

## **JOINT NATURE CONSERVATION COMMITTEE CONSULTATION: POSSIBLE SPECIAL AREAS OF CONSERVATION (SACs) FOR HARBOUR PORPOISE**

### **Wildlife and Countryside Link online response April 2016**

#### **Q 7. Do you support the designation of the possible harbour porpoise SACs included in this consultation?**

Wildlife and Countryside Link (Link) brings together 46 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following members of Link:

- ClientEarth
- Environmental Investigation Agency
- Friends of the Earth England
- 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 - UK

#### **Wildlife and Countryside Link strongly support the designation of harbour porpoise SACs for English and Northern Irish waters.**

The UK has some of the highest abundances of harbour porpoises in Europe and several of our members have collectively advocated for the need of such sites for many years to protect the most important areas for this cetacean species.

These pSACs will contribute towards an ecologically coherent network of marine protected areas within UK waters, as well as the wider OSPAR network and will complement the over 200 SACs already designated for harbour porpoises across Europe under the Habitats Directive.

We therefore believe that they should be swiftly designated, along with clear conservation objectives underpinned by effective management measures. 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.

We note that the same procedures that identified the 5 sites that are part of this consultation, also identified a further four sites in Scottish waters, two of which are encompassed in the Inner Hebrides and the Minches pSAC. Without the addition of the Scottish part of the North Channel pSAC or a site in the Outer Moray Firth, which were both recommended as part of the same Interagency Marine Mammal Working Group (IAMMWG) process as the one that selected these English and Northern Irish sites, sufficiency targets set out by the IAMMWG will not be met. We understand that Marine Scotland's concerns about the outputs and interpretation of the report that formed the basis for site selection has been dealt with numerous times by the IAMMWG and that there is good enough evidence to support the Scottish sites.

Given the reduction in the percentage of the Celtic and Irish Sea Management Unit UK population of harbour porpoise protected, from 23% to 14% according to the IAMMWG's supplementary note, we would also recommend looking into the possibility of enlarging the sites selected within this Management Unit or identifying a potential further site in South West English waters in the future. 14% is well below the minimum 20% abundance threshold, which even if the site abundances are underestimated, would mean that the UK is insufficient as a whole. However, we do not believe that this should result in a delay of the designation of these initial sites.

**Q 9. Would you like to make any site specific comments on any of the possible SACs in this consultation?**

Yes.

**Q 10. Which possible marine Special Area of Conservation (pSACs) do you wish to comment on?**

**Southern North Sea pSAC**

**Wildlife and Countryside Link strongly supports the designation of the harbour porpoise Southern North Sea SAC**, with its estimated 18,542 supported individuals, but would like some clarity on why the eastern boundary of the site moves inwards in the middle section, leaving a substantial area out of the proposed designation. It is not clear if this happened because of lack of confidence in the model or if there was a different reason.

We are pleased to see that the need to avoid significant disturbance of harbour porpoises from the site, as well as direct injury or mortality both deliberately and indirectly, is included in the conservation objectives. We however would like some clarification on what is meant by 'significant' in reference to the exclusion of porpoises from '*a significant portion of the site for a significant period of time*', as this is what would contravene the conservation objective. We acknowledge that the conservation objectives state that further guidance will be produced on the meaning of 'significant disturbance'. Whilst it would not be appropriate to set specific thresholds, recognising that the impact of activities has to be assessed on a case by case basis, nevertheless further guidance on this will be required.

We disagree with the classification of anthropogenic underwater sound as posing a *medium* risk only, as the current wording suggests that impacts of underwater noise do not include displacement or any cumulative effects. Given the predicted increases in activities producing noise at potentially high levels for this site in the future (such as offshore wind construction, oil and gas decommissioning and military activity) this must be considered. Also, these impacts should be assessed at site level on a case by case basis using effective HRA, not at a Management Unit level, but taking into account cumulative impacts on population(s) within and outside the site boundary.

We are concerned that no management measures have been recommended for shipping, especially as this site has very high shipping activity which has a negative impact on harbour porpoise presence, as highlighted by the use of shipping as a proxy for anthropogenic pressure by Heinänen and Skov (2015), used as the basis for identifying areas of persistent high density.

Commercial fishing methods should be subject to an assessment in line with the requirements of Article 6 of the Habitats Directive to determine their environmental impact on these proposed harbour porpoise SACs to ensure the appropriate management measures are put in place to protect the sites. Harbour porpoise bycatch from fishing vessels needs to be adequately assessed to be able to ensure maintenance of site integrity.

Clearly more data is required on prey species and their importance within the pSAC, in order to adequately meet the conservation objective of this site (and all sites) to maintain supporting habitats and prey species.

