



Form for issuing a Notice of Objection

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Responsibility for this manual

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Versions Issued

Version Number	Date	Description of amendment
2.1	01 October 2016	Updates for use with simplification pilots
2.0	08 October 2014	Updated with FCR v2.0
1.2	26 October 2012	Updated with CR v1.2
1.1	February 2010	Issued with TAB Directive 023 v2.0
1.0	March 2009	Issued with TAB Directive 023

Quick Links

- [Contact Details](#) >
- [Credentials of objector](#) >
- [Objection category](#) >

Introduction

1 The MSC Objections Process

The MSC Objections Process provides an orderly, structured, transparent and independent process by which stakeholder or client objections to the Final Report and determination of a certifier (or Conformity Assessment Body) can be resolved.

The Objections Process is not intended to review the fishery against the MSC fisheries standard, but to determine whether the certifier (CAB) made an error of procedure, scoring, or condition setting that is material to the determination or the fairness of the assessment.

[Learn more about MSC Objections >](#)

[View the Objections Flowchart >](#)

2 Simplification Pilot Process


This template has been adapted from the default 'Notice of Objection Template' for piloting a revised assessment process. This project aims to simplify the assessment process – reduce complexity and cost, whilst improving effectiveness of stakeholder engagement and maintaining credibility.

[Read more about the simplification pilot process >](#)

The completed Notice of Objection form should be completed and sent to objections@msc.org.

Your details

1.1 Contact details for objecting party

Contact Details		8 March 2018
First Name*	Martin	
Last Name*	Purves	
Title	Mr	
Organisation Details		
Organisation*	Please enter the legal or registered name of your organisation or company. International Pole & Line Foundation (IPNLF)	
Department	Click or tap here to enter Department.	
Job Title*	Managing Director	
Description	The International Pole & Line Foundation (IPNLF) is a UK registered charity which works to develop, support and promote socially and environmentally responsible pole-and-line and handline tuna fisheries around the world.	
Mailing Address	1 London Street, Reading, Berkshire RG1 4QW, United Kingdom	
Phone	+ +27 833245828	
Email*	martin.purves@ipnlf.org	
Assessment Details		
Fishery Name*	Echebatar Indian Ocean Skipjack Tuna Purse Seine Fishery	
Certifier (CAB) *	Acoura Marine	
The following objection is being lodged on behalf of the below named organisation(s) and I am authorised to make this submission on their behalf.		
Signature*		

1.2 Objecting party's credentials**Prior Involvement**

8 March 2018

Please indicate your prior involvement with this assessment	
Fishery client – PD2.3.1.1	
Written stakeholder submissions - PD2.3.1.2	X
Meetings attended - PD2.3.1.2	
Participation prevented or impaired - PD2.3.1.3	

Evidence

Please note that Objections can only be raised on a topic if you have previously raised the issue during the initial assessment stages i.e. announcement and site visit periods ([See Simplification Pilot Process](#)). See [Annex PD, Clause 2.3.1](#) for more information on who can raise an objection.

Supporting evidence of prior involvement to indicate that you raised this topic previously.	IPNLF participated during the site visit of the assessment by connecting telephonically with the CAB and by providing written input to the assessment in April 2017. IPNLF further provided exhaustive written comments on the 2nd Report. We feel that many of our inputs have not been adequately addressed by the CAB in the finalisation of the Final Report. this classification.
Background	IPNLF promotes the environmental and social benefits of one-by-one tuna fisheries by working on improvements with the fisheries and promoting these benefits to market partners. IPNLF also works closely with other organisations and market partners to promote improved regional management of tuna fisheries at the RFMO level. to state your interest in the fishery and it's certification.

Your Objection

1.3 Categorisation of Objections

Objection category	8 March 2018
Are you objecting on the basis that, in your opinion...	

There was a serious procedural or other irregularity in the fishery assessment process that was material to the fairness of the assessment – PD2.7.2.1 , Complete Section 4	X
The setting of conditions by the certifier (CAB) in relation to one or more Performance Indicators cannot be justified because the conditions fundamentally cannot be fulfilled, or the condition-setting decision was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available to it – PD2.7.2.2 , Complete Section 5	X
The score given by the certifier (CAB) in relation to one or more of the Performance Indicators cannot be justified, and the effect of the score in relation to one or more of the particular Performance Indicators in question was material to the determination - PD2.7.2.3 , Section 6	X
Additional information not forming part of the record (as defined in PD2.6.5.1) that is relevant to the circumstances at the date of determination has not been considered - PD2.7.3 , Section 7	X

Process

1.4 Objection in line with [PD2.7.2.1](#)

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Content

Please identify...

Procedural issues	Please see Objections 2, 12, 13, 19, 20, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34 and 36 below.
Other	Please see Objections 2, 12, 13, 19, 20, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34 and 36 below.
Affect on the determination	Please see below

Conditions

1.5 Objection in line with [PD2.7.2.2](#)

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly indentify –

- a. The reason(s) why you or your organisation believes that the condition assigned to the Performance Indicator within the Final Report cannot be justified because it cannot fundamentally be fulfilled; or,
- b. The reason(s) why you or your organisation believes the condition setting decision was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available.

Conditions	
Performance Indicator	Click or tap here to select a Performance Indicator.
Condition	Please see Objection 11 below
Reason	Please see Objection 11 below
Supporting Rationale	Please see Objection 11 below

Conditions	
Performance Indicator	Click or tap here to select a Performance Indicator.
Condition	Click or tap here to enter the condition, as stated in the Final Report.
Reason	Click or tap here to enter reason in line with (a) and (b) above.
Supporting Rationale	Click or tap here to enter supporting rationale for the reason(s) above.

Conditions	
Performance Indicator	Click or tap here to select a Performance Indicator.
Condition	Click or tap here to enter the condition, as stated in the Final Report.

Reason	Click or tap here to enter reason in line with (a) and (b) above.
Supporting Rationale	Click or tap here to enter supporting rationale for the reason(s) above.

Please repeat table as needed for each Performance Indicator and condition to be included in the Objection.

Scoring

1.6 Objection in line with [PD2.7.2.3](#)

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly indentify –

- a. The reason(s) you or your organisation believes that the score(s) presented within the Final Report cannot be justified; and,
- b. Your rationale and/or evidence in support of a different conclusion, making reference to the particular Performance Indicator in question.

Note: The individual Objections set out below are independent of and without prejudice to each another.

Terminology

1. In this Objection, the following acronyms are used:

CAB: Conformity Assessment Body
 CDR: Certifier Desk Review
 CPUE: Catch per Unit Effort
 dFAD: drifting FAD
 EIO: Echebatar Indian Ocean
 FAD: Fish Aggregating Device
 FCR: Fisheries Certification Requirements and Guidance, v2.0 (2014)
 FSC: Free School
 RBF: Risk Based Framework
 SFA: Seychelles Fishing Authority
 SI: Scoring Issue
 SG: Scoring Guidepost
 UoA: Unit of Assessment

2. Page references to the Final Report are to the revised version of the Final Report, unless otherwise stated.

Materiality

3. The irregularities in scoring are material to the determination in that they individually and/or collectively affect the scoring of the UoA.

Scoring	
Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p><u>Nature of the UoA</u></p> <p>Objection 1</p> <p>4. IPNLF, in its response to the Second Report, wrote that:</p> <p>“The UoA, and proposed UoC, applies to Skipjack only. Yet Skipjack is not the only species targeted by the Echebatar vessels: they also target Yellowfin and Bigeye. This is stated</p>

at just one point in the Second Report (p.54), as follows:

“Skipjack, the target (MSC P1) species under MSC assessment represents 36.7% of the landed catch, and yellowfin and bigeye are targeted species representing 54.8 and 8.3% of the landed tuna catch, but are not considered as P1 species in this assessment.”

