



# Sea Bass Fishing and Dolphins

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This note describes the problem of dolphin by-catch in the sea bass fishery. The Defra website has a useful, frequently updated, page on Fishing: whales and dolphins (<http://www.defra.gov.uk/wildlife-pets/wildlife/protect/whales/index.htm>). Another note covers sea bass fishing generally, [Sea Bass Fishing](#) (SN/SC/745).

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# 1 Cetacean (dolphin and porpoise) by-catch

The UK has placed observers on fishing vessels to see if there is a problem with cetacean by-catch, where dolphins or porpoises are tangled in nets and drown. Pair trawling in the winter sea bass fishery is the first area in which a problem has been clearly identified.<sup>1</sup> In March 2003, a newspaper explained:

Pair-trawling is where two powerful trawlers pull a net up to two thirds of a mile long between them for hours on end in the hope of intercepting a shoal of bass returning from their spawning grounds...It is surprising that such a strong swimmer as a dolphin should find itself trapped by a net being towed at a maximum of three knots. Observers who have been out with pair-trawlers say that the dolphins swim with the shoals, unseen by the fishermen, until the nets are hauled. This movement calls them like a dinner bell. The dolphins begin feeding on the crowded bass until they rise to get air and find they are trapped.<sup>2</sup>

In November 2003, Defra reported on promising trials of new equipment called separator grids, to reduce the by-catches<sup>3</sup> However, they turned out to be disappointing. More detail was published in the report by the Environment, Food and Rural Affairs Select Committee.<sup>4</sup> The Government Response was published in April 2004.<sup>5</sup> Defra's website has a page on Conservation: Cetaceans, including information about the by-catch in the bass fishery.<sup>6</sup>

A debate on cetacean by-catch in April 2004 stressed the key role of bass fishing. Candy Atherton explained:

Let me turn to the pelagic trawls, which are implicated in the deaths of so many common dolphins. A typical pelagic pair trawl involves a stretch net large enough to cover the Sydney opera house pulled between two boats. The largest could hold 10 jumbo jets. There is clear evidence that the sea bass pelagic trawl is the primary cause of death of common dolphins as a result of by-catch. Trials of separator grids have been encouraging and we commended the Department for Environment, Food and Rural Affairs for funding those trials over several seasons of the sea bass fishery.<sup>7</sup> However, if by-catch in the sea bass fishery is to be addressed effectively, action must be taken at European level. The United Kingdom Government are prevented by the common fisheries policy from imposing restrictions on other UK-registered vessels that are more stringent than any restrictions already imposed by the European Commission.

It is extraordinary that we do not know the size of the sea bass fleet of different countries. The National Federation of Fishermen's Organisations estimated that there are 60 French vessels working in 30 pairs, fewer than 10 Dutch vessels, which are large and do not work in pairs, and between two and six Scottish pair teams...I am trying to make the point that there is no real knowledge of the numbers and the Committee found that extraordinary. We felt that there should be more information, which should come not just from the National Federation of Fishermen's Organisations

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<sup>1</sup> DEFRA News Release 29/03, *Morley Pushes for EU Action to protect Cetaceans*, 23 January 2003

<sup>2</sup> "The Fatal Catch", *Telegraph Magazine*, 22 March 2003

<sup>3</sup> HC Deb 6 November 2003 c736W

<sup>4</sup> EFRA Committee, *Caught in the net: by-catch of dolphins and porpoises off the UK coast*, January 2004 HC 88 2003-4

<sup>5</sup> EFRA Committee, *Caught in the net: by-catch of dolphins and porpoises off the UK coast Government Reply to the Committee's Report*, April 2004, HC 540 2003-4

<sup>6</sup> Defra, [Conservation: Cetaceans](#)

<sup>7</sup> A separator grid or exclusion grid is a device that is fitted inside a pelagic trawl net, with the aim of mitigating cetacean by-catch

but should be known at EU level. How can we tackle the problem if we do not know the size of it?...

