



# MARINE MAMMAL COMMISSION

18 March 2016

Ms. Adrienne Vincent  
Natural Resources Division  
SCS Global Services  
2000 Powell Street, Suite 600  
Emeryville, CA 94608

Dear Ms. Vincent:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Marine Stewardship Council's (MSC) Public Comment Draft Report (PCDR) addressing Certification Requirements for the Northeastern Tropical Pacific purse seine tuna fishery of Mexico. In keeping with agency practices and requirements for making such comments available to the public, these comments and recommendations on the assessment conducted by SCS Global Services and the Action Plan submitted by the client are submitted in letter format rather than using the MSC form.

The Commission is an independent agency of the U.S. government created under the Marine Mammal Protection Act (MMPA) and charged with overseeing implementation of the MMPA mandates, both domestically and in international fora. Ensuring the protection and conservation of marine mammals as significant functioning elements of healthy marine ecosystems is one of the MMPA's primary goals, and we use science-based avoidance or mitigation and monitoring of anthropogenic impacts on marine mammal populations and their ecosystems as tools for achieving that goal. Because of the direct link between the health and status of dolphin populations in the Eastern Tropical Pacific (ETP) and the tuna fishery under consideration for MSC certification, the Commission appreciates the opportunity to provide feedback on the PCDR. The comments and recommendations below focus on the conditions set by the SCS Assessment Team, and the specific actions that the client (Pacific Alliance for Sustainable Tuna, or the Alliance) proposes in their Action Plan.

## Background

In its [16 January 2015 letter](#) to SCS Global Services, the Commission underscored that in order to meet the MSC principle of maintaining "the structure, productivity, function and diversity of the ecosystem" with a high degree of certainty, certification should be granted only under the following conditions:

- 1) a new fishery-independent survey has been completed and an associated stock assessments has demonstrated that all affected dolphin stocks in the ETP are growing with a probability

- greater than 0.9 or, if not growing, the stocks are already at and being maintained at their optimum sustainable population levels<sup>1</sup> (e.g., above their maximum net productivity levels);
- 2) reliable information from observers on fishing vessels continues to show that dolphin mortality due to chase and encirclement remains at the low levels specified in the Agreement on the International Dolphin Conservation Program (AIDCP);
  - 3) fishery-independent dolphin surveys are conducted on a reasonable schedule (e.g., every 3-5 years) to allow updated dolphin stock assessments and to ensure that unobserved effects associated with chase and encirclement are not impeding recovery or causing dolphin populations to decline; and
  - 4) the determination as to whether the fishery maintains the “structure, function, productivity, and diversity of the ecosystem” also reflects the ecological impact of total removal of biomass from the ecosystem by the fishery.

The Commission also recommended that the MSC consider the effectiveness of monitoring, control, and surveillance in the ETP tuna fishery and the reliability of the information reported by observers. In particular, the Commission noted the need to assess the reliability of observer programs through studies comparing data from national observers with those collected by Inter-American Tropical Tuna Commission (IATTC) observers.

### **Public Comment Draft Report (PCDR)**

The PCDR reaches the conclusion that the overall scores assigned by the Assessment Team are sufficiently high to allow the client to obtain immediate, albeit conditional, MSC certification for the skipjack and yellowfin tuna fisheries. For all three “Principles” (Target Species, Ecosystem, and Management System) the Team determined that the fishery for these species reached or exceeded the minimum score of 60, although certain “scoring issues” prompted the Team to propose conditions, as the scores fell between 60 and 80 points. As such, yellowfin and skipjack tuna harvested by Mexico’s vessels in the Alliance (90 percent of the yellowfin and skipjack harvest of Mexico) will receive the MSC label upon finalization of the Action Plan.

The Team proposed 25 conditions to address the scoring issues, six of which concern the impact of the fishery on ETP dolphins. As noted in the assessment report, there are weaknesses regarding current knowledge of the status of dolphin populations and the impacts of the fishery on these populations. While the Commission was hopeful that the six conditions would respond to our recommendations, we find that the wording of the conditions, and of the Action Plan that has been proposed by the client, are vague, non-committal, and not tied to specific concrete outcomes. Furthermore, none of these conditions would need to be met until the fourth year of the program, including requirements that the client show that the “strategy” of the Action Plan will work and that it is being successfully implemented.

As an example, Condition 2-7 developed by the Assessment Team reads:

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<sup>1</sup> If dolphin stocks are being maintained at their optimum sustainable population relative to pre-exploitation levels this would be a strong indication that they likely are fulfilling their roles as healthy, functioning elements in the ETP ecosystem.

“Dolphins: By the fourth annual surveillance, provide *evidence* that direct effects of dolphin sets on dolphins have been *considered* and are *thought to be unlikely* to create *unacceptable* impacts.”

The terminology in this statement raises many questions, including:

- What would be considered adequate “evidence”? Captains’ logbooks? Independent observer data that have been analyzed and peer reviewed?
- “... [direct effects] have been considered....” Does that mean the effects have been scientifically analyzed or discussed in a workshop?
- “. . . are thought to be unlikely . . .” Thought by whom? Scientists? Fishery operators? And does “unlikely” mean a 5 percent probability, 10 percent probability, or some other standard?
- “. . . unacceptable impacts.” It would be preferable to express this as “population impacts on the dolphin stocks that are or may be impeding their recovery.” Otherwise, what is meant by “unacceptable”? By leaving this particular point vague, Condition 2-7 appears to allow the client to skirt the Commission's recommendation that a full-scale dolphin population assessment be conducted *prior to* granting MSC certification. To address these concerns, the Commission believes that this condition should be redrafted as follows: “Prior to certification, demonstrate, based on reliable, peer reviewed, statistically acceptable scientific information, that the direct and indirect effects of dolphin sets are not adversely affecting or impeding the recovery of any dolphin stock in the ETP.”