[Emphasis added]

It is important to note that the UoA comprises only 37% of the landed catch. This issue is not clearly emphasised throughout the report.”

5. The CAB responded (at p.271) as follows:

“We consider that the report is clear on the breakdown of the total catch. We followed the MSC requirements for identifying the P1 and P2 species. This is the same approach adopted in the recently recertified Maldives pole and line fishery for skipjack where a significant part of the total catch is yellowfin.”

IPNLF notes the reference by the CAB to yellowfin in the Maldives pole and line fishery (hereafter “Maldives PNL”).

6. In Echebatar, skipjack is the UoA species and yellowfin and bigeye are “primary main” species (see pp.39 and 42 of Final Report). According to text at p.37, the proportion of yellowfin is 54.8%. (That is the same figure as is used in the Second Report – see above.) That figure, or something similar to it, is explained at p.44: “Based on observer data, the average annual yellowfin tuna catches of 10,617 t (2014 -16) in the Echebatar FAD sets was 38.8% of the estimated total catch; respective figures for the FSC sets are 2,723 t and 72% of the total catch.” The average of 38.8% and 72% is 55.4% - i.e. very close to 54.8%.

7. In Maldives PNL, skipjack is the UoA species and yellowfin and bigeye are ‘primary main’ (see pp.24-26 of Maldives Final Report). According to the text at p.24, the proportion of yellowfin averaged over 5 years is 17%.

8. So the CAB is right that the same approach is adopted for yellowfin in both Echebatar and Maldives PNL. However, there are also two important differences between Echebatar and Maldives PNL in respect of yellowfin:

(1) Firstly, in Maldives PNL, the bycatch of yellowfin is much smaller, in terms of proportion, than in Echebatar: 17% (averaged over 5 years) in Maldives PNL compared to more than 54% (averaged over 3

	<p>years), i.e. more than three times as much in terms of proportion, in Echebatar.</p> <p>(2) Secondly, in Maldives PNL, yellowfin is <u>not</u> targeted (see Maldives National Report of 2016 (IOTC-2016-SC19-NR17 Rev 1-Maldives); Miller KI, Nadheeh I, Jauharee AR, Anderson RC, Adam MS (2017) Bycatch in the Maldivian pole-and-line tuna fishery. PLoS ONE 12(5): e0177391. https://doi.org/10.1371/journal.pone.0177391) whereas in Echebatar it <u>is</u> targeted (see pp.37 and 304 of the Final Report).</p>
Supporting rationale and or evidence	<p>9. IPNLF sees the Echebatar fishery as a fishery for yellowfin that also catches skipjack. In those circumstances, and in view of (a) yellowfin forming the majority of the catch and (b) being targeted, it is arbitrary and/or unreasonable for the CAB to define the UoA in terms of skipjack.</p>

Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p><u>“Enhanced” fishery</u> Objection 2</p> <p>10. The CAB, in the Final Report (p.3), states that:</p> <p>“The CDR did not identify FADs as an "enhanced fishery". MSC FCR2.0 G7.4.3 states "the use of man-made structures associated with the capture of fish that are not strictly 'fishing gear' including fish attracting devices" and "artificial habitat modifications either enhance the productivity of the fishery or facilitate the capture or production of commercial marine species". Table 1 of the MSC FCR 2.0 notes that habitat enhanced fisheries can only be considered for MSC certification if they are considered "in scope", specifically "any modifications to the habitat of the stock are reversible and do not cause serious or irreversible harm to the natural ecosystem's structure and function". FADs enhance fishing operations by aggregating fish to more efficiently capture them.”</p> <p>11. The CAB further states (Final Report p.4):</p> <p>“The assessment team conducted a review and determined that the PIs within the default assessment tree are suitable to address the issues associated with FAD use in the Indian Ocean purse seine fishery. This was confirmed by information gained from the site visit and stakeholder input that were not initially considered in the client submission and the CDR. In particular, the assessment team recognizes that there is ongoing discussion of the "ecological trap</p>

hypothesis", but also notes that a recent review of the issue by Dagorn et al (2012) concluded that there was no unequivocal empirical evidence that FADs represent an 'ecological trap' that inherently disrupts tuna biology, although the authors state that further research should focus on this issue. The assessment team also recognizes the concern over lost FADs, and their possible impact on coral reefs. However, the team believes that Echebatar Fisheries is addressing this issue by using less FADs than allowed so as to reduce the potential for lost FADs interacting with coral reefs, by using non-entangling FADs that will cause less damage if they do interact with a reef when lost, and finally by experimenting with biodegradable FADs that will further reduce the impact of lost FADs on reefs. These issues have been fully considered in the scoring of the PIs in the default assessment tree contained in this report."

12. The scope criteria for enhanced fisheries in Table 8 in the FCR (p.25) states that:

"Any modifications to the habitat of the stock are reversible and do not cause serious or irreversible harm to the natural ecosystem's structure and function."

13. The deployment of, and fishing on FADs, makes the UoA an enhanced fishery. The use of FADs is a modification of the pelagic habitat (Wang 2014) and it has not been demonstrated by the CAB that such modifications to the habitat of skipjack (i.e. "the stock") are reversible and cause neither serious nor irreversible harm to the natural ecosystem's structure and function. Accordingly the UoA should have been determined as out of scope.

14. As a result of MSC's technical oversight, the CAB has stated (p.104) that "MSC requires that the assessment team consider "serious and irreversible harm" as reductions in habitat structure and function below 80%.". This is patently implausible and there is no apparent basis for this in the FCR.

15. The ecological trap hypothesis is that dFADs exhibit zonal drift and so the associated populations of juvenile tuna and associated fauna are transferred to, and remain in, areas where such schooling was not previously observed and which are not necessarily favourable for tuna feeding. Such concentrations also may increase competition and exposure to predators.

16. In summary:

- (1) The ecological trap hypothesis for tuna was originally proposed by Marsac & Fonteneau (2000)¹ and they proposed additional studies to look at the validity of the hypothesis.
- (2) Hallier et al. (2008)² provided evidence from the Atlantic that tunas caught in association with FADs were less healthy than free school tuna. They argued that these findings support the hypothesis that FADs act as a super-stimulus, misleading tunas to make inappropriate habitat selection and suggested that additional research is required to investigate the long-term effect of FADs on the entire life cycle of tunas.
- (3) Dagorn et al (2013)³ found that (i) the processes for FADs to drive tunas to new areas, and possible consequences of such movements on the biology of individuals, could occur at scales smaller than originally thought and (ii) that the processes for FADs to retain tuna longer in some areas should be investigated, considering that the density of floating objects has been multiplied by a factor of 40 in some areas in recent years due to large-scale deployment of FADs by purse seiners.

17. These and other studies show that the ecological trap hypothesis may be causing serious and irreversible harm to ecosystems. Accordingly, the CAB is required to apply the precautionary approach and cannot dismiss the theory unless clear evidence is produced that it is not a problem. The current overfished state of yellowfin and the impact that the Echebasta UoA (and the rest of the Indian ocean purse seine fleet) has on this species, together with the high number of dFADS that are being deployed by purse seine vessels, makes it clear that fishing on FADs has the potential to cause major negative impacts on ecosystems.
18. Mass deployment of dFADS, as well as the massive use of GPS buoys to track dFADS and natural floating objects since the 1990s, has raised serious concerns for the state of tropical tuna stocks and ecosystem functioning.
19. In a recent study by Maufroy et al, (2017) tracks were combined from a large proportion of the French GPS buoys from the Indian ocean with data from observers aboard French and Spanish purse seiners and French logbook data to estimate the total number of dFADS and GPS buoys

¹ Marsac F., Fonteneau A. M. F. (2000). Drifting FADs used in tuna fisheries: an ecological trap ?. In Le Gall J.Y. (ed.), Cayré Patrice (ed.), Taquet M. (ed.) Pêche thonière et dispositifs de concentration de poissons. Plouzané : IFREMER, (28), 537-552. (Actes de Colloques - IFREMER ; 28).