The Select Committee recommended that the Government should aim to reduce by-catch of the common dolphin in the pelagic trawl fishery for sea bass to within 1.7 per cent. by the end of two fishing seasons from now. The Committee and I have been criticised for that, but we took the view that the Department should be allowed to pursue its plans and to work at European level for the reasons that I have described. We urged the Government to work towards convincing other member states to adopt mandatory use of grids in the sea bass fishery if the current separator trials proved successful. We recommended that, if other member states did not agree to deploy separator grids or take other effective mitigating action to reduce the cetacean by-catch, the Government should make a formal request to the European Commission to impose emergency measures in the form of closure of the pelagic trawl fishery for sea bass.

There is some evidence of by-catch in pelagic trawl fisheries other than sea bass, but insufficient monitoring has been carried out, so it is impossible to know the full extent.

**Matthew Taylor (Truro and St. Austell) (LD):** On separator grids, I am sure that the hon. Lady is aware that fishermen in my part of the country are saying that the grids are misplaced and not effective. The dolphins that escape through them show clear signs of severe damage. Photographs taken of the recent massing of porpoises off Cornwall show clear evidence of substantial damage to a large number of dolphins. They were not killed by the nets but were damaged by them, including, for example, a dolphin with its entire dorsal fin ripped off. Some people argue that the majority of dolphins show signs of damage. I hope that the hon. Lady will accept that the use of the grids is by no means proven to be effective in a fishery that risks destroying the bass stocks as well as the dolphins.

**Ms Atherton :** The hon. Gentleman makes an interesting point. The fishermen to whom I have spoken are considering all sorts of measures to try to solve the problem. Many of them do not want a situation in which both the fish stocks and the dolphin stocks are depleted. I accept that more work has to be done.

We recommend that the Government place much greater emphasis on moving quickly to set up long-term observer monitoring programmes for other pelagic trawl fisheries that take place off south-west England in the winter months, such as those for mackerel, horse mackerel and tuna. The fact is that fishermen, dolphins and porpoises all hunt the same prey—fish—and that is why these tragedies occur.

I am concerned that the EU regulation does not ban certain practices or make any recommendation on the use of devices to mitigate cetacean by-catch in the pelagic trawl fishery, but instead only recommends that observers monitor the by-catch until the review of the regulation in 2008. I believe that the public will be astonished by that. Not even to agree that separator grids should be used is quite wrong and leads me to conclude that we shall have to explore different solutions.<sup>8</sup>

She welcomed the use of pingers on nets so as to be registered on dolphins' echo location systems, but regretted that the EC proposals did not go further:

The draft regulation has been considerably watered down in its final form. As I have said, pingers will be mandatory only on vessels of more than 12 m using fixed-net gear

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<sup>8</sup> HC Deb 1 April 2004 cc501-4WH

in the three seas, and fisheries using pingers will not be subject to the on-board observer scheme. The date for implementing pingers has changed from 2005 to 2007. That wait-and-see approach will see thousands more porpoises and dolphins and possibly whole populations dying needlessly. It is disappointing to say the least that, in an area where concerted action is needed at EU level, the EU has singularly failed to deliver an effective solution.<sup>9</sup>

A press notice on 23 March 2004 announced EU-wide measures to reduce cetacean by-catch. Although there is no specific reference to bass fishing, the measures are relevant to that fishery:

Agreement on a new Council regulation to reduce the level of cetacean by-catch, (the injury to and death of dolphins and porpoises linked to fishing activities), was reached by Member States at the Agriculture and Fisheries Council today in Brussels. The regulation sets out the following action to be taken by Member States:

- Compulsory acoustic devices ("pingers") required on fishing vessels over 15 metres using fixed gear in the North Sea, Channel and Celtic Sea;
- The use of observers on certain sectors of the fishing fleet to improve knowledge of where by-catch occurs; this data will inform the review of the Regulation;
- The setting up of pilot projects to monitor the impact of fisheries where pingers are used; pilot projects will also be required to monitor the by-catch from under 15 metre vessels; these pilot projects will need to meet strict quality standards;
- In 2008 all the data gathered by Member States including information from the pilot projects on the level of cetacean by-catch for the under 15 metre fleet, will be considered in a review of the Regulation;

Ben Bradshaw, the UK Fisheries Minister said:

"I welcome the efforts the Presidency and Commission have made to reach agreement on a way forward to reduce the level of cetacean by-catch. Today's agreement is an important step by the European Union as a whole to follow the UK's lead. The UK has been seeking Community action to address this problem for some time. The UK would have liked the Regulation to go further. We argued, for example, against an exemption for under 15 metre vessels to fit acoustic devices "pingers" to fishing nets, but a majority of other States supported the exemption. Pilot projects will provide the means to reassess this in the future. Taken as a whole, the package is an important advance in the protection of small cetaceans, with a commitment to observers and a review after two years, we were pleased overall with the outcome."<sup>10</sup>

## **2 Defra's closure of the bass fishery in 2004**

On 22 July 2004, Defra Minister, Ben Bradshaw announced emergency action to close a bass fishery to protect dolphins after research had shown severe dolphin loss.<sup>11</sup> The European Commission refused to close the fishery. Although the UK can prevent UK fishermen from fishing, fishermen from other EU countries have historic rights between six and twelve miles from the shore. Defra has no control over them. According to Defra, most of the fishermen catching sea bass are French and the French Government objected to the proposed closure.

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<sup>9</sup> HC Deb 1 April 2004 c504WH

<sup>10</sup> Defra Press Notice 103/04, *EC agreement reached to reduce cetacean by-catch "an important step forward"*, Ben Bradshaw, 23 March 2004

<sup>11</sup> Defra Press Notice 292/04, *Minister seeks closure of fishery to protect dolphins*, 22 July 2004

On 28 September 2004, Defra announced the closure of the UK bass fishery up to 12 miles from the coast, along with licensing requirements for UK vessels between 12 and 200 miles from the coast:

Ben Bradshaw, Fisheries Minister, today announced that new measures are being drawn up to help reduce death and injury to dolphins (cetaceans) caused by pair trawling techniques used in the fisheries in the South West of England. These measures include banning bass pair trawling out to 12 miles and introducing a licensing system for UK vessels within the 12 to 200 miles zone. Ben Bradshaw said:

"I have always maintained that we must take firm action to reduce injury and death to dolphins from this fishery. The UK Government has been at the forefront of the campaign within Europe to encourage Member States to act jointly to protect the wider marine environment. Indeed, I am grateful for the European Commission's recent commitment to find the means to reduce dolphin bycatch deaths. The UK Government is actively pursuing their ideas to take forward the issue with other Member States. But the UK Government wants to take account of its scientific evidence based data now by using a more radical but practical approach to marine environment protection.

Ben Bradshaw continued:

"Banning bass pair trawling by UK vessels within 12 miles builds on the European Council regulation the UK Government was instrumental in achieving in March 2004 to protect dolphins and porpoises. The UK will continue to press for future action on a EU wide basis."

Notes to Editors:

1. EU legislation requires us to notify the European Commission if unilateral action within our waters might affect other Member States. France and Belgium have theoretical rights to fish for demersal species in UK territorial waters from 6 to 12 miles, however, there is no evidence that either country prosecutes the winter bass fishery.

2. Licensing would be limited only to those vessels which can prove a long term involvement in the fishery. Licensed vessels will be required to employ mitigation devices and to carry scientific observers.<sup>12</sup>

### **3 The European Commission refuses to widen the closure 2005**

On 10 January 2005, the Minister, Ben Bradshaw, announced that the dolphin population was believed to be larger than had previously been estimated:

When our request for an emergency closure was put to the Commission it was understood that the relevant population of common dolphins was approximately 120,000. More recent abundance estimates show however that the population is several times this figure. Although dolphin bycatch may not now be considered a significant threat to the conservation of the species, I intend to continue with bycatch reduction measures to comply with commitments to minimise bycatch and to reduce it to its lowest level.<sup>13</sup>

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<sup>12</sup> Defra Press Release 377/04, *New action by UK to reduce dolphin by-catch in waters of SW coast of England*, 27 September 2004

<sup>13</sup> HC Deb 10 January 2005 c161W

In March 2005, the Minister explained the position on observers and on possible closure at an EU level:

**Ms Atherton:** To ask the Secretary of State for Environment, Food and Rural Affairs (1) what plans she has to monitor the pair trawl sea bass fishery in the south west; (2) what recent reports she has received from observers in the south-west approaches monitoring the pair trawl sea bass fishery.

