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CONSIDERATIONS AND COMMENTS ON THE PROPOSED UPDATES TO THE MSC FISHERIES STANDARD¹

The Marine Stewardship Council (MSC) has undertaken a public review of its proposed updates to its Fisheries Standard. Consistent with its duties under the 2003 Antigua Convention and the 1998 Agreement on the International Program for the Conservation of Dolphins (AIDCP), the IATTC staff has carefully considered and discussed that proposal.

Specifically, the proposed changes to the scope of which fisheries may be considered by MSC for certification are a source of great concern and alarm, since they would exclude ex ante from the process of certification all fisheries that would be considered as “intentionally harassing” marine mammals - including that set on marine mammals while targeting other species

In the Eastern Pacific Ocean (EPO), this would mean excluding from any possible consideration an important component of the fishery sector of the 14 States that are Parties to the AIDCP, which comprises the fishermen companies that participate in the purse seine fishery for yellowfin tuna in association with dolphins.

Such an exclusion, in our opinion, not only would cause an extraordinary prejudice to that sector and these countries but also would impact negatively the AIDCP and its implementation. It would also run counter to MSC’s stated mission of rewarding sustainable fishing practices and its practice of a science-based evaluation process.

I. **THE PURSE-SEINE FISHERY FOR YELLOWFIN TUNA (YFT) IN ASSOCIATION WITH DOLPHINS IN THE EPO, A SUSTAINABLE FISHERY PAR EXCELLENCE:**

- A. Overall and considered on their own, YFT fisheries in the EPO have demonstrated that they complied consistently with the requirement of sustainability. Catches of YFT in the most recent years are closely aligned to the average catches of the last 30 years. The most-recent IATTC benchmark assessment of YFT ([Document SAC-11-07](#)) and the corresponding risk analysis conducted considering 48 reference models estimated that there is only a 9% chance that the fishing morality corresponding to the

¹ This document was submitted to the Marine Stewardship Council (MSC) as attachment to a letter dated 1 April 2022, as part of the process of public review referred to in its text. Both letter and document were circulated to the IATTC Members and the AIDCP Parties through Memorandum ref. 0121-410 dated 2 April 2022.

maximum sustainable yield was being exceeded and only a 12% chance that the spawning stock biomass corresponding to maximum sustainable yield was breached ([Document SAC-12-08](#)). That is, it is highly unlikely that overfishing of YFT is occurring or that the stock is in an overfished state.

- B. Additionally, by contrast with other fisheries, the YFT fishery conducted in association with dolphins targets exclusively large, mature YFT, which appears to be more desirable and consistent with the sustainability goal that the IATTC looks to achieve and MSC to recognize and reward. The dolphin-associated purse-seine fishery in the EPO exploits the optimal age-class of the YFT stock for maximizing sustainable yield.

Shifting to other techniques, particularly to fishing with fish-aggregating devices (FADs) might result in a further increase of catches of juvenile YFT and in pressure on the stock, which is presently sustainably managed, within MSY, as mentioned above. We are concerned that a categorical exclusion of this fishery from the MSC certification process could stimulate such a shift, through motivating the owners and operators of vessels but also the canned tuna sector – on which MSC exerts a considerable influence – to abandon this YFT fishery in favor of other fishing methods that may impact associated species and the ecosystem in ways and to a degree that are not yet fully accounted.

To maintain the status quo described above, IATTC scientific staff has cautioned against any further increase in fishing effort on FADs (see Document IATTC-97-02). The staff remains concerned about the impacts of this fishery on all three tropical tuna species (yellowfin, bigeye and skipjack) and the corresponding reductions to maximum sustainable yield that could result from a major shift away from the fishery conducted in association with dolphins. Furthermore, the impacts of other fisheries as well as of climate change would probably aggravate the situation in terms of the structure and dynamics of the whole eastern tropical Pacific ecosystem as well as the situation of associated species such as sharks and Mobulid rays and their habitats (see Document [SAC-12-13](#)).