² Hallier J., Gaertner D. (2008). Drifting fish aggregation devices could act as an ecological trap for tropical tuna species. Marine Ecology Progress Series, 353, 255-264.

³ Dagorn L., Bez N., Fauvel T., Walker E. (2013). How much do fish aggregating devices (FADs) modify the floating object environment in the ocean?. Fisheries Oceanography, 22 (3), 147-153. (IOTC-2013-WPTT15-INF03).

used within the main fishing grounds over the period 2007–2013. In the Indian Ocean, the number increased from 2250 dFADs in October 2007 to 10 300 dFADs in September 2013.

20. Though the relative proportion of natural to artificial floating objects varies geographically, in no region do dFADs represent <50% of the floating objects and the proportion of natural objects has dropped over time as dFAD deployments have increased. This increased dFAD use represents a major change to the pelagic ecosystem.
21. Far from being reversible, deploying further FADs is adding to the problem. Slowing down the number of FADs being added to the ocean is not a reversal of the process (even assuming that the numbers additionally deployed are in fact reducing).
22. The CAB based all their calculations on the supposed facts that (i) Echebastar deploys 400 FADs per year per vessel (Final Report p. 104: “The UoA has a total of 2,000 active FADs (5 vessels each with 400 FADs)”], and (ii) that all their FADs are non-entangling and that this has ensures no entangling/ghost fishing impact on silky sharks.
23. However, the reality is different:
 - (1) Firstly under Resolution 17/01 (adopted in May 2017) each purse seiner is limited to 350 active FADs, but can deploy up to 700 FADs per year - Resolution 17/01: “b) The number of Fish Aggregating Devices (FADs) as defined in Resolution 15/08 [superseded by Resolution 17/08], paragraph 7 will be no more than 350 active instrumented buoys and 700 acquired annually instrumented buoys per purse seine vessel per year.”
 - (2) 400 active FADs per vessel would now be in breach of 17/01, which has a maximum of 350 active ones as from 3 October 2017.
 - (3) When FADs are lost they are replaced by others, and every purse seiner can in fact deploy 700 FADs/year although only 350 of those are allowed to be active at any given time.
 - (4) There appears to be no independent verification of FAD numbers.
 - (5) Secondly, it is the usual practice for purse seiners to attach their own satellite buoy to someone else’s FAD when encountered out at sea. There is no evidence that Echebastar does not follow the same practice. This would entail taking over entangling FADs. Discarded netting and other floating objects opportunistically

encountered at sea are also claimed as FADs by purse seiners attaching a satellite buoy. There is no evidence that Echebaster does not also follow this practice, with further entangling FADs being added to the equation.

- (6) Thirdly, it is inconceivable that an Echebaster purse seiner will give up the opportunity to set their net around an entangling FAD encountered by chance.
 - (7) Fourthly, there is evidence⁴ to show that non-entangling FADs can untangle and become entangling FADs. There is no empirical evidence that no entanglements happen on any of the FAD sets that involves Echebaster purse seiners.
 - (8) The precautionary approach requires a higher level of precaution in the absence of scientific data. The CAB has failed to adopt that approach.
24. The fact that FADs are lost itself means that the impact is not reversible (Echebaster even keeps a database of lost FADs (Report p.3).). Annually 20% of dFADs are lost at sea and the fishery has no possibility to recover them. Some of the lost dFADs will beach while the rest will continue to drift in the IO (Imzilen 2016).
25. Many FADs are still constructed of non-biodegradable materials, and can be more than 100m in length. Synthetic materials such as nylon, polyethylene, and polypropylene are impervious to natural biodegradation and can remain unchanged in the marine environment for decades (Stelfox 2016).
26. Three distinct impacts of lost FADs are noted by Moreno et al (2017), namely (1) damages to sensitive coral reefs, (2) marine pollution as well as (3) ghost fishing. Since 2015, ISSF has been working on finding solutions to the impacts of lost FADs that become marine debris and the potential damages by lost FADs that end up in sensitive habitats. There is general agreement that to address these impacts, there is a need to return to biodegradable floating objects (natural, biodegradable floating objects preceded man-made ones which are often constructed of long-lasting, stronger materials, with deeper and sophisticated structures for greater tuna aggregation capabilities). During an ISSF workshop which specifically convened fishers and scientist from the Indian, Atlantic and Pacific Oceans to look for solutions regarding FADs, the use of biodegradable fish aggregating devices. Seven different types of biodegradable FADs were designed and a protocol

⁴ The ISSF Purse Seine Skipper Guidebook refers to the use as a temporary step of old tuna fishing nets rolled up in "sausage" shapes and securely wrapped, though "the nets can eventually unroll and pose an entanglement hazard"; see also What does well-managed FAD use look like within a tropical purse seine fishery? (Doc. No. j-FAD 35/2017).

for at-sea trials was defined (Moreno et al., 2016). Moreno et al (2017) reported that despite an ongoing research project, which includes a number of pilot trials a solution has not been found yet.

Refs

Moreno, G., Restrepo, V., Dagorn, L., Hall, M., Murua, J., Sancristobal, I., Grande, M., Le Couls, S., Santiago, J., 2016. Workshop on the use of biodegradable fish aggregating devices (FAD). ISSF Technical Report 2016-18A. International Seafood Sustainability Foundation, Washington, D.C., USA.

Moreno, G., Jauharee, R., Muir, J., Schaefer, K., Adam, S., Holland, K., Dagorn, L. & Restrepo, V. 2017 FAD structure evolution: from biodegradable FADs to biodegradable FADs. Joint t-RFMO FAD Working Group meeting, April 5, 2017, Madrid, Spain.

27. The full biodegradability of the FADs at present is questionable as the flotation material is usually still non-degradable. The efforts at this stage to find the right biodegradable materials is inconclusive and ongoing. There also needs to be independent verification of the use of true biodegradable FADs before any recognition can be given to the fishery.
28. See also Doc. No. j-FAD_06/2017 as to lost echosounder buoys and the need for the FAD to float with all of the weight it has underneath.
29. There are anecdotal reports (e.g. Stelfox et al., 2015), a report by the Maldives government⁵, and a further paper by Davies et al⁶ as to negative environmental impact of dFADs washing ashore and become grounded or beached, potentially causing damage to marine habitats. Furthermore:
 - (1) On the occurrence of observed dFAD beaching events, Balderson and Martin (2015) present a detailed investigation into the location, characteristics and source of beached dFADs in Seychelles. They show categorically that dFADs used by fleets in the region are washing ashore, and that coral reefs are the most impacted habitat, with dFAD sub-surface structure becoming entangled on reef structure. However, their study did not attempt to quantify the damage caused to habitat during entanglement.

⁵ Maldives Government report to joint RFMO meeting on FAD management, Madrid, Apr 2017 (Doc. No. j-FAD_12/2017: Drifting FADs contribution to marine litter and ghost fishing: a perspective from the Maldives.

⁶ Doc. No. j- FAD_19/2017 Davies et al. 2017. Potential Environmental Impacts Caused by Beaching of Drifting Fish Aggregating Devices and Identification of Management Uncertainties and Data Needs.

