappointing that Marine Scotland specifically did not recommend the addition of further site(s) in the Scottish part of the North Sea Management Unit in its guidance to Scottish Natural Heritage.⁸

We also note with particular concern that the sufficiency of the Celtic and Irish Sea Management Unit in relation to abundance has fallen in JNCC's revised calculations from 23% to 14% (Table 2), well below the minimum 20% threshold. The Bristol Channel Approaches, North Channel and part of the West Wales Marine pSACs have been identified as important in the winter season, not surveyed as part of SCANS II. Further work should be taken in this MU to identify ways of increasing the percentage of the harbour population covered by pSAC designations in both the North Sea and Celtic and Irish Sea Management Units.

⁷ <http://jncc.defra.gov.uk/pdf/SupplementaryAdviceNote20160302.pdf>

⁸ <http://www.snh.gov.uk/docs/A1917857.pdf>, p.5

Table 2. Area and population thresholds of the five pSACs, showing as insufficient for population (below the 20% minimum recommended threshold) Source: IAMMWG 2016 Supplementary Note⁶

Management Unit	Habitat area within pSACs as % of the UK MU _{200m} area	Abundance of harbour porpoises within the pSACs as % of the UK MU _{200m} population
North Sea (NS)	12	18
Celtic and Irish Seas (CIS)	13	14
Total for the CIS & NS combined	13	16
UK total (CIS, NS & WS MUs)	10	15

Q12. Do you have any comments on the socio-economic impact assessment report for any of the sites?

Although views are also being sought on the impact assessment as part of this consultation, **we stress that Article 4 and Annex III of the Habitats Directive are clear that economic impacts cannot be taken into account in the selection of sites as SACs or the delineation of their boundaries.** While we note that impact assessments have been completed for similar SACs in the past, the combined nature of this consultation, seeking views on the scientific justification and the impact assessment through the same process, is unhelpful and risks muddying the distinction between the site identification process (on the basis of the scientific criteria in the Habitats Directive) and the separate process of understanding the consequences of the sites being selected.

We recognise the attempts by the impact assessment to identify the costs and benefits associated with these sites, particularly the need for site monitoring, accurate Habitat Regulations Assessment of plans and projects and the possibility of mitigation to reduce the impacts of bottom-set gillnet fishing. We also support the inclusion of costs associated with site monitoring over the next twenty years, although we are unclear if this is additional investment or within existing survey budgets.

We would like to see the socio-economic benefits of the sites addressed in the summary cost-benefit analysis alongside the costs. This balance is important, given that an attempt to describe and quantify the benefits is made by the consultants in the underlying analysis and given the numbers involved. The impact assessment provides conservative monetary estimates for the sites as a whole, stating that “*The data suggests that the designated sites may have a recreational value to divers and anglers of at least £100,000’s and possibly much higher at larger sites with greater activity*”⁹, with total economic value in “*an order of magnitude of £millions*”¹⁰. This view is based on peer-reviewed literature into the value of other MPA designations and non-use value estimates of marine biodiversity. As such, we can be confident that under the intermediate scenario of limited and targeted mitigation

⁹ ABPmer Ltd. (2015), Developing the Evidence Base for Impact Assessments for Recommended Draft SACs and SPAs, Report to JNCC, November 2015, p. 98

¹⁰ Ibid, p. 99

where appropriate, the benefits of these sites outweigh the costs of designation. These benefits are likely to be focussed on the more accessible sites for diving and angling, with the total economic value to the angling and diving sector alone of designating the West Wales pSAC estimated at between £8 and £16.8m.

We also question the assumption within the impact assessment that the baseline scenario would be unchanged into the future without designation. The stated reason for designating the sites is to maintain harbour porpoise populations at Favourable Conservation Status in the context of increasing pressures, as the headline Q&A document itself states “*the harbour porpoise population is exposed to a range of pressures that are both ubiquitous (e.g. pollution) and patchy (e.g. bycatch) in nature, and protection is therefore required both within protected areas and through wider measures.*”¹¹ We believe therefore that the impact assessment should assume a deteriorating environmental baseline without designation, which further increases the benefits of designation.