**Mr. Bradshaw:** As in previous years, Defra-funded observers have been placed on UK vessels pair trawling for bass in the south-west. This work is now undertaken to comply with the EU bycatch regulation, Council Regulation (EC) No. 812/2004, and so is now a requirement for other member states with vessels in this fishery. The pair trawl fishery for bass usually takes place between November/December and April. Results from the observations will be made available after the fishing season has closed, allowing time for collation and analysis of the data.

**Ms Atherton:** To ask the Secretary of State for Environment, Food and Rural Affairs what recent discussions she has had with the European Commission regarding the pair trawl sea bass fishery.

**Mr. Bradshaw:** On 27 January the UK made a request to the European Commission for the UK prohibition on pair trawling within 12 miles of the south-west coast to be extended to vessels from other member states with historic rights of access to the six to 12 mile zone. On 21 February the Commission rejected the UK request. I am currently considering the Commission's response and our next steps, building on the Commission's commitment to find an effective solution to the bycatch problem in the south-west.<sup>14</sup>

#### 4 The European Commission position

The Green MEP Caroline Lucas wrote to EU Fisheries Commissioner Joe Borg complaining that he had not supported UK attempts to close the fishery to foreign vessels as well as to UK ones. His reply, in June 2006, explained the Commission position:

The Commission is ready to take action and support any measure aimed at providing additional protection to cetaceans, where there is a sound basis to do so; where such measure is proportionate to the objective pursued; and where a measure at Community level would contribute added value as compared with national measures.

As far as the UK 2004 request for emergency measures under Article 7 of Regulation 2371/2002 was concerned, the Commission considered, on the basis of data available, that it could not be argued that the bass pair trawl fishery poses an immediate risk of cetacean population decline in the short term which is of such a serious and non-reversible nature as to justify the adoption of emergency, and possibly disproportionate or discriminatory measures. Scientists have advised that other fisheries also catch dolphins and that a ban on pelagic pair trawling for bass would be an "arbitrary measure, unlikely to achieve the desired goal".

Similarly the Commission did not accept the request by the United Kingdom in February 2005 under Article 9 of Regulation (EC) No 2371/2002 to extend the closure of the pair trawl fishery for bass within 12 miles of the south coast of England to vessels of other Member States, on the basis in particular that this would be likely to simply result in a redistribution of fishing effort into adjacent areas, without necessarily

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<sup>14</sup> HC Deb 10 March 2005 cc1930-1W

reducing the by-catch of common dolphins. I would recall that in both cases this position was based on scientific advice available from the International Council for the Exploitation of the Sea (ICES).<sup>15</sup>

## 5 The dismissal of Greenpeace's Judicial Review, October 2005

On 10 October 2005, the High Court dismissed Greenpeace's judicial review:

Judgment was handed down today in the High Court in the judicial review claim by Greenpeace against Defra. The judgement was made in relation to a prohibition introduced by Defra to ban pair trawling for bass in the South West to reduce dolphin deaths. The judgment dismissed the Greenpeace claim in full...

### NOTES TO EDITORS

1. The Greenpeace claim related to the introduction by Defra in December 2004 of a prohibition within 12 miles of the SW coast on the use of pair trawls to catch bass. This was a fishery which had been observed through UK research to have a bycatch of common dolphins.

2. Greenpeace were seeking through the case to overturn this 12 mile closure as it claimed that the closure would cause a displacement of effort outside 12 miles and increase bycatch. Since the 12 mile closure was introduced, bycatch in the pair trawl fishery reduced from 429 deaths in 2003/04 to around 140 in the latest season, 2004/05.

3. At the beginning of 2005, Defra introduced a prohibition on pelagic pair trawling for bass within 12 miles of the South West coast (via Statutory Instrument 2004 No 3397) to reduce the common dolphin bycatch that had been observed in this fishery. The pair trawl fishery for bass takes place in the Winter and Spring. The UK has 2 pairs of vessels in the fishery; France around 20 pairs.