- (2) From a different perspective, and using a large dataset of GPS buoy positions, Maufroy et al. (2015) estimated that almost 10% of all dFADs deployed by French vessels in the Indian and Atlantic Oceans ultimately became beached. In the Indian Ocean, beaching events occurred more widely than in the Atlantic, with most events observed in Somalia, the Seychelles, the Maldives, and Sri Lanka. Beaching events were also observed in the British Indian Ocean Territory (BIOT) marine protected area. These beaching events generally occur due to the dFAD drifting outside of the main fishing grounds and malfunction/or loss of the tracking buoy. In the Indian Ocean this could be 1,000-1,400 beaching events per year from dFADs deployed by the EU and Seychelles flagged fishing fleet alone. These figures are probably an underestimation of the number of beaching events as they do not account for the dFADs that are dumped at sea with no Satellite buoy attached. As dFADs are built primarily from non-biodegradable materials this is a significant source of marine pollution that adds to the environmental impact already caused by 'ghost nets' from other forms of fishing such as trawling and gill nets (Stelfox, et al., 2014).
- (3) The lack of research on this topic means that the problem of beaching dFADs is not well defined, with the risk of dFADs beaching events being mostly assumed and the extent and severity of beaching impacts uncertain.
- (4) Balderson & Martin 2015 and Maufroy et al. 2015 ascertain that dFADs may result in some ghost fishing and that it is therefore essential to assess the magnitude of overall mortality of turtles through entangling in dFADs at sea or beached [from Rees et al., 2016. Research priorities for sea turtles: a review].
- (5) There are reports of Echebastar satellite trackers that are usually deployed on dFADs being found on a beach in South Africa (<http://southcoastherald.co.za/73075/fishing-tracker-discovered-off-shelly-beach>) and another report of an Echebastar satellite buoy washing up on a beach in Cape Vidal, South Africa in March 2017. In the Indian Ocean, beaching events have also been reported from Somalia, the Seychelles, the Maldives, Sri Lanka and in the British Indian Ocean Territory (BIOT) marine protected area (Davies et al, 2017). There are numerous other reports of dFADs drifting onto sensitive reef ecosystems and causing habitat damage.
- (6) At the Global FAD Science Symposium held in Santa Monica, California, 20-23 March 2017 and the Joint t-RFMO FAD Working Group meeting held in Madrid on

10 April 2017, one of the of the studies presented (Davies et al, 2017), specifically investigated the potential for FAD beaching events to occur in the Indian Ocean, characterising beaching risk and identified knowledge gaps. Their case study examined the spatio-temporal dynamics of dFAD dispersal in the Indian Ocean, specifically estimating the probability of dFAD beaching events on coral reefs and examining the potential environmental impacts of dFAD beaching in terms of physical damage to coral reef and other shallow water habitats. They also identified and critically discussed possible approaches to managing the issue of beaching dFADs.

- (7) The CAB entirely fails to engage with this critically important evidence (a serious non-procedural irregularity) and adopts an approach so superficial as to be arbitrary and/or unreasonable.

30. As long as the UoA does not use bio gradable FADs, the annual input of lost non-degradable FADs must be classified as a non-reversible habitat modification.

31. Furthermore, and more particularly:

- (1) The Moir Clark et al.(2015) paper, which is primarily focused on catch and bycatch composition of IUU fishing activities in the British Indian Ocean Territory (BIOT), specifically also states that that they wanted to “bring[s] to the attention of the WPEB [Working Party on Ecosystem and Bycatch] an apparent recent increase in lost or abandoned fishing gear during 2014 and 2015, the majority of which have been fish aggregating devices (FADs) that have been found washed on shore”. They state that while abandoned gear had been encountered in the past it had been a relatively rare occurrence. Between March and April 2015 however 18 items were found and the authors conclude that these numbers are very much an underestimation of the true impact on the ecosystem as abandoned fishing gear was only encountered opportunistically, while on patrol, rather than during any systematic surveys. Most of the gear was found washed up on shore, on the seaward side or trapped on the seaward side reef.

- (2) Of all 22 items listed that had been encountered, all but one of these items, a longline flag, were FADs. In some cases the name of the vessels could be distinguished. Out of the 14 lost and abandoned FADs that could be connected to specific vessels through markings, 3 could be linked to Echebastar vessels, namely the Alakrana, Elai Alai, Campolibre Alai. The report also stated that “[t]he risk to some animals posed by FADs

was demonstrated by the sighting of a juvenile green turtle trapped in the netting of a FAD which washed up on Ile Anglaise, although in this case the turtle was released alive. It should be noted that, following IOTC Resolution 13/08, it is recommended that the sub-surface component of a FAD is made from non-meshed materials such as ropes or canvas sheets instead of netting. FADs evidently utilising netted material were encountered on a number of occasions”.

- (3) The waters of the British Indian Ocean Territory (BIOT) were declared a Marine Protected Area (MPA) on 1 April 2010 and from 1 November 2010 became a no-take MPA to commercial fishing. Mees and Stevens (2016) identified discarded fishing gear abandoned or lost FADs as one of the threats to the ecosystem. According to them the discarded, lost and abandoned fishing gear and FADs are “causing inter alia hazards to nesting turtles and ghost fishing”. It should be of particular concern and relevant that the Echebastar fishery is having direct impacts on sensitive ecosystems, and that one negative environmental impact of dFADs is that they have the potential to wash ashore and become grounded or beached, potentially causing damage to marine habitats. However, other than anecdotal reports, this issue has received very little research attention to date. The lack of research on this topic means that the problem of beaching dFADs is not well defined, with the risk of beaching events mostly assumed and the extent and severity of impacts uncertain.
- (4) Davies et al. (2017) mention that dFADs can have a number of negative environmental impacts. This includes ‘ghost fishing, degradation and damage to benthic habitats and causing marine pollution. When they wash ashore and become grounded or beached, there is a serious risk of causing damage to marine habitats. However, other than anecdotal reports, this issue has received very little research attention to date. The lack of research on this topic means that the problem of beaching dFADs is not well defined, with the risk of beaching events mostly assumed and the extent and severity of impacts uncertain.
- (5) Davies et al (2017) contend that the beaching of dFADs has the potential to cause physical impacts to marine habitats and could also constitute marine pollution. Old fishing nets are a common material used in dFAD construction and previous studies have shown ALDFG nets to entangle significant numbers of animals, a process termed ‘ghost-fishing’. This entangling impact is likely to be variable by habitat. For example, nets in shallow sandy bottom habitats may follow this pattern, yet nets caught on rocky bottoms, structures, or reefs

could tear and form larger holes for larger animals to become entangled thus altering the catch selectivity of the net (Stelfox et al., 2016). In addition, ALDFG material may get colonised by smaller animals looking for food and shelter, which in turn could attract larger predators that may become entangled, potentially prolonging the fishing effect (Carr, 1987). Ghost fishing may be particularly damaging if it occurs in important foraging, spawning and nesting grounds, or if it intercepts migration routes (Gilman et al., 2010).

