CLIENT RESPONSE CONCERNING THE DECISION OF THE INDEPENDENT ADJUDICATOR ON THE OBJECTION TO THE FINAL DRAFT REPORT AND DETERMINATION ON THE PROPOSED CERTIFICATION OF THE AGAC FOUR OCEANS INTEGRAL PURSE SEINE TROPICAL TUNA FISHERY (INDIAN OCEAN)

AGAC[1]

AGAC would like first to acknowledge receipt of the Decision of the Independent Adjudicator, noting paragraph 192 of the Decision, in which the IA informs that "all grounds of objection are dismissed with the exception of the AIS related ground against the score for PI 3.2.3" noting that "There will be a remand on this issue". The IA further notes, in paragraph 193, that "The CAB must re-consider the score of 80 for PI 3.2.3 and consider whether AIS is part of the management strategy, whether legislation applies to AGAC in respect of AIS and whether it should be followed and whether in fact during the period of assessment it was being followed."

We also note the response from LRQA regarding this issue, which includes rescoring of PI 3.2.3 SId, and issues a new condition to address the concerns raised by the IA on the use of AIS by the AGAC fleet.

Concerning the questions raised, we would like to reassure the IA that AGAC's Indian Ocean fleet is subject to very comprehensive regulations concerning vessel and crew safety, for which we believe LRQA has provided enough evidence in its response to the IA's Decision and recommendations. All AGAC vessels are equipped with several monitoring systems that ensure both constant and secure monitoring, in real-time, including[2]:

- Telecommunications systems that allow for satellite communication and the release of distress calls, where necessary;
- Access to internet, that allows the crew to use e-mail or other internet-based communication means[3];
- Vessel Monitoring Systems (VMS[4]) connected with fisheries management authorities, on all vessels, including more than one system per vessel in order to be able to switch systems in the event of breakdown (e.g. ARGOS and INMARSAT);
- Since 2015, 100% observer coverage, including Electronic Monitoring Systems (EMS[5]) on fourteen over the fifteen purse seiners and all support vessels, which include the recording of GPS data from sources other than the one collected through VMS, and at least six cameras

working 24/7 365 days a year, recording video both inside the vessel and in the waters around it; in addition, EMS service providers can follow-up on any request to interrogate the system from land, reporting images and the GPS position of the vessel, in real-time;

- At least two pairs of radars for the detection of ships or objects within a range of at least 30 nautical miles from the vessel[6], and which can be set up to trigger alarms as the vessel reaches a prespecified distance from the object; 24/7 radar monitoring by the captain or the first mate, the latter responsible for keeping watch at night;
- Two or three armed security personnel onboard each purse seiner, keeping watch at all times for any suspicious activity around the vessel;
- At least a pair of echo-sounders and pairs of vertical and lateral sonars for the detection of any submerged object or marine feature;
- At least four crew on watch during the day (upper front deck and crow's nest), looking through powerful marine binoculars for signs of tuna schools, other vessels or objects, over a range of up to 8 nautical miles.

Regarding safety protocols, equipment, and auditing mechanisms, as already indicated by LRQA:

- All AGAC vessels are equipped with the safety equipment required by national authorities, and subject regularly to the relevant inspection processes, as determined by the flag states in accordance with IMO regulations;
- All crew willing to board the vessels is obliged to obtain certificates that they have successfully completed training[7] on basic fishing and vessel safety[8], first aid[9], and other obligatory and voluntary courses[10];
- AGAC is promoting initiatives to strengthen medical attention and safety of its crew[11], the most advanced implemented on fishing vessels to date;
- All AGAC vessels are obliged to have an up-to-date Tuna from Responsible Fisheries ("*Atún de Pesca Responsable*" or APR) Certificate[12] based on the UNE Standard 195006[13], and undergo the required independent audits for its annual renewal; the AENOR APR Certification includes substantial auditing, on an annual basis, of vessel safety documentation and equipment; more information regarding the APR Certification can be sent upon request.