Given the vague conditions proposed by the Assessment Team, the Alliance’s Action Plan also is disappointingly weak on measurable and effective actions. The Action Plan has overriding objectives (page 339) to expand knowledge and information on dolphin populations, impacts of the fishery on mother-calf bonds, and stress, to ensure fewer disaster sets by aligning nets, and to address inconsistencies between national and international observer programs. While these are all laudable objectives and in line with the Commission’s recommendations, the actual steps that the Alliance would be required to take fall short of what is needed to achieve meaningful outcomes through collaborative, multinational, and peer-reviewed science and monitoring. Most critically, the Action Plan fails to call for a full-scale commitment to new stock assessments by the member governments of IATTC for ETP dolphins.

For example, under the Action Plan, to improve knowledge of dolphin populations, the Alliance would:

- Co-sponsor (with IATTC) a scientific workshop on dolphin population assessment (but not actually conduct an assessment);
- Ask Mexico’s national fishery agency (CONAPESCA) to negotiate for release of data from previous stock assessments (although it is unclear how this would contribute to knowledge of current dolphin stock status);
- Support the scientific community with expertise by having the Alliance hire its own consultants.

These and many of the other actions that the Alliance pledges to take are useful, but they don't go far enough to address the underlying issues and the uncertainty surrounding them. Furthermore, it is unclear whether these actions would be conducted with participation by the scientists who have been working on these issues, including mother-calf separation and stress-related studies, for many years. The design and methods for some of the studies would apparently not always involve

multilateral collaborative teams of scientists and independent peer review, which are essential for producing reliable results.

The Alliance indicates (page 341) that it will “. . . contribute information and data and promote public access to these data in order to do our part in helping to identify the status of dolphin populations.” Furthermore, the Alliance underscores “. . . our member companies’ willingness and openness to seek out, identify and provide available data, as well as to support proposed population estimate assessment projects.” If the Alliance is indeed able to provide data and support, it would be a significant contribution to science and to improving the overall understanding of the impact of chase and encirclement on dolphin populations in the ETP. As the major tuna fleet setting on dolphins in the ETP, the Alliance could support critical science through a fishery-independent research program for samples and experiments, using the vessels of the Alliance’s fleet as platforms for collecting samples and data and conducting experiments, such as those assessing mother-calf separation. Most importantly, the Alliance could make a significant contribution to understanding the impacts of this fishery by providing financial support for a full assessment of dolphin populations in the ETP by a credible, fishery-independent body.

Despite the efforts laid out in this Action Plan, it is not acceptable simply to project current models forward to estimate the current and future status of the ETP dolphin stocks and the efficacy of measures in place under the AIDCP. After 10 years without an updated assessment of the status of the stocks, it is absolutely critical that a dedicated ship survey be undertaken. While there are uncertainties and data issues surrounding previous ETP dolphin stock assessments, the existing series of survey results are nonetheless still the best available science on which to base management. However, in the United States, marine mammal survey data more than eight years old are no longer considered suitable for producing population estimates upon which management decisions can be based. A new stock assessment for each species of ETP dolphins, based on the results of a new vessel survey, is the only way in which the long-term effectiveness of the AIDCP program can be assured.

The Assessment team also proposed conditions related to management of the fishery, concluding that there is a need to improve transparency in procedures and the actual outcomes of monitoring and enforcement activities. There was particular concern about the operation of the International Review Panel (IRP), which is the IATTC’s mechanism for addressing non-compliance as reported by the IATTC and national observers on the tuna vessels. The Assessment team also found that national authorities in Mexico were non-responsive to issues arising from monitoring and research programs. The specific activities proposed by the Alliance to address these shortcomings are basically sound, but depend heavily on the willingness and ability of Mexican authorities to take action within the IATTC and to respond to requests from the MSC-certified fleet. In the text of the Action Plan, several sections note the “need to complete” certain actions e.g., Condition 3.4 states, “[N]eeds more content specifically related to the shortcoming of the IRP process - inability for the public to clearly follow complaints by year to their resolution, lack of timely resolution of issues, almost no sanctions imposed, etc.” These are important parts of the Action Plan that are not yet complete, but that should be completed prior to certification.

In conclusion, the assessment by the SCS Team recognizes the shortcomings of the management of the ETP fishery, but lacks specific and rigorous conditions for overcoming these shortcomings. In response, the Action Plan prepared by the client does not ensure that answers to

Ms. Adrienne Vincent

18 Mar 2016

Page 5

the fundamental questions about the impacts of this fishery, in particular those concerning the long-term impacts of chase and encirclement on dolphins, will be forthcoming. The Commission therefore recommends that the SCS Team modify the conditions under which MSC certification would occur to include the four specific conditions recommended in the Commission's 16 January 2015 letter and repeated above. The Commission further recommends that the Alliance be required to address these modified conditions by preparing a revised Action Plan. Finally, the Commission recommends that certification be withheld pending public review of the revised PCDR, and until it can be demonstrated that concrete steps have been taken to implement the Action Plan.

Please contact me if you have any questions regarding the Commission's comments and recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R".

Rebecca J. Lent, Ph.D.  
Executive Director