- C. Finally, it should be recalled that the dolphin-associated purse-seine fishery is a very clean one with respect to the resulting bycatch and the impact on the associated species and fauna and their ecosystems, particularly when compared with some other methods of fishing.

II. **THE PURSE-SEINE FISHERY FOR YELLOWFIN TUNA (YFT) IN ASSOCIATION WITH DOLPHINS IN THE EPO, A FISHERY GOVERNED BY STRICTLY APPLIED RULES AIMED AT PROTECTING THE DOLPHINS:**

- A. The aspect of the fishery that would place it outside the scope of consideration and exclude it from future evaluation by MSC is that the fishery exploits the relationship between dolphin pods and mature YFT in the eastern tropical Pacific.

Fishing vessels encircle pods of dolphins, with the use of speedboats, in order to capture YFT, and, in addition to using a specially designed net, they perform a sequence of prescribed maneuvers under the scrutiny of the IATTC/AIDCP on-board observer, in order to release the dolphins before hauling the tuna catch aboard the vessel. It is only unintentionally and by accident that an extremely small percentage of dolphins may result harmed or killed, in spite of all these required and mandatory efforts.

- B. We acknowledge that constituents in some countries, along with some environmental NGOs, raise ethical objections over this fishery, maintaining that any behavior that results in “intentional

harassment” of marine mammals, or any level of mortality of marine mammals, is unacceptable. We fully respect these opinions and do not question the legitimacy of the concerns felt by those who maintain them, the more so when, after all, the EPO International Dolphin Conservation Program was born and developed decades ago because of a similar ethical choice.

But, when applied to the dolphin-associated purse-seine fishery in the EPO, these objections, and the proposed updates to the MSC Fisheries Standard, seem to overlook both the current science and the existing law.

- (a) First, both are not grounded in the best available scientific knowledge regarding the effects on dolphins of that fishery nor in the observed facts, and they seem not to take into consideration the comparatively great ecological and sustainability benefits of the fishery itself, when this would be expected to be at the core of the MSC standards.
- (b) Second, they do not seem to take into proper account the fact that this fishery has been, for several decades, thoroughly monitored, managed and regulated under the auspices of IATTC, by its members, currently 21, and the AIDCP Parties, currently 14.

This fishery is one of the most highly regulated and monitored fisheries in the world. It is also unique, not only because it is managed within the framework of a RFMO, but also by the Parties to an international treaty. That treaty was the culmination of years of work not only of representatives of the States interested but of the broadest range of stakeholders, including fishermen, vessel owners and operators and entities representing the civil society at large, and environmental NGOs in particular.

The goal was to drastically reduce and eliminate dolphins’ mortality and minimize harassment and harm to these marine mammals in the fishery. The success of the AIDCP is not in question. The estimates of dolphin mortality in this fishery were high in the 1960s 1970s and 1980s, but the collective efforts have achieved a reduction of over 99% in the observed mortality of dolphins in the fishery - currently less than 1000 animals per year in fishing operations that include over 10,000 sets per year and sometimes hundreds of animals per set.

This achievement may be considered as extraordinary as well as exemplary, and it has been recognized as such by the Food and Agriculture Organization (FAO) of the United Nations, which awarded it its Margarita Lizárraga Medal in 2004-2005.

- C. In conclusion, the best available scientific evidence continues to support the assumption that the purse-seine fishery is not having a significant adverse impact on any of the dolphin stocks in the tropical EPO, including those that have been listed as depleted under the U.S. Marine Mammal Protection Act (MMPA)². This was the conclusion reached by the IATTC staff several years ago in a

² Some of the stocks and populations of dolphins that interact with the purse-seine fleets of IATTC members are listed as depleted under the U.S. Marine Mammal Protection Act (MMPA), but on the other hand, under that same Act, these stocks meet the Potential Biological Removal (PBR) standard for sustainability, as well as the MMPA’s Zero Mortality Rate Goal.