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[6] https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers18-06/010045256.pdf

See pages 23-24, in particular section 2.3.3 Radar de navigation : « […] En effet, il est utilisé de nos jours pour observer la position et la vitesse de déplacement d'un groupe de navires **dans un rayon d'environ 30 miles**, permettant ainsi de déceler s'ils sont en train de pêcher. […] »

[7] BOE.es - BOE-A-2008-9147 Orden ARM/1438/2008, de 14 de mayo, por la que se convoca para el año 2008, la concesión de ayudas destinadas al fomento de actividades de formación profesional náutico-pesquera. See Table in Annex 1

[8] ISM: All courses (premm.es)

[9] ISM: All courses (premm.es)

[10] ISM: All courses (premm.es)

[11] Atuneros españoles refuerzan la protección de los tripulantes con telemedicina digital a bordo (lavozdegalicia.es)

[12] La Certificación APR • APR - Atún de Pesca Responsable AENOR (atundepescaresponsableaenor.com) https://atundepescaresponsableaenor.com/en/la-certificacion-apr-2/ Atún de Pesca Responsable (Tuna from Responsible Fishing)

[13] https://en.tienda.aenor.com/norma-une-195006-2016-n0056808

Regarding the use of the AIS by the Spanish fleet, following the Decision of the Independent Adjudicator on the Objection, AGAC approached the shipowners having vessels in the Indian Ocean, and AIS service providers, in order to obtain more information concerning the way in which the AIS is used onboard, clarify the reasons why AIS did not transmit at all times over the assessment period, and obtain confirmation that the Secretariat of Fisheries of Spain did not open any procedure concerning the use of AIS by the AGAC fleet in the Indian Ocean.

We are summarizing our findings below:

- AGAC shipowners confirmed that the use of AIS in the Indian Ocean has been highly compromised due to the threat posed by Somali piracy;
- AGAC shipowners acknowledged that, while the risk of piracy seems to have decreased in recent years, it has not disappeared[14]; they noted that European shipowners assess regularly the risk of piracy and the measures that they have put in place to protect the vessels, in particular the presence of security armed personnel onboard the ships, confirming that there are still security personnel onboard all vessels, because the risk of piracy is still real;
- AGAC shipowners' insurance companies confirmed that none of the AGAC vessels was involved in collisions over the period under assessment, as included in LRQA's response;
- AGAC shipowners confirmed that they have not received additional guidance from fisheries management authorities from the flag states regarding the use of AIS in the Indian Ocean, including no indication concerning the extent of the area covered by Somali pirates;
- AGAC shipowners indicated that since the start of piracy, pirate activities have been recorded over a very extensive area, which includes the western north and center Indian Ocean, the Mozambique Channel, and the EEZ of Seychelles, covering the whole fishing grounds of purse seiners;
- In lieu of the above, AGAC shipowners indicated that the operation of AIS in the Indian Ocean has been guided by: (i) Article 6a of Directive 2002/59/EC[15] which includes the provision "Fishing vessels equipped with AIS shall maintain it in operation at all times. In exceptional circumstances, AIS may be switched off where the master considers this necessary in the interest of the safety or security of his vessel."; (ii) Article II of IMO Resolution A.1106(29), which indicates that "AIS should always be in operation when ships are underway or at anchor. If the master believes that the continual operation of AIS might compromise the safety or security of his/her ship or where security incidents are imminent, the AIS may be switched off."; and (iii) Best Management Practice 3, or any subsequent revision, on Piracy off the Coast of Somalia and Arabian Sea Area[16], particularly 7.5 "Outside of the Gulf of Aden, in other parts of the High Risk Area, the decision on AIS policy is again left to the Master's discretion, but current Naval advice is to turn it off completely";
- We argue that the existence of piracy in the Indian Ocean qualifies as "exceptional circumstances" in which AIS should be switched off; furthermore, it is also recommended by the security companies placed onboard the AGAC vessels that the use of AIS should be

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[14] Details regarding the last attack, on 17 May 2022, can be found here: RMS -- Incident (mailchi.mp)
[15] Included in the response from LRQA
[16] 100630bestmanagementpracticesversion3.pdf (westpandi.com)

restricted to avoid pirate motherships (that can be equipped with AIS) to pick up the signal and deploy skiffs to target vessels fishing in the vicinity;

- AGAC shipowners stressed that the decision on the use of AIS in the Indian Ocean belongs solely to the vessel skippers, who are the authority responsible to assess the risk of piracy during the trip and guarantee that the security of the crew is not compromised through the use of AIS; they noted that several purse seiners have been subject to attacks from pirates since the start of piracy, some of them leading to the hijacking of purse seiners and crew[17], other requiring the intervention of the armed security personnel onboard to repel the attack, events that vessel skippers have very much in mind when evaluating risk;

- AGAC shipowners confirmed that, since the inception of piracy, none of their vessels has been subject to procedures initiated by the management fisheries authorities of their flag states, IOTC, or coastal states or port states where they operate, with regards to the use of AIS in the Indian Ocean, for the period under assessment (2014-2018), to date;

- SatLink, a Service provider for AIS, informed that Class A AIS, in use on AGAC vessels, can be operated in three different ways[18]: (i) Normal transmission mode: AIS receives information on the presence of vessels within a range of 30-50 NM and its position is transmitted via satellite to other ships having AIS; (ii) Silent mode: The silent mode is a special mode for travelling in areas where the transmission of own position impose risk to the user. When active, no signals are sent from the Transponder unit, but the user is still able to receive information from other vessels; (iii) Tanker mode: The power of the transponder is lowered to up to 1 W, which reduces the range at which the ship can be seen by other ships[19].