4. Greenpeace have been pursuing a judicial review claim against the Department, seeking the following:

- (i) a declaration that the 12-mile prohibition order on pair trawling is unlawful, and
- (ii) a quashing order in respect of the 12-mile prohibition order, and
- (iii) a declaration that the Secretary of State is in breach of obligations under Articles 2(2) and 12(4) of the Habitats Directive (iv) and a mandatory order that further measures are taken by the Secretary of State to protect the conservation status of cetaceans

5. Greenpeace withdrew the last two elements of their claim before the case reached court, so the judicial review hearing concern itself solely with the 12 mile prohibition order. If Greenpeace had been successful in their claim, the 12 mile prohibition would have fallen.<sup>16</sup>

Greenpeace then appealed against that verdict, but their appeal was rejected on 1 November 2005.<sup>17</sup>

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<sup>15</sup> [http://www.carolinelucasmep.org.uk/wp-content/uploads/file/Borg\\_Dolphins\\_Ans\\_Jun06.pdf](http://www.carolinelucasmep.org.uk/wp-content/uploads/file/Borg_Dolphins_Ans_Jun06.pdf)

<sup>16</sup> Defra Press Notice, *Dolphin bycatch: Greenpeace judicial review claim against the department dismissed by Court*, 10 October 2005

<sup>17</sup> Defra News Release, *Dolphin by-catch: Greenpeace case against the Department rejected for second time*, 1 November 2005

## 6 How effective is the 12 mile ban?

A PQ in March 2006 suggested that the 12 mile ban was having a notable effect in reducing dolphin by-catch:

**Mr. Bradshaw** [*holding answer 11 November 2005*]: (...) [C]ommon dolphin by-catch in this fishery has reduced from 429 animals in the 2003–04 season to 139 in the 2004–05 season.

In addition, we have in place observer schemes to monitor by-catch in other fisheries which may be responsible for by-catch both inside and outside 12 miles. The first report from this work also being conducted on our behalf by SMRU is due in spring 2006.

Strandings data is obtained under the Defra-funded Cetacean and Turtle Strandings Scheme, carried out by the Natural History Museum in partnership with the Institute of Zoology and Scottish Agricultural College. Cetacean strandings have shown a steep decline this year in the area covered by the 12 mile pair trawl prohibition. Between 1 January and 18 July 2005, there were 68 common dolphin strandings in Cornwall, Devon and Dorset compared with 178 for the same period in 2004.<sup>18</sup>

A PQ in June 2006 puts the dolphin by-catch in context, but also suggests that the 2003-4 figure of 429 was exceptionally high, thus reducing the extent of the improvement:

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker)**: There is no complete abundance estimate of common dolphin populations in the Atlantic near the UK, but advice from the International Council for the Exploration of the Sea (ICES) suggests that approximately 500,000 common dolphins inhabit this area.

The number of animals that die as bycatch every year is unknown, as it is not feasible to monitor all fishing operations. Bycatch has been monitored in the bass pair trawl fishery. An average of 180 dolphins per year were bycaught in the bass pair trawl fishery between the 2000-01 and 2004-05 winter seasons. Estimates for each year are provided below.

2000-01	189;	2001-02	39;	2002-03	114;
2003-04	429;	2004-05	145;		
Total		916...	<sup>19</sup>		

Defra also announced that whale and dolphin strandings had declined sharply in 2005:

The number of whales and dolphins stranded on UK shores has dropped between 2004 and 2005. Initial figures show a UK-wide decrease in strandings of around 13 per cent (799 in 2004, 700 in 2005). In South-west England, which has one of the most comprehensive stranding volunteers networks in the UK, there was a decrease of 41 per cent (477 in 2004, 282 in 2005). Figures for the preceding four years (2000 to 2004) had shown a national increase in strandings (420 in 2000, 799 in 2004). Defra has today published a report to analyse the findings...<sup>20</sup>

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<sup>18</sup> HC Deb 17 March 2006 cc2505-6W

<sup>19</sup> HL Deb 11 July 2006 c99WA

<sup>20</sup> Defra Press Release, *Whale and Dolphin strandings down - 2004/2005*, 6 July 2006

## 7 Progress in late 2008 and in 2009

A PQ in November 2008 updated the position:

**Mrs. Curtis-Thomas:** To ask the Secretary of State for Environment, Food and Rural Affairs in relation to Article 17 of Council Regulation 2371/2002, if he will institute measures governing pair-trawling for bass within 12 nautical miles applicable to foreign vessels fishing with grandfather rights.