### **Bristol Channel Approaches pSAC**

**Wildlife and Countryside Link strongly support the designation of the harbour porpoise Bristol Channel Approaches SAC.**

We would like to see a definition of *relatively low levels of shipping*, as stated for this site in the conservation objectives. The assessment document for the Bristol Channel Approaches states that *lower densities of harbour porpoise were found in areas with high levels of shipping traffic (based on a threshold of approximately 50 ships per day) in the summer*. We question the inclusion of ship traffic in the modelling process, as it contradicts the requirement to only include scientific information (also see under Q 11) and are concerned that no management measures have been proposed for shipping.

Clearly more data is required on prey species and their importance within the pSAC, in order to adequately meet the conservation objective of this site (and all sites) to maintain supporting habitats and prey species.

We do not agree with anthropogenic underwater sound only posing a *medium* risk. The mentioned impacts do not include displacement or any cumulative effects. Also, these impacts should be assessed at site level, not at a Management Unit level, on a case by case basis, as the legal requirement is to avoid adverse effects on the site (also see under Q13).

We believe that mitigation should be required for all set nets within the pSAC. The nature of this mitigation may vary, but could include pingers, gear modifications and spatial or temporal restrictions.

We disagree with the statement that dredging and disposal are considered to pose a low risk and management is unlikely to be required. There is not enough information to make an informed decision on management. Impacts are likely to be localised, but may be problematic in-combination.

We agree that seismic surveys require an EPS license and that management needs to extend to beyond site boundaries for impacts within the site.

We request a detailed review of military activities within the vicinity of the pSAC, including in-combination impacts.

### **North Channel pSAC**

**Wildlife and Countryside Link strongly support the designation of the harbour porpoise North Channel SAC.** We support this site with its estimated 537 supported

individuals, but would like to stress that it is only part of a larger area which extended into Scottish waters originally identified through the scientific site identification process. We believe that the Scottish part should also undergo public consultation as soon as possible, especially in light of the recent changes in sufficiency calculations by JNCC for the Celtic and Irish Sea Management Unit and the connected degrading of the North Channel site to a Grade C for size and density. We note with concern that the Scottish section of the North Channel pSAC site has not been taken forward by the Scottish Government due to concerns about the underlying evidence, and we refer to the response by Scottish Environment Link for detailed comments on this aspect.

We would like to see a review of the use of pingers within this part of the Irish Sea in light of the future Technical Conservation Measures (TCM) package under the reformed Common Fisheries Policy. Currently, as the Advice on Operations document says, boats operating in ICES area VIIa are currently not required to apply pingers under existing EU Regulation 812/2004, and there is little detail in the new TCM proposal from the Commission on how this Regulation will be incorporated. Commercial fishing methods should be subject to an assessment in line with the requirements of Article 6 of the Habitats Directive to determine their environmental impact on these proposed harbour porpoise SACs to ensure the appropriate management measures are put in place to protect the sites. Harbour porpoise bycatch from fishing vessels needs to be adequately assessed to be able to ensure maintenance of site integrity.

We note that this site has high shipping activity with the port of Belfast being within the site which will have a negative impact on harbour porpoise presence. We are therefore concerned that no management measures have been recommended for shipping and would highlight that these areas offer the opportunity to promote quieter forms of shipping.

**Q 11. Do you agree that the analysis and evidence underpinning the proposed sites support and justify their designation?**

We agree that the analysis and evidence underpinning the proposed sites support and justify their designation. We are grateful to the IAMMWG for the thorough approach they have taken to ensure that the best available data have been standardised and made available, and that the process to select the sites has been peer-reviewed. We would like to take this opportunity to highlight the enormous contribution of NGOs in collecting the majority of the 18 years of data in the absence of a government-led systematic survey programme.

We also want to stress that Annex III of the Habitats Directive clearly states that economic impacts cannot be taken into account in the designation of SACs or the delineation of their boundaries. The supporting analysis clearly shows that the three pSACs have been identified to contain persistent high densities of harbour porpoises, based on statistical modelling combining species occurrence data and environmental spatial data. This type of modelling approach is one frequently utilised in the analysis of distribution and density data and we believe that the process is both scientifically robust and makes use of the best available evidence.