We particularly note that most costs under the intermediate (preferred) scenario over and above the costs under the lower-case scenario are associated with applying mitigation measures on bottom-set gillnets and costs to the oil and gas sector from mitigating decommissioning activities (although the latter are considered to be a very small percentage of the oil and gas industry’s turnover). There are zero costs associated with managing commercial fisheries under the intermediate scenario, and no predicted reduction in effort of set nets unless more restrictive measures are taken.

We also question why the predicted costs of technical mitigation for the offshore wind sector are minor compared to the costs of HRA and site monitoring. This, along with references to measuring impacts against the Management Unit population level, rather than at a site level, leads us to believe that management of the site is likely to be light touch. We believe that some form of technical mitigation for noisy activities will realistically be required to keep noise levels below those associated with significant behavioural disturbance and to ensure site integrity is not adversely affected.

Q13. Do you wish to make any further comments not covered by the previous questions?

- **Conservation objectives**

We welcome that the conservation objectives include the need to ensure “to avoid disturbance of the species”, as well as direct injury or mortality both deliberately and indirectly. We also support the objective to maintain supporting habitats and prey species, although we note that the advice on operations documentation omits any suggestion that management is needed to achieve this objective for any site at this time. Future research should prioritise the connection between harbour porpoise presence and supporting habitats, processes and prey species, in order to develop appropriate management to maintain this attribute.

¹¹ <http://jncc.defra.gov.uk/pdf/HarbourPorpoiseQuestionAndAnswer.pdf>, p. 7

Ongoing government and industry funding should be available for surveillance in the future, as part of a wider UK conservation strategy, to ensure adequate site monitoring. Given the NGOs contribution to the scientific evidence used to determine the site boundaries, involvement of NGOs in its development is essential.

The site assessment documents state that further guidance will be produced on the meaning of “significant disturbance” in the context of these conservation objectives. We support this important piece of work and would be keen to be involved in discussions on this subject, although we do not think the setting of arbitrary thresholds on disturbance would be appropriate and stress that decisions on developments will need to be taken on a case by case basis.

- **Use of the Management Unit Population level for site management**

We are concerned about the use of the Management Unit population as a recommended baseline level to assess the impacts of activities within sites, and in turn their impact upon site integrity. Indeed, the conservation objectives for each site themselves state that the “*concept of a ‘site population’ may not be appropriate for this species*”. This is despite population estimates of each site being included. We are also worried by the statement in the advice on operations for each site that “*apparent deterioration of harbour porpoise presence at the site must be contextualised in terms of natural variability in abundance and distribution patterns at the population level*” (i.e. at the Management Unit scale). While we understand the need to account for variability, these aspects collectively make site-based assessment of activities through the HRA process extremely difficult and could lead to a lack of effective management and thus deterioration.

The Management Unit population level is already used in the determination of European Protected Species (EPS) licence decisions and we can support its use as a contextual guide to overall harbour porpoise populations. However, the need to consider impacts at a site level is required to meet the obligations of Article 6(3) (and, by analogy, Article 6(2), given that the European Court requires that the same level of protection is achieved) of the Habitats Directive. Without some form of site-specific population estimate, any assessment of impact on site integrity will be very difficult and the risk will be that site-level adverse impacts over and above what would be acceptable will occur.

As such, we would therefore recommend the development of appropriate limits for key impacts. In particular, these will be needed for underwater noise, ideally on a site-by-site basis according to the estimated population using that site, but as a minimum by introducing a strict threshold in an updated JNCC Underwater Noise Protocol (which currently contains no such limits). On this point, we note that other countries in the North Sea have made attempts to use site-specific estimates to aid SAC management.

- **Assumption of Favourable Conservation Status (FCS)**

We are concerned by the assumption of FCS as it underpins the basis for management and the need to maintain features in this condition rather than restore them. Indeed, the stated reason for the sites is to maintain the populations of harbour porpoise in FCS in the context of predicted increases in pressures from human usage.