**Huw Irranca-Davies:** In 2004 we banned pelagic pair trawling for bass by UK vessels within 12 miles of the south-west coast of England (within the International Council for the Exploration of the Sea (ICES) area VIIe) as this fishery was shown to have relatively high levels of cetacean by-catch. The UK asked that the ban on pelagic pair trawling for bass be extended (under Article 9 of Council Regulation EC No 2371/2002) to the vessels of other member states, who are currently permitted to fish between six and 12 miles off the south-west English coast. However, as this request was rejected by the European Commission, we could only take unilateral action in relation to our own vessels out to 12 miles.

The UK report on 2006-07 observed cetacean by-catch levels, as required by Council Regulation (EC) 812/2004, has been submitted to the European Commission, and is available on our website [www.defra.gov.uk](http://www.defra.gov.uk).

It is important for us to consider reports provided by those member states which have vessels permitted to fish in our waters in order to understand the overall level of cetacean bycatch. Once we have done this we will consider whether to make further representations to the Commission.

Scientific advice from ICES in 2004, and subsequent advice to DEFRA from the Centre for Environment, Fisheries and Aquaculture Science (Cefas), suggests that the bass stock is fished sustainably. Given this assessment, I currently have no plans to institute any measures governing pair trawling for bass for the purposes of stock conservation.<sup>21</sup>

A PQ in July 2009 updated the position:

**Andrew Rosindell:** To ask the Secretary of State for Environment, Food and Rural Affairs (1) what steps his Department is taking in respect of fishing vessels that do not comply with the provisions of the Incidental Catches of Cetaceans in Fisheries (England) Order 2005;

(2) how many UK fishing vessels of 12 metres or more in length using gillnets or entangling nets comply with the provisions of the Incidental Catches of Cetaceans in Fisheries (England) Order 2005 on the use of acoustic deterrents on nets.

**Huw Irranca-Davies:** The UK is committed to enforcing all aspects of Council Regulation 812/2004 and the provisions of the Incidental Catches of Cetaceans in Fisheries (England) Order 2005 in order to minimise cetacean by-catch.

The Marine and Fisheries agency (MFA) monitor compliance through the inspection activities of the Royal Navy fishery protection squadron. In addition, the MFA conducts training courses for the fisheries protection squadron who undertake boarding at sea. This has led to increased industry awareness of cetacean by-catch issues. The use of acoustic deterrent devices as specified under Council Regulation 812/2004 has been problematic for the UK and for other member states. UK fishing vessels have identified

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<sup>21</sup> HC Deb 24 November 2008 c858W

pinger deployment and safety issues during fishing operations. We reported our concerns to the European Commission and we have been given scientific dispensation to start a research programme to develop appropriate and effective pingers that are safe for our fishers to use.

The UK's research into acoustic deterrent devices is being carried out on behalf of DEFRA by the sea mammal research unit (SMRU). SMRU, in collaboration with SeaFish and the industry are currently testing a dolphin dissuasive device (DDD) and they are looking at the effects these devices may have on the population distribution of harbour porpoises. Initial results on the efficacy of these pingers are promising.<sup>22</sup>

#### The Defra website notes

In March 2009 the European Commission announced its intention to review Council Regulation 812/2004 and publish a Communication in 2010. The aim of the review is to clarify and strengthen current measures and to propose new ones in order to assist Member States implement the Regulation better. Therefore, with most of the recommendations already complete in the current strategy and in light of any future proposals that will emerge from the review of the Regulation, the UK will produce a new Small Cetacean Bycatch Strategy in 2010.<sup>23</sup>

Defra will raise the issue of pair-trawlers from other Member States operating within the 12 mile limit.<sup>24</sup>

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<sup>22</sup> HC Deb 9 July 2009 c924W

<sup>23</sup> Defra, [Cetaceans](#)

<sup>24</sup> HC Deb 10 November 2009 c193W