However, we would like a clarification on why shipping as an anthropogenic pressure is included in the predictive modelling. Heinänen & Skov (2015)<sup>1</sup> state that the available data show *markedly lower densities with increasing levels of shipping traffic*, deciding on a threshold of 50 ships/day for the North Channel pSAC and Bristol Channel Approaches pSAC, and 80 ships/day for the Southern North Sea pSAC in their modelling. While it may

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<sup>1</sup> 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

be sensible to *consider* human pressures from an early stage, we are of the opinion that this contradicts the requirement to select sites only on scientific criteria per Article 4 and Annex III of the Directive, and may lead to the exclusion of sites that would otherwise have high harbour porpoise densities if shipping was not considered. Notably, the conservation objectives for each site do not include any management measures for shipping. We would like clarity, if this is, because despite the high intensities of shipping, the sites still were identified as high density areas for harbour porpoise and therefore shipping is deemed compatible with site integrity? We note that the actual shipping traffic will be an underestimate and the model therefore inaccurate, as Heinänen & Skov (2015)<sup>2</sup> actually state that *Ship Routes excludes the movements of 'non-routine traffic' such as fishing vessels, military vessels, tugs, dredgers, cruise ships, offshore wind farm construction traffic, recreational craft and anchored vessels.*

We further note that the sites in the consultation meet only the bare minimum habitat threshold and are insufficient to meet the recommended abundance threshold set by the SNCBs (of 10-14% habitat and 20% population within the UK's part of each Management Unit), as they only represent around 10% of the total harbour porpoise habitat and 15% of estimated harbour porpoise populations in UK waters according to JNCC's revised figures. In addition to being important in their own right, further sites in Scottish waters will be required to complete the list of SACs in UK waters.

We note, therefore, that the recently published consultation by the Scottish Government on harbour porpoise pSACs only includes one larger site off the West of Scotland, and omits the North Channel and Outer Moray Firth sites identified by the IAMMWG process. Whilst this will reach the sufficiency threshold for the West Scotland Management Unit, it means that the Celtic & Irish Sea and North Sea Management Unit will still not reach sufficiency. We refer to the response by Scottish Environment Link on the need to include these sites for both geographic range and to meet the minimum sufficiency thresholds.

**Q 12. Do you have any comments on the socio-economic impact assessment report for any of the sites?**

As previously stated, Annex III of the Habitats Directive clearly states that economic impacts cannot be taken into account in the designation of SACs or the delineation of their boundaries. Views on the impact assessment cannot influence the designation process and should be sought in a separate consultation after the consultation on possible sites.

While we recognise that the inclusion of an impact assessment is normal procedure for proposals across Government, we do not agree with the integrated way in which consultation feedback is being sought on the impact assessment in such an integrated fashion with the more fundamental question of whether the scientific case for the sites has been made. We believe that the impact assessment should have been presented for information only, given the main purpose of the consultation.

Notwithstanding this, we make several points on the impact assessment. Firstly, we would like to see inclusion of socio-economic benefits of the sites in the cost-benefit analysis, given that the ABPmer/Eftec<sup>2</sup> report attempts to describe and quantify them by providing monetary estimates for all the sites on its pages 98 and 99: *'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'*, with total economic value in *'an order of magnitude of £millions'*.

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<sup>2</sup> ABPmer/Eftec. 2015. Developing the evidence base for Impact Assessments for recommended dSACs and dSPAs. Report prepared for the Joint Nature Conservation Committee. Report 2462. August 2015.

We 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 for boats under 12m in length, as well as costs to the oil and gas sector from decommissioning activities. The impact assessment suggests the use of pingers on nets of vessels <12m in length (p.11) but this is not a requirement by the EU (e.g. through Regulation 812/2004) and due to lack of knowledge related to the number of possibly affected vessels and the lengths of nets used, there is a high degree of uncertainty and speculation in the assessment of the socio-economic impacts. Regulation 812/2004 is also being repealed in the near future and being integrated into the new Technical Conservation Measures Package as part of the reformed Common Fisheries Policy.

Such information needs to be collected before impact assessments are made to give a more accurate picture, and a precautionary approach should be taken with respect to management of fisheries inside these pSACs. However, we welcome the statement that further knowledge is required on the potential displacement impact on harbour porpoise from areas of these sites if implementation of pinger use on such a large scale is used and agree that further non-technical fisheries management measures should be considered. No costs are associated with commercial fisheries management under the intermediate scenario, and no predicted reduction in effort of set nets unless more restrictive measures are taken.

Finally, we note that the predicted costs of technical mitigation for the offshore wind sector are very minor compared to the costs to the sector of HRA and site monitoring for the Southern North Sea pSAC. This, along with references to measuring impacts against the MU population level, rather than at the site population level, leads us to believe that management of the noise impacts within this site is likely to be light-touch in nature at best.