- (6) The design and nature of dFADs is widely variable but usually consist of sub-surface aggregating material made of old fishing nets tethered to a floating surface frame. Where nets are used, it is likely that monofilament nets are likely to have greater ghost fishing capacity. This is due to the higher visibility of the multifilament nets (Ayaz et al., 2006). Driven by concerns over shark and turtle entanglement within these nets, there has been a move towards changing dFAD designs to reduce entanglement (for details see MRAG, 2017). These consist of using smaller mesh sizes and replacing the sub-surface net curtains with rolled net 'sausages' (Franco et al., 2009; Balderson and Martin, 2015). However, these 'sausages' have been shown to unravel, questioning their efficacy at reducing entanglement rates. In addition, 'sausage' nets do not prevent the entanglement of corals, although dFADs built with synthetic rope appear to be less likely to become entangled (Balderson & Martin 2015). These factors have led to organisations, such as the International Seafood Sustainability Foundation (ISSF), calling for the term 'non-entangling' dFADs to be reserved for solely for those that contain no netting throughout their construction (ISSF, 2015).
- (7) ALDFG has also been shown to degrade benthic habitats (Macfadyen et al., 2009), such as coral reefs as nets are prone to snagging on rocks, sponges and corals. Once snagged, the wind and wave forces exerted on the net may break away from the reef, damaging habitat in the process (Donohue et al., 2001). Fishing gear is then free to snag on another coral and thus the process repeats itself. Depending on the species and size of coral colonies, it may take long periods for the reef to recover from intense physical trauma as corals grow between 0.4-1.5 cm per year for massive species and up to 20 cm per year for branching species (e.g. Crabbe and Smith, 2005). Recovery from other physical traumas have been estimated at between five and ten years to recover from blast fishing (Fox and Caldwell, 2006), or ten (Connell, 1997) to 40-70 years (Dollar and Tribble, 1993) to recover from storm damage. In some cases, recovery can then follow a different trajectory and the

reef becomes an altered community (Hughes et al., 2005). It is difficult to ascertain the impact of nets on other habitats, such as seagrasses, as few have studied the impact of ALDFG. However, seagrass growth is known to be very slow, 0.4-7.4 cm per year (Boudouresque and Jeudy de Grissac, 1983), and previous studies have shown that seagrass communities take can between 1.4-9.5 years to recover from mechanical scarring from boats (Kenworthy et al., 2002).

- (8) However, the impact of ALDFG is not restricted to the sub-tidal zone. If the ALDFG is not caught within an ocean gyre or caught on the benthos, then it will most likely come to rest along coastal beaches and shorelines. In some areas, ALDFG can account for more than half of the litter found on beaches (Hong et al., 2014). Beached litter can have both economic and ecological consequences. For example, beach litter may reduce a beach's aesthetic appeal to tourists and possibly reduce visitor numbers. Alternatively, litter can form a significant proportion of sea-bird nest building material (Schernewski et al., 2017; Votier et al., 2011) and can negatively affect turtle hatchlings trying to reach the sea (Özdilek et al., 2006).
- (9) Most dFADs are constructed from non-biodegradable materials, including nylon, polyethylene, metal, plastics and electronic components. These materials typically degrade very slowly, often only break up into smaller pieces through mechanical action, and have the potential to pollute the marine environment. Synthetic materials such as these can then enter food-webs through ingestion by plankton (Setälä et al., 2014), turtles (Schuyler et al., 2012) and corals (Hall et al., 2015), potential severely inhibiting animal fitness (Wright et al., 2013). In addition to this chemical pollution, ALDFGs also have the potential to biologically pollute ecosystems through the transportation of invasive species which can disrupt community structure and cause local extirpations of native species (Derraik, 2002; Macfadyen et al., 2009).
- (10) There is no clear consensus on whether dFADs breach international laws on marine pollution as it is difficult to define when it has become ALFDG. If a dFAD was deliberately discarded this would likely violate MARPOL Annex V, and would also likely contravene the London Convention. The definition is complicated by the frequent 'stealing' of dFADs at sea, when the GPS buoy belonging to one vessel is removed and replaced with another from the new vessel.

- (11) Balderston & Matis (2015) looked at lost FADs in Seychelles and found that the increased number of deployments in recent years has led to an increase in the number of lost dFADs. These lost dFADs continue to drift with ocean currents and a large number eventually come into contact with land and 'beach', becoming stuck in a wide range of habitats. In their paper they detail the first attempt to assess the environmental impact and causation of lost dFADs that have become beached on and around Seychelles islands. They showed that vessels owned by Spanish companies were responsible for 76% of the dFADs found beached in the study area. The data also shows that there has been a move by the fishing industry towards 'non-entangling' dFADs that make use of 'sausage nets' to reduce the entanglement of sharks and turtles in the open ocean but that these devices still pose an entanglement risk when they come into contact with coral reefs.
- (12) Balderston & Matis (2017) state that there are a number of concerns about the environmental impacts of DFADs. Entanglement of marine life within the net of the DFAD itself has been shown to be having a major impact on pelagic species such as sea turtles and sharks. Sea turtles, particularly the vulnerable Olive Ridley Turtles (ORTs) (*Lepidochelys olivacea*) (Abreu-Grobois, et al., 2008), spend their juvenile years associated with floating objects in the open ocean. ORTs are attracted to DFADs and can become entangled in the nets which have been shown by researchers to be composed of the mesh size most dangerous to turtles (Stelfox, et al., 2014).
- (13) An estimated annual DFAD entanglement mortality of 480,000-960,000 silky sharks (*Carcharhinus falciformis*) in the Indian Ocean (Filmmalter, et al., 2013) is a similar figure to the combined world fisheries catch of Silky Sharks (400,000-2million), a situation that clearly needs addressing (Filmmalter, et al., 2013). These concerns have led towards changes in FAD design to try to limit entanglement (Tolotti, et al., 2015). Net curtains are being replaced by rolled net 'sausages' (Franco, et al., 2009) and smaller mesh sizes are being used in so called 'Ecological FAD' designs. The non-entangling nature of these dFAD designs has been called into question as sausage nets have been shown to unravel and small mesh netting can tear creating larger holes, as such the International Seafood Sustainability Foundation (ISSF) has refined its definition of 'non-entangling' FADs to only include those that contain no netting in the construction (ISSF, 2015).
- (14) As well as impacts on non-target species there are growing concerns about the effect of DFADs on the tuna fisheries themselves. The use of DFADs has

significantly increased the catches of juvenile bigeye (*Thunnus obesus*) and yellowfin tuna (*Thunnus albacares*) causing a reduction in yield per recruit (Dagorn, et al., 2013) and average sizes that are well below that of first spawning (Fonteneau & Chassot, 2014). Although significant stock declines have not yet been observed, with so many unknowns with regards to the effect of this type of fishing pressure surely a precautionary approach to FAD use should be adopted.

- (15) Balderson & Martin (2015) reported that in April 2015 ICS teams conducted DFAD surveys around St. Francois and Farquhar atolls in Seychelles to determine the number of DFADs currently beached at these locations. A total of 96 DFADs were found during these surveys. 214 separate DFADs were recorded by ICS between 2011 and 2015. Of these, 210 were recorded as beached after they had become stuck and were no longer drifting. As the majority of the data was recorded opportunistically then there would have been DFADs passing by that were missed and these figures therefore represent the minimum number of DFADs that beached on the islands during this time period. Of the DFADs, 128 (60%) were found with a Satellite buoy attached, and it was possible to determine the fishing vessel that was using the DFAD for 115 (90%) of these. 16 of the FADs that could be linked to a particular vessel belonged Echebastar.
- (16) Balderson & Martin (2015) mention that a relatively low proportion (18.4%) of DFADs had hanging curtain nets as the aggregator. The use of fishing nets rolled up into a sausage (sausage net) was found to be the most common form of aggregator (62.1%). What was apparent was a lack of bio-degradable materials used in DFAD construction. In all the DFADs observed the aggregator components were made entirely of synthetic materials. Of DFADs using curtain nets that could be identified to a vessel 100% were from Spanish companies. Where the aggregator was recorded for French vessels, 77% used sausage nets, with the others using synthetic rope.
- (17) The materials used to cover the raft of the DFADs were also entirely synthetic. 85% of DFADs had fishing net stretched across the frame, whilst 44% had shade cloth or a combination of both fishing net and shade cloth. Of DFADs that still had the aggregator part attached (119) only one was found to have no netting used in its construction. This FAD was constructed using a steel frame with shade cloth stretched across (Figure 5), the aggregator was a synthetic rope hanging down from the centre to a depth of >30m, attached to the rope were woven sacks (salt bags) placed at regular intervals.