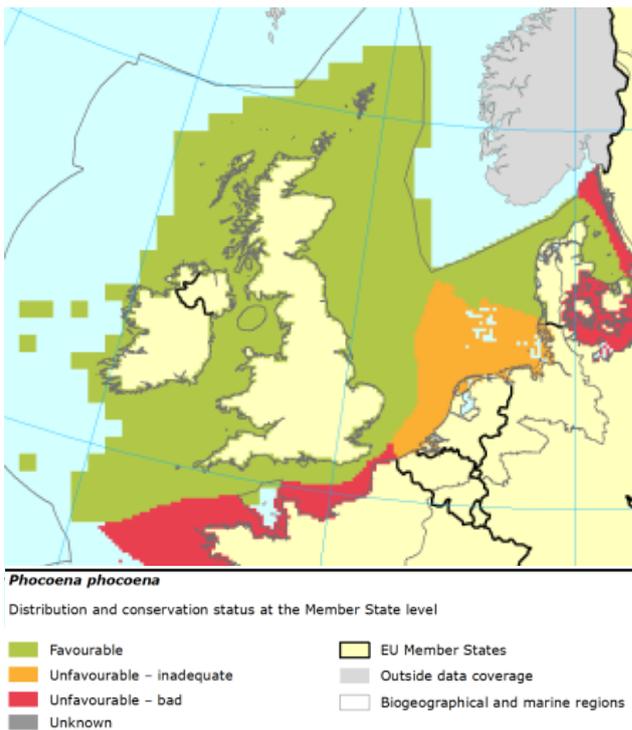


Figure 2. Conservation status of harbour porpoise at the Member State level, based on summary of Article 17 Habitats Directive Reporting 2010-12. Green = Favourable, Orange = Unfavourable - inadequate, Red - unfavourable - bad. Source: EEA¹²

In this context we would refer to previous assessments of harbour porpoises as being in unfavourable condition by the European Environment Agency for the marine Atlantic Region up to 2009 under Article 17 of the Habitats Directive (as set out in Evans and Prior, 2012¹²). Charting Progress 2¹³ also highlighted that harbour porpoise were only in “good condition” for the northern and southern North Sea, and the most recent EEA assessment¹⁴ places harbour porpoises in waters in French, Belgian, Dutch and German waters as being in unfavourable condition due to future prospects (Figure 2). Recent evidence also shows very high mean blubber PCB concentrations, which likely cause population declines and suppress population recovery (Jepson et al., 2016). Since the last report to the Commission, a longer calving interval,

lower pregnancy rate and later maturation and higher rates of reproductive abnormalities have been identified in a necropsy study of 329 female UK- stranded HPs (between 1990–2012), as compared to harbour porpoise populations in much less PCB-polluted regions like Iceland and the Gulf of Maine/Bay of Fundy in the NW Atlantic (Murphy et al., 2015). Direct observations of reproductive failure (foetal death, abortion, dystocia or stillbirth) were observed in 25/127 (19.7%) of necropsied mature female harbour porpoise in the same study.

As such, it would be sensible to assume that harbour porpoise populations are currently close to the threshold of FCS or in danger of falling below FCS in certain areas around the UK. All decisions surrounding management must consider this serious underlying population wide issue.

The value of effective marine planning and Strategic Environmental Assessment (SEA) should also not be forgotten, in order to guide potentially damaging activities away from the most environmentally sensitive areas before the need for project level assessment and potentially expensive mitigation. These processes should place these SACs in the context of the wider marine ecosystems they find themselves in, and the need to achieve and maintain Good Environmental Status as a whole for the relevant subregions under the Marine Strategy Framework Directive.

¹² http://assets.wwf.org.uk/downloads/protecting_the_harbour_porpoise_in_uk_seas_aug2012.pdf

¹³ <http://webarchive.nationalarchives.gov.uk/20141203181034/http://chartingprogress.defra.gov.uk/>

¹⁴ <http://bd.eionet.europa.eu/article17/reports2012/static/factsheets/mammals/phocoena-phocoena.pdf>

Commercial fishing methods and military activities should both be subject to an assessment in line with Article 6 of the Habitats Directive to determine their environmental impact on these pSACs, so as to ensure the appropriate management measures are put in place to protect the site.

Q9. Would you like to make any site specific comments on any of the possible SACs in this consultation?