We recognise that these pSACs are coming forward at the same time as, or after in some cases, planning decisions are being made on important offshore wind developments in the North Sea, and that certainty on the implications of these sites is needed. However, given the need to achieve no significant disturbance under the conservation objectives to maintain or achieve Favourable Conservation Status, and the need to ensure site integrity is maintained as per Article 6(3) of the Habitats Directive, we believe that unless clear alternatives to piling design and schedule are made in the light of these sites, some form of technical mitigation will be realistically required to ensure that offshore wind can take place inside these sites.

**Q 13. Do you wish to make any further comments not covered by the previous questions?**

*Assumption of Favourable Conservation Status (FCS)*

There is an overriding assumption within the consultation that the harbour porpoise is currently in FCS. This means that management measures will be designed to maintain features in this condition rather than restore them, in the context of predicted increasing anthropogenic pressures/threats.

Previous assessments by the European Environment Agency (EEA) for the marine Atlantic Region up to 2009 of harbour porpoises classified them as being in unfavourable condition, Charting Progress 2<sup>3</sup> highlighted that harbour porpoise were only in “good condition” for the northern and southern North Sea, and the most recent EEA assessment<sup>4</sup> places harbour

<sup>3</sup> <http://webarchive.nationalarchives.gov.uk/20141203181034/http://chartingprogress.defra.gov.uk/>

<sup>4</sup> <http://bd.eionet.europa.eu/article17/reports2012/static/factsheets/mammals/phocoena-phocoena.pdf>

porpoises in waters along the Channel and in Belgian, Dutch and German waters as being unfavourable due to future prospects. In addition, the recent evidence about the link between reproductive failure of UK harbour porpoises and chemical pollutants presented by Murphy et al. (2015)<sup>5</sup> and Jepson et al. (2016)<sup>6</sup>, point towards an unfavourable conservation status for harbour porpoise in UK waters. 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 harbour porpoises 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 north-west Atlantic (Murphy et al., 2015). Direct observations of reproductive failure (foetal death, abortion, dystocia or stillbirth) were observed in 19.7% of necropsied mature female harbour porpoises in the same study.

In light of the predicted increased pressures, more ambitious management is needed just to maintain populations, let alone increase them, especially in the light of predicted increases in human pressure over the next twenty years and beyond. All decisions surrounding management must consider this serious underlying population wide issue. Therefore, we suggest that a more precautionary conclusion of a status of 'unfavourable – inadequate' for harbour porpoises in the marine Atlantic region would be more appropriate.

#### Conservation objectives

Whilst we are pleased to see that disturbance is included in the listed impacts, as well as direct injury or mortality, both deliberate and indirect, we believe that the conservation objectives are very general in nature. We believe that a requirement for site monitoring plans should be included to ensure that effort aimed at reducing such pressures is effective. These plans should be combined with monitoring programmes for the EU Marine Strategy Framework Directive, for which marine mammals, including harbour porpoise are a key group.

We also support the objective to maintain supporting habitats and prey species, although we note that no advice on operations suggests any management is needed to address this objective at this stage for any site, and no further research is highlighted to suggest that this conservation objective will be met in future. We seek clarity on this in future discussions on site management, in which we would expect to be involved.

#### Management Units

We are concerned to see multiple references in the consultation documents to the '*wider harbour porpoise population*' and '*favourable conservation status of the management unit*', including the statement '*It is ... not appropriate to use site population estimates in any assessments of effects of plans or projects (i.e. Habitats regulation Assessments), as these need to take into consideration population estimates at the MU level, to account for daily and seasonal movements of the animals*'. Commission guidance<sup>7</sup> states that 'site integrity' has to refer to the site, rather than the wider population. This population level approach is not adopted in HRAs of designated sites for other mobile marine species, such as seals and species protected by Special Protection Areas<sup>8</sup>. The need to consider impacts at a site level

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<sup>5</sup> Murphy S, Barber JL, Learmonth JA, Read FL, Deaville R, Perkins MW, et al. 2015. Reproductive Failure in UK Harbour Porpoises *Phocoena phocoena*: Legacy of Pollutant Exposure? PLoS ONE 10(7): e0131085. doi:10.1371/journal.pone.0131085

<sup>6</sup> <http://www.nature.com/articles/srep18573>

<sup>7</sup> European Commission, 2000. Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC. European Commission, pp. 73.

<sup>8</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=0f7c87a6-8980-69d2-b500-ff0000d74aa7>

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. We do not believe that the requirements of the Commission for site based protection would adequately be met, if subsequent HRAs for those sites were based on the reference population for the species, rather than the number of individuals supported by the site.

As site specific population estimates are included for each site, we do not agree with statements such as the '*concept of a site population may not be appropriate for this species*' and that '*there is not an exact number of animals within the site above which the species is viable or below which it will become unviable*'.