- Finally, AGAC shipowners acknowledged the need for vessel skippers to record changes in the use of AIS more thoroughly, through vessel logbooks (or other vessel-specific document or database), so as this information is readily available in the future; they also acknowledged that, being the norm to have AIS in silent mode, due to piracy, some vessel skippers had not been consistent in recording these events or the reasons why AIS was not set to normal transmission mode, noting that they are committed to strengthen the procedures for the reporting of this information in the future.

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[17] Presumed pirates take fishing boat off Somalia (hiiraan.com)
[18] https://www.manualslib.com/manual/2239359/Jotron-Tron-Ais-Tr-8000-Mkii.html PPP Page 21:

Transmission Modes :

Silent Mode - Transmission is turned OFF

Normal transmission mode (12.5W)

Low Power (1 W) if
- Vessel type = "Tanker" and
- speed is below 3 knots and
- Navigation Status = "Moored"

[19] TR8000.Operator-and-Installation-Manual-part-3-1790183.pdf (usermanual.wiki) Point 10.2.2.3 Silent mode on Page 91

The information presented above tends to confirm that the main reason for the AGAC fleet not to use AIS in normal transmission mode in the Indian Ocean is Somali piracy, and the perception that remains in the AGAC fleet that the risks posed by piracy, confirmed by recent events, still represent a real threat to vessel activity and crew safety. It is also evident that, until the risk of piracy in the Indian Ocean is eliminated, the final decision regarding whether AIS should be set up to normal transmission or silent mode remains with the skipper of each vessel; AGAC considers that any third-party interference regarding such decision could have been detrimental to vessel and crew safety over the period under assessment.

This report demonstrates that the security of the AGAC fleet and vessels' crew was not compromised during the assessment period. All the AGAC vessels have a wealth of equipment[20] and well-trained crew for the identification other ships, objects, and marine features, and take the necessary actions to rectify course and avoid collision, in a timely and secure manner. This was confirmed by the insurance companies.

AGAC deeply regrets that the questions related to the use of AIS came very late during the objection process. This prevented AGAC from devoting the required amount of time and resources to obtaining information about the systems used by its fleet, its functionality, and how AIS is operated onboard. AGAC also agrees with the view expressed by LRQA that AIS has a minor role in fisheries management, especially when it applies to large-scale vessels equipped with VMS and a wealth of communications and detection systems that ensure high standards concerning both Monitoring Control and Surveillance and vessel and crew safety, as it is the case of the AGAC fleet.

While the AIS has been purposely put on silent mode to protect the safety of the vessel from piracy, this practice, which is an established norm in the industry in the Indian Ocean where in proximity to high risk areas (as well as to other non-tuna fleets fishing in the area), has also indirectly allowed skippers to reduce access to information (through the web-based availability of AIS) of their preferred fishing areas, that could be accessed by other vessels. We emphasize this practice is not the norm and does not supersede the overriding concerns of our seagoing crews as to their exposure to the risk of piracy. We would also like to emphasize that the use of AIS data by NGOs and any other persons for commercial or other benefit may seriously undermine the safety of our crews (e.g., putting AIS data in [near]-real time in the public domain) and is negating the true purpose of the IMO resolutions and the associated directives that might be in place by flags states and maritime nations in general.

Regardless of the above, AGAC agrees on the need to follow-up on the potential issues concerning the use of AIS by the AGAC fleet in the Indian Ocean, as raised by the IA; and the changes that LRQA has made to the FDR Report to address such concerns, including a new Condition to MSC Certification. AGAC has also updated its Client Action Plan to address such Condition, focused on issuing further guidance concerning the use of AIS in the Indian Ocean and the strengthening of procedures for the recording of events when AIS is not used in normal transmission mode.

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[20] Including the detection of other ships using AIS in silent mode

Finally, AGAC would like to kindly request the IA to consider the information that is presented here for its final determination. AGAC also kindly request the IA to consider the modifications to the FDR Report proposed by LRQA and the work plan proposed by AGAC, hoping that those fully address the concerns expressed in the Adjudication Report.

To conclude, AGAC would like to reiterate its commitment to better ocean governance and strengthening the sustainability of its fishery through the implementation of the Client Action Plan proposed to address the Conditions set to our Indian Ocean fishery. We also thank all the participants in the Objection process for maintaining a constructive debate.