32. FAD management at IOTC has the following weaknesses (which mean that it cannot be determined that the use of FADs is within scope):
- 1) The impact of current FAD numbers on tuna populations and the broader ecosystem are poorly understood. The Precautionary Approach requires as a minimum a freeze of the dFAD footprint. Adopting 'limits' that incentivise an increase in overall dFAD use are counterproductive.
 - 2) There is an absence of mechanisms to share data collected by dFADs with fisheries managers, relevant scientific bodies, secretariats, and research institutes, in line with confidentiality provisions of the RFMOs, not later than 6 months after they are collected. Such data would provide clarity on dFAD numbers, benefit future stock assessments, and aid development of more effective FAD management measures. To accomplish this, dFAD data should be shared with
 - 3) There is a lack of understanding as to how FAD fishing and densities of dFADs in tropical areas impact the distribution and CPUEs of tropical tunas to higher latitude coastal fisheries.
 - 4) The absence of mechanisms to track and monitor dFADs on the high seas by the IOTC to complement measures in coastal state EEZs.
 - 5) If non-biodegradable dFADs are not recovered, then they should be considered abandoned and this should be recorded as a violation of MARPOL Annex V and the London Convention (see Davies et al, 2017), reported to the Flag State, and appropriate action should be taken minimize losses in the future.
 - 6) Vessels should be accountable for all of the FADs they deploy, and should recover them as part of their fishing strategy. This is consistent with the UN Fish Stock Agreement, which calls on States to, "minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species." When lost or stranded, dFAD owners should be liable for recovery and rehabilitation costs in case of damage to coastal habitats, such as reefs.
33. Purse seine fisheries in the Indian Ocean catch several ecologically important groups including other tunas and sharks. In particular, sharks are considered top predators in many ecosystems and play a critical role in how these ecosystems are structured and function (Piraino et al.

2002) (Stevens et al. 2000). The loss of these predators can cause many changes, such as to prey abundances, which can lead to a cascade of other affects (Myers et al. 2007) (Duffy 2003) (Ferreira et al. 2010) (Schindler et al. 2002) and behavioural changes (Heithaus et al. 2007).

34. The use of FADs in the Indian Ocean impacts the surrounding ecosystems. Smaller tuna, specifically bigeye and yellowfin, are often associated with FADs and this can lead to growth and recruitment overfishing (Freon and Dagorn 2000). In addition, behavioural changes in tunas may be associated with the introduction of FADs. These include increases in the biomass of tunas under FADs, reduced free-school abundance, changes in school movement patterns and structure, and differences between the age and size of free and FAD associated schools (Fonteneau 1991) (Menard et al. 2000a) (Menard et al. 2000b) (Josse et al. 1999) (Josse et al. 2000).
35. The negative long-term impacts of FAD fishing are difficult to evaluate due to insufficient qualitative data (Fonteneau et al. 2000), so additional research needs to be undertaken to determine the potential effects of FADs on the ecosystem, including monitoring the number of FADs being used (Dagorn et al. 2012). Recently, the Indian Ocean Tuna Commission (IOTC) required individual countries to provide a management plan for FADs to be submitted to the Commission in 2013. Within this plan, countries must identify designs and deployment options that will reduce the incidental capture of sharks, marine turtles, or other bycatch species (IOTC 2013I).
36. For both yellowfin and bigeye, catches of small tunas on dFADs reduce the yield per recruit of each cohort recruited in the fisheries. The development of the DFAD EU and associated flags purse seine fishery has resulted in a major increase in the catch of small YFT in the IO over the last decades. Annual numbers of small yellowfin caught under dFADs have been steadily increasing since 1991, from less than 4 million fishes caught in 1991 to more than 20 million in 2013 (Fontenau & Chassot, 2014)⁷.
37. It is estimated that the total number of DFADs numbers had increased by about 70% since the early 2000s and that they had reached around 10,500-14,500 in 2014. A good knowledge of the total numbers of DFADs is urgently needed to better estimate the fishing effort and capacity of purse seine fisheries. Future limitations in the number of DFADs could be a direct and efficient way to reduce fishing effort exerted by purse seiners and their support vessels.

⁷ Fontenau, A. & Chassot, E. 2014. Managing tropical tuna purse seine fisheries through limiting the number of drifting fish aggregating devices in the Indian Ocean: food for thought IOTC–2014–WPTT16–22

38. Fontenau and Chassot (2014) suggested that by IOTC following the precautionary approach, they should consider setting a cap on the number of DFADs drifting at-sea and that threshold reference levels could be based on the year 2013, at least to slow down the trend observed in the overall fishing capacity on DFADs. They went further to say that any such reduction measures should first be carefully analysed by an ad hoc IOTC DFAD multidisciplinary working group to ensure their efficient implementation and to allow an improved sustainability of the concerned fisheries.
39. It should be noted that the FAD limits under current IOTC resolutions were not derived through informed scientific analysis, but were rather based on compromise measures underpinned by political discussions. It cannot be said with confidence that the current limits on FAD numbers, or even the voluntary commitment of Echebastar under ANABAC, are precautionary. Fontenau & Chassot (2014) suggested that a return to 2013 levels might be precautionary.
40. There have been estimates of the number of FADS being deployed annually in the Indian Ocean, although they are often described as 'back of the envelope' calculations (Blaha, 2015) as the information is not readily available. Blaha (2015)⁸ asserts that "Information on FAD deployments remains hard to find. Much of the data that would be needed to develop a precise estimate of their numbers exist but are confidential as industry invest heavily on the construction and electronics of it (just think how much 3 km of Polyethylene line will cost!) and they don't want other companies to use their FADS, so this information proprietary".
41. Maufroy et al (2017)⁹ stated that despite the recent implementation of dFAD management plans by tuna RFMOs to collect data on dFADs and GPS buoy use (ICCAT Recommendation 14/01; IOTC Resolution 13/08), it is still difficult to evaluate the magnitude and ecological impacts of dFAD use. In this context of growing concerns for tropical tunas and pelagic ecosystems, it is necessary to have a good understanding of how many dFADs are currently drifting at sea and how many dFADs and logs are equipped with GPS buoys.
42. This information is still currently lacking at the IOTC. Without a good understanding of the total number of dFADS drifting in the Indian Ocean at any given time as well as the number of potential deployments that can be

⁸ Blaha, F. 2015. Fish aggregating devices (fads) are not a fad... <http://www.franciscoblaha.info/blog/2015/11/17/fish-aggregating-devices-fads-are-not-a-fad>

⁹ Maufroy, A., Kaplan, D. M., Bez, N., Delgado De Molina, A., Murua, H., Floch, L., Chassot, E., 2017. Massive increase in the use of drifting Fish Aggregating Devices (dFADs) by tropical tuna purse seine fisheries in the Atlantic and Indian oceans, ICES Journal of Marine Science, Volume 74, Issue 1, 1 January 2017, Pages 215–225, <https://doi.org/10.1093/icesjms/fsw175>

made based on available GPS buoys, FAD limits based on IOTC resolutions are applied arbitrarily and without scientific basis.