We have noted with some interest that the MSC-contracted “*Review on global, commercial wild-capture fisheries intentionally harassing or killing marine mammals*” (2019) cites various provisions of the U.S Marine Mammal Protection Act with the goal of examining how the MMPA handles the issue of “intentionality” during fishing

2002 report on the status of EPO dolphin populations. From a scientific standpoint, the evidence to date still does not support concerns that the fishery is having a significant negative impact on dolphin stocks, their conservation status, or their role in the ecosystem.

III. THE NEED FOR FURTHER RESEARCH AND THE POTENTIALLY NEGATIVE CONSEQUENCE OF THE PROPOSED MODIFICATION OF THE MSC FISHERIES STANDARD UNDER CONSIDERATION:

- A. IATTC scientific staff recognizes that not all scientific matters are settled in relation to the EPO dolphin fishery. For example, the last comprehensive survey of marine mammals in the EPO was conducted by NOAA Fisheries over 15 years ago.

We believe that renewed survey effort is therefore prudent in order to monitor the status and trends of EPO dolphin populations. We also acknowledge that some scientists and constituents have continued to raise concerns about the possibility of unaccounted impacts and mortality in the fishery resulting from the dolphin pods pre-encirclement and encirclement – for instance, concerns that dolphin calves may become permanently separated from their mothers.

- B. In order to generate updated and more thorough information and data on these questions, the Parties to the AIDCP, along with their fishery sector, have been planning to conduct research on both of these topics.

In late 2019 a trial dolphin survey was conducted by IATTC scientific staff in collaboration with scientists at the University of St Andrews and funded by the Pacific Alliance for Sustainable Tuna and the government of Mexico. The survey design methodology tested during this trial was developed by scientists at the University of St Andrews in 2018, based on recommendations from a workshop of world-renowned experts in marine mammal abundance estimation that was convened by IATTC scientific staff in 2016. A combination of the pandemic and its negative impact on our fund-raising campaign have delayed further progress but we are working in order to resume the projected programme of work and activities in 2022 and 2023.

Similarly, the project that had been formulated by the IATTC scientific staff to study whether dolphin calves may become separated permanently from their mothers as a result of the setting process will be resumed in 2022 with funding from the Pacific Alliance for Sustainable Tuna. A workshop of experts is expected to be convened in the first months of the year to discuss the data collection protocol for the study and it is expected that fieldwork could begin in the later part of 2022 or be carried out in 2023 at the latest.

- C. Both projects (the general dolphin population survey and the mother-calf study) will be expensive and will likely require external funding, and the recent motivation to find this funding was supported to a large extent by MSC’s previous evaluation and recommendations for the fishery. With MSC’s announcement of these proposed changes to its standards, support for this research will likely falter.

operations. The paper even cites the MMPA definition of “take,” the concept of depletion, and the Act’s prohibitions on the intentional harassment of marine mammals. But what it fails to acknowledge is that the MMPA itself treats the EPO fishery for YFT conducted in association with dolphin differently in recognition of the comprehensive measures and monitoring of the fishery under the IATTC and AIDCP, and explicitly allows for the import of EPO YFT where the other provisions of the MMPA would otherwise prohibit it.

In this respect, it is important to recall that MSC has stated that a goal of their programs is to encourage the collection of data, with the objective of scientific analyses of fisheries and their impacts. We are quite concerned that a change in MSC's scope leading to the exclusion of the EPO dolphin-associated tuna fishery from the certification process will have the opposite impact by undermining the momentum that was gained towards the funding and execution of this important research.

CONCLUSION:

The proposed update to the scope of the MSC Fisheries Standard would lead to the categorical exclusion of the EPO purse seine fisheries associated with dolphins from a rigorous scientific analysis, whatever the results of that analysis might be. Through barring them beforehand from the certification process, they would be precluded to be considered on their own merits, through a science-based evaluation. This would constitute indeed a huge departure from what has been commonly understood and highly valued in the MSC certification process. It would have momentous and seriously damaging consequences on the fishery sector and, most likely, on the resources themselves, and on the species and ecosystems that the proposed update was supposed to better protect.

For these reasons, the proposed update should be reconsidered and not adopted as presently formulated.