We support the designation of all proposed pSACs in the consultation. For detailed comments on individual sites, we refer you to the individual responses by each Link organisation as follows:

- Wales Environment Link (for West Wales Marine, North Anglesey Marine and Bristol Channel Approaches pSACs)
- Wildlife and Countryside Link (for Southern North Sea, North Channel and Bristol Channel Approaches pSACs)
- Northern Ireland Marine Task Force (for North Channel pSAC)
- Scottish Environment Link (Inner Hebrides and Minches pSAC)

Answers to specific questions – SNH Consultation

• **The Inner Hebrides and Minches pSAC**

Q. Do you support the designation of the Inner Hebrides and the Minches proposed Special Area of Conservation?

Environment Links UK strongly supports the designation of the Inner Hebrides and the Minches proposed SAC. We support the process described in the document ‘The use of harbour porpoise sightings and acoustic data to inform the development of the Inner Hebrides and the Minches draft Special Area of Conservation on the west coast of Scotland’, which clearly identified this site as a key Area of persistent high density.

As such, we would like to see this site submitted to the European Commission and designated at the earliest opportunity. Further, clear and effective management measures must be introduced promptly to ensure that requirements under the Habitats Directive to ensure maintenance of the integrity of the site are met.

Q. Do you agree that the scientific evidence presented for the Inner Hebrides and the Minches proposed Special Area of Conservation supports and justifies the case for its designation?

Environment Links UK agrees that the analysis and evidence supports site designation. We welcome the thorough and robust process undertaken in making the case for designation. We also want to recognise that NGOs contributed a significant amount of the scientific evidence used to determine the site boundaries.

However, we do not consider that this site alone will be adequate to meet the requirement to meet UK recommended minimum threshold of 20% population within the UK’s part of each

Management Unit as based on European Commission guidance. Given the importance of Scottish waters for this species, and the need to reach greater sufficiency in both the North Sea and Celtic and Irish Sea Management Units, we believe further sites in Scottish waters in these management units should be proposed.

Q. Do you have any comments to make on the proposal to develop a harbour porpoise conservation strategy for Scottish waters?

Environment Links UK strongly supports the proposal to develop a harbour porpoise conservation strategy for UK waters. A UK strategy would be the most appropriate scale. A UK conservation strategy should be mindful of obligations and requirements at all levels of required management, i.e. at the site level (where a Management Scheme should be required), Management Unit level, other requirements at a UK level (including European Protected Species licensing and assessment of Favourable Conservation Status) and, where appropriate, at a European level, including through participation in the Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS).

Q. Do you have any comments on the Advice to Support Management document for the Inner Hebrides and the Minches proposed Special Area of Conservation?

We are pleased to have the opportunity to comment on the draft Conservation objectives. We refer you to the comments in the sub-sections above on Conservation Objectives, Use of the Management Unit Population level for site management and Favourable Conservation Status.

It is not appropriate that Management Options are ‘recommended’ where “an activity-feature interaction exists, [and] there is a reasonable evidence base” and ‘considered’ where “an issue exists, but a lack of evidence upon which to base an assessment of risk means that a specific recommendation for action cannot or need not be made at this point” as stated in the document. The Waddenzee judgment¹⁵ is unequivocal in its application of the precautionary principle to the approval of a plan or project in accordance with Article 6(3) and there must be no reasonable scientific doubt that a plan or project will not have an adverse effect on the integrity of the site, before it can be approved. If such doubt remains as to the absence of such effects, then the plan or project must not be approved.

Commercial fishing methods and military activities should both be subject to an assessment to determine their environmental impact on these pSACs, to ensure the appropriate management measures are put in place to protect the site.

A Management Scheme should be put in place as soon as possible

Q. Do you have any comments on the Business and Regulatory Impact Assessment (BRIA) report for the Inner Hebrides and the Minches proposed Special Area of Conservation?

We fully support the recommendation of the BRIA to designate the site as a Special Area of Conservation.

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002CJ0127:EN:PDF>

We agree with the BRIA that it is only for contextual purposes as the decision to designate can only be on the basis of scientific evidence. Socio-economic considerations can only be considered once designation has taken place and then, Member States must make certain that an activity will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects (Waddenzee, at paras 59 and 61; see also Sweetman¹⁶ at para 40).

We also agree that the benefits of the network may be greater than the sum of the benefits from individual MPAs. Yet our knowledge of these benefits is far from complete and considerable effort and investment are required to monitor and report on these.

Q. Do you wish to submit any documentation in support of your response?

For detailed comments on the Inner Hebrides and the Minches pSAC, we also refer you to the Scottish Environment Link response to the consultation by Scottish Natural Heritage on this pSAC.

¹⁶ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-258/11>