43. There is also no independent monitoring of the numbers of dFADs that are actually deployed. This lack of transparency is not conducive to applying the precautionary approach.
44. The impacts of dFADs on the ecosystem is undeniable. Maufroy et al (2017) summarised these impacts as follow: "The development of dFAD-fishing has had several consequences (Dagorn et al., 2013b; Fonteneau et al., 2013). First, this increased fishing effort and overall capacity of the fishery by (i) enhancing the aggregation of tropical tunas, including juveniles of yellowfin and bigeye tuna; (ii) reducing search time dedicated to locating tuna schools; and (iii) increasing the fraction of sets with non-zero catch (Ariz et al., 1999). Secondly, dFADs may have modified the natural habitat of tropical tunas and other species. There are concerns that the increased use of dFADs has modified the dynamics and structure of tuna schools, their feeding ecology and movements (Fonteneau et al., 2000a; Marsac et al., 2000; Ménard et al., 2000; Hallier and Gaertner, 2008). It has been hypothesized that dFADs act as an "ecological trap" by maintaining tunas in suboptimal areas and/or reducing school size (Marsac et al., 2000; Hallier and Gaertner, 2008; Sempo et al., 2013), though evidence for such effects remains limited (ISSF, 2014). In addition, FOB fisheries have potential to severely negatively impact coastal and pelagic ecosystems via increased levels of bycatch and discarding (Amandè et al., 2010, 2012; Hall and Roman, 2013), ghost fishing of sensitive species (Filmlalter et al., 2013), and potential damage to fragile ecosystems when lost FOBs end up beaching on coral reefs (Balderson and Martin, 2015; Maufroy et al., 2015)."
45. Without fully understanding all these impacts, and having a better understanding of what level of FAD reductions will have the desired effect to maintain healthy ecosystems, it cannot be claimed that the Echebастar operation, which is heavily reliant on FAD fishing, is sustainable and will not cause irreparable harm to sensitive ecosystems.
46. There is a clear potential for negative ecological impacts from FADs, and management is not designed to avoid these impacts.
47. FAD fishing has a large bycatch of juvenile silky sharks. An increase in the proportion of artificial to natural FADs increases the bycatch of such sharks (as well as other species). This has not been shown to be either reversible or a non-serious change to the pelagic ecosystem:

	<p>(1) The status of silky sharks in the Indian Ocean is uncertain. In the eastern and western Indian Ocean, along with globally, silky sharks are considered Near Threatened by the International Union for the Conservation of Nature (IUCN) (Bonfil et al. 2009).</p> <p>(2) No qualitative assessment has been conducted in the Indian Ocean, due to a lack of information. The information that does exist indicates that significant declines in abundance have occurred over time, and silky shark is considered one of the most vulnerable shark species in the Indian Ocean (IOTC 2012) (IOTC 2013g). They are the main shark species (79% of all shark bycatch) in Indian Ocean purse seine fisheries (Amande et al. 2008). Monterey Aquarium's Seafood Watch programme says "the worst scoring species in the associated (Indian Ocean) purse seine fishery is the silky shark, due to the potentially low population size and large negative impacts from fishing.</p> <p>(3) Current fishing mortality rates are unknown but it is generally thought that maintaining or increasing fishing effort will likely cause the biomass to decline (IOTC 2013).</p> <p>(4) The incidental capture of ecologically important species by FADs has the potential for negative ecological impacts, and management is not designed to avoid these impacts.</p> <p>(5) A recent study by Poisson et al. (2014) has also shown that the overall mortality rate of silky shark individuals brailled on board purse seiners operating in the Indian Ocean was 85%.</p> <p>48. If the CAB is seeking to disregard the effect of dFADs on the basis that this UoA comprises only a small number of vessels out of the total number deploying and/or fishing on dFADS, then that must be wrong in principle; it would allow the overall impact to be disregarded, with the standard being met by all vessels, provided they were considered in sufficiently small groups. This would remove all pretence of legitimacy from the standard.</p>
Supporting rationale and or evidence	<p>49. The CAB states (p.89 of the Final Report) that concerns as to the effects of dFADs on the migratory patterns of tuna as well as the effects of lost dFADs on coral reefs are addressed in Components 2.4 and 2.5. Without accepting that these are the only components where such matters are properly to be considered, the flaws in the CAB's report set out above fundamentally undermine the scoring in 2.4</p>

and/or 2.5, such that the scoring there is seriously irregular and/or arbitrary and/or unreasonable.

Scoring

Performance Indicator

Click or tap here to select a Performance Indicator.

Reason

Data on skipjack landings/catches in 2014 and 2015 Objection 3

50. Tables 14–17 at p.36 of the Final Report set out tuna “landings” by Echebistar seiners, by species, for each of 2012, 2013, 2014 and 2015. Tables 40 and 41 at pp.132-133 of the Final Report set out “catch” of skipjack by Echebistar vessels (Seychelles-flagged and Spanish-flagged, respectively) for each of 2014, 2015 and 2016. Therefore figures for 2014 and 2015 can be compared, as follows:

	Skipjack (tonnes) 2014	Skipjack (tonnes) 2015
Tables 14–17 at p.36 (‘landings’)	13,903	15,263
Tables 40 and 41 at pp.132-133 (‘catch’)	1,893 (Seychelles- flagged) 7,102 (Spanish- flagged) ----- 8,995	6,752 (Seychelles- flagged) 6,500 (Spanish- flagged) ----- 13,252

Supporting rationale and
or evidence

51. Therefore there is a significant discrepancy between the figures in the tables at p.36 and the figures in the tables at pp.132-133, particularly for 2014. The result is that catches are lower than landings. This discrepancy must be explained by the CAB, otherwise the scoring for each and every SI which refers to or is based on the tuna landings is arbitrary and/or unreasonable.

Scoring

Performance Indicator

Click or tap here to select a Performance Indicator.

Reason	<p>Observer scheme</p> <p>Objection 4</p> <p>52. The Final Report, at least for P2, places a great deal of weight on data gathered by observers.</p> <p>53. At p.236 of the Final Report, MSC Technical Oversight (item 27282) states, regarding the Second Report, the following: “Only one source of catch data is used in this assessment. It is unclear whether the catch data from the fishery observer program is adequate to assess the impact of the UoA on P2 species, information on how observer data is collected and analysed is not included in this assessment (see SA3.6.3, subclauses and associated guidance).” The CAB responds by stating that: “The report has been revised (section 7.3) to provide a more detailed description of the SFA observer program, the training of observers, and analysis of the data that was provided by AZTI to the assessment team.”</p> <p>54. Section 7.3 of the Final Report (p.37) just states: “The SFA observer programme is described under P3.” There is indeed a description under P3, at pp.148-149. The description does indeed refer to training. However, it is silent about the analysis of data, apart from stating that the data is forwarded to national fisheries management division at SFA which ensures that observer data complies with IOTC resolution 11/04. In turn, IOTC resolution 11/04 is silent about data analysis. Therefore, the Final Report is deficient regarding information about the observer programme in terms of analysis – notwithstanding the MSC Technical Oversight and the CAB’s response to it.</p>
Supporting rationale and or evidence	<p>55. In addition, no information is provided at pp.148-149 about the following key aspects of the observer scheme: what minimum qualifications the observers need to have; what nationalities they are compared to the flag States of the vessels concerned; and how they are paid. This information, together with more information about the analysis of the data, needs to be provided by the CAB in order that stakeholders, including IPNLF, can form their own view as to the credibility of the observer scheme. Otherwise the scoring for each and every SI which refers to or is based on the observer data is arbitrary and/or unreasonable.</p>
Scoring	
Performance Indicator	Click or tap here to select a Performance Indicator.

