

Our Ref: VAR/3597/DR

15 October 2015

George Eustice MP
DEFRA
Nobel House
17 Smith Square
London
SW1P 3JR

Dear Minister,

Harbour Porpoise

We recognise and indeed support the need for marine protected areas where they can demonstrate a tangible benefit to the conservation of threatened, rare and vulnerable species or habitats. The emerging proposals to designate large areas around the UK for the protection of harbour porpoise do not, however, meet this purpose.

These plans come as a surprise to our industry as Defra is on record stating that alternative approaches to MPAs are likely to be more effective for the conservation of widely dispersed and highly mobile species. Only recently, Defra's response to the Fitness Check of the Nature Directives of the European Commission noted the following:

Experience gained from implementation has also indicated instances where the approach taken by the Directives may not be the most effective way of achieving FCS. For example the benefit of designating sites to protect highly mobile species (e.g. harbour porpoise).

It would appear to us, therefore, that your department's change of stance comes not from a science-led evidence-based conclusion that such areas would add anything to the suite of conservation measures already in place or proposed for our seas, but from a perception that there is a legal obligation on the UK to designate. We think this is a mistaken view and the annex to this letter details our specific legal opinion that identifies a more appropriate course of action in accordance with the provisions of the Habitats Directive.

Based on the available evidence, there is no reason why harbour porpoise should continue to be included on Annex II of the Habitats Directive as the species has clearly maintained favourable status over two consecutive

reporting cycles under Article 17 without designation of an SAC. The evidence suggests that harbour porpoise cannot be regarded as endangered, rare or endemic and requiring particular attention under Article 1(g) of the Habitats Directive; nor can it be regarded as vulnerable, on the basis that it is not likely to move into the endangered category in the near future. There is no evidence to suggest that the conservation status of harbour porpoise is likely to change for the foreseeable future. Its range, habitat and future prospects remain favourable.

Defra has in its response to the Fitness Check made a convincing and coherent case for the harbour porpoise in UK waters to be removed from Annex II, and for protection to be continued under Article 12 on the basis that the harbour porpoise is an Annex IV species. This seems to us a proportionate and reasoned approach that is in accordance with the Habitats Directive and we are baffled that Defra is departing from it and proposing to designate a suite of Porpoise SACs.

Such an approach would also appear to be in line with the government's policy to both reduce unnecessary regulatory burden, whilst also securing more appropriate terms as the basis for continued membership of the UK within the European Union. Pursuing designations for harbour porpoise would incur an unknown and indefinite cost burden to the UK, would not provide any further benefit to their conservation, and could lead to the introduction of inappropriate and unnecessary measures that impact upon marine livelihoods.

Yours sincerely,

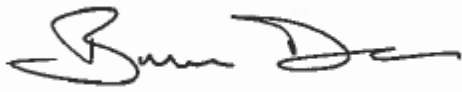


Stephen Lockwood
Chairman
MPA Fishing Coalition



Jim Evans
Chairman / Director
Welsh Fisherman's Association

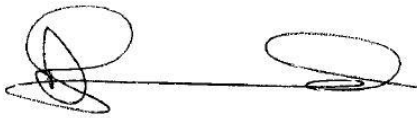




Barrie Deas
Chief Executive
National Federation of Fishermen's Organisations



Bertie Armstrong
Chief Executive
Scottish Fishermen's Federation



Shellfish
Association of Great Britain

David Jarrad
Director
Shellfish Association of Great Britain



The Northern Ireland Fish Producers' Organisation Limited

Dick James
Chief Executive
Northern Ireland Fish Producers' Organisation Limited

Annex

- The EU Habitats Directive imposes duties upon member states with regard to the protection of certain natural habitats, as are listed in Annex I to the Directive and the protection of species of a community interest as listed in Annex II and which are to be found within the territory referred to in Article 2.
- The Directive goes on to set out a procedure for member states to note and identify habitats and species requiring protection and to notify those to the Commission and thereafter for the designation of appropriate Special Areas of Conservation to protect those habitats and species.
- Article 11 requires that member states put in place a monitoring regime in order to maintain surveillance of the conservation status of the natural habitats and species previously referred to
- Article 1(g) states that a species of community interest means a species within the territory defined in Article 2 (1) which is either endangered, vulnerable, rare or endemic and requiring particular attention by reason of the specific nature of their habitat. A species of community interest may be listed in Annex II and/or in Annex IV or V. The Harbour Porpoise is on Annex II and is also on Annex IV.
- The aim of the Directive is to identify species which are within the categories and maintain or restore them at "favourable conservation status" by site designation under the provisions for Annex II species or by protecting and monitoring under the provisions for Annex IV species. Favourable conservation status is defined in Article 1(i) as being when:-
 - population dynamics data of the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitats, and
 - the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
 - there is and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.
- However, under the reporting requirements of Article 17, both the second and third UK reports on conservation status has shown that in all respects relating to its population size, range and habitat quality requirements Harbour Porpoise is maintaining favourable conservation status as defined in Article 1(i).

- Furthermore, its status has also been assessed as favourable at the biogeographic/marine region level by the European Environment Agency.
- Therefore, given that Harbour Porpoise no longer qualifies as a species of community interest under Article 1 (g) it should no longer be included on the Annex II list as either endangered, vulnerable, rare or endemic and requiring particular attention by reason of the specific nature of its habitat.
- In order to delist the species from Annex II the provisions of Article 19 should be followed to allow an amendment to Annex II by the Council acting on qualified majority voting on a proposal from the Commission.
- This procedure would correctly follow the logic contained within the provisions of the Habitats Directive. It would allow the UK to comply with its obligations under the Directive and remove any basis for an infraction challenge under Article 258 of the Treaty on the Functioning of the European Union.