Reason	Objection 5 56. At p.229 of the Final Report, the CAB (in response to PNA) states that observers “physically subsample the catch before any species are discarded”. At p.377, the Final Report (in the Meeting Record, Seychelles Observer Programme, paragraph 4) states that: “Observers identify tuna discard, sample bycatch and the impact of FADs.” As far as we are aware, these are the only two references in the Final Report to sample or sub-sampling by observers. These references are in the appendices, rather than in the main body of the report. In other words, the matter of catch sampling and subsampling seems to have been marginalised by the CAB. Yet the regime for sampling and sub-sampling is crucial to understanding the veracity of the data presented in Tables 23 and 24. Having acknowledged that sampling occurs, the CAB must explain what criteria are used to determine the sampling regime. Otherwise the scoring for each and every SI which refers to or is based on the observer data is arbitrary and/or unreasonable.
Supporting rationale and or evidence	Otherwise the scoring for each and every SI which refers to or is based on the observer data is arbitrary and/or unreasonable.

Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	Objection 6 57. At p.366 of the Final Report, Peer Reviewer A (reviewing the Second Report) states that: “The information on catches presents no CVs [CV = coefficient of variation] or other measure of variability, and no power tests to estimate the % of samples needed for rarer species. Although average catches of minor species are generally low, data is unlikely to be normally distributed and at the least there needs to be some confidence levels around the estimates to determine the impacts.”
Supporting rationale and or evidence	58. These comments have not been addressed by the CAB in the Final Report. In particular, the information on catches presents no CVs. That is very significant, in view of the fact, as pointed out by the peer reviewer, that “data is unlikely to be normally distributed and at the least there needs to be some confidence levels around the estimates”. The CAB must address this omission. Otherwise the scoring for each and every SI which refers to or is based on the catch data is arbitrary and/or unreasonable.

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Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p><u>Objection 7</u></p> <p>59. We note that data from the vessel Demiku are missing for 2014 in Table 19 (cf. Table 16, where Demiku is shown as fishing for 2014), suggesting that the percentage figure in Table 22 for 2014 may be wrong. This matter (regarding Demiku) has not been addressed from the Second Report, despite the CAB stating (p.273) that: “In response to the INPLF comment, we requested AZTI to review their observer data. Revised data are contained in the report.” The CAB must check the potential anomaly regarding Demiku, Otherwise the scoring for each and every SI which refers to or is based on data from the vessels is arbitrary and/or unreasonable.</p>
Supporting rationale and or evidence	Otherwise the scoring for each and every SI which refers to or is based on data from the vessels is arbitrary and/or unreasonable.

Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p><u>Objection 8</u></p> <p>60. Much of the assessment of the P2 Pls uses the data set out in Tables 23 and 24. These two tables contain data from observers for the years 2014, 2015 and 2016. Yet the percentages of observer data available for each of 2014, 2015 and 2016 are (only) 29%, 53% and 34% respectively (see Table 22).</p> <p>61. These relatively low percentages raise doubts about the representativeness of the data in Tables 23 and 24. In that respect, the Final Report states (at p.38) that:</p> <p>“IOTC considers that 25 % observer coverage or data availability is required to accurately characterize the bycatch of the major species (particularly sharks and billfish) in</p>

	<p>Indian Ocean purse seine fisheries (Lennert-Cody, 2001; Sánchez, et al. 2007)."</p> <p>62. The wording "IOTC considers" is a softening from the Second Report (p.55), which stated instead that "IOTC has determined". Nevertheless, we take issue with the reference to "IOTC considers". What part of IOTC "considers"? It is the Scientific Committee? Is it the plenary? Or is it the authors of the two papers cited. This needs to be clarified by the CAB, so that it is possible to understand better what weight should be applied to the 25% figure.</p> <p>63. This is important because the 25% figure is used several times in the Final Report to justify the representativeness of the observer data (see for example pp.67, 68 and 84), except in respect of some ETP species. We note that the most recent of the two papers cited by the CAB is now 10 years old.</p>
Supporting rationale and or evidence	<p>64. As presently set out, the scoring for P2 is therefore arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p>Objection 9</p> <p>65. As noted above, the percentages of observer data available for each of 2014, 2015 and 2016 are 29%, 53% and 34% respectively. However, in terms of those percentages, the Final Report - in Table 22 - makes no distinction between observed FAD sets and observed FSC sets. Instead, it lumps these two set types together for each year. Thus it seems to assume that the percentage of observed sets is the same across both set types.</p> <p>66. The CAB's response to IPNLF raising this point in respect of the Second Report is (p.273): "The observer catch data are not summarized or presented by vessel, it is summarized for the fleet by set type, and then expanded to an estimated total observed catch by the percentage of observed sets". This statement is opaque. It also fails to address the point made above.</p> <p>67. To understand the situation better, we have done our own analysis, for each of 2014, 2015 and 2016, using the data available in Tables 20 and 21:</p>

2014, FAD sets:

Number of sets with processed observer data (Table 20):
163

Total number of sets (Table 21): 567

Percentage of total sets with processed observer data:
28.7%

2014, FSC sets:

Number of sets with processed observer data (Table 20): 68

Total number of sets (Table 21): 237

Percentage of total sets with processed observer data:
28.7%

2015, FAD sets:

Number of sets with processed observer data (Table 20):
610

Total number of sets (Table 21): 1158

Percentage of total sets with processed observer data:
52.7%

2015, FSC sets:

Number of sets with processed observer data (Table 20):
124

Total number of sets (Table 21): 235

Percentage of total sets with processed observer data:
52.7%

2016, FAD sets:

Number of sets with processed observer data (Table 20):
518

Total number of sets (Table 21): 1510

Percentage of total sets with processed observer data:
34.3%

2016, FSC sets:

Number of sets with processed observer data (Table 20): 65

Total number of sets (Table 21): 190

Percentage of total sets with processed observer data:
34.2%

68. We would have expected the percentage figures to vary between FAD sets and FSC sets: it would be an odd coincidence if, for any given year, across all the Echebastar vessels, the ratio of observed FSC sets to total FSC sets and the ratio of observed FAD sets to total FAD sets was the same. And yet that 'odd coincidence' is exactly what comes out of our analysis. This is quite surprising. The CAB must explain why this result is obtained – and, what is

	more, not just for one year but for all three years concerned.
Supporting rationale and or evidence	

Scoring

Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p><u>Objection 10</u></p> <p>69. The Final Report refers to “expanded” data (see, for example, pp.38, 51, 52 and 67). At p.38, it states that: “The total catch of all species by weight and number for non-tuna species was expanded using the ratio of observed sets to total sets for each year and set type”.</p> <p>70. This assumes that the distribution of by-catch species (e.g. sharks, including Silky sharks) over time and distance is homogenous and hence that it is representative to “expand” as has been done. The natural environment of the Indian Ocean is not that simple. We consider that careful consideration should be given to whether or not it is representative to expand as has been done, before reliance is placed on ‘expanded’ data.</p> <p>71. The CAB’s response to IPNLF raising this point in respect of the Second Report is (p.274) (emphasis added):</p> <p>“The expansion of limited observer coverage or available observer data to the full scale of a fishery is a standard procedure in fisheries science. <u>Assuming that the observer data are representative of the fishery</u>, then limited observer data can be expanded to estimate the total catch of any species by using either some measures of effort (the proportion of observed sets to the total number of sets), or some measure of catch of the target species, (the proportion of observed catch of tuna) to the total catch of tuna. While there are assumptions, we believe that the analysis allows for the reasonable estimation of the catch of individual species, including silky sharks.”</p>

Supporting rationale and or evidence	72. The key words in the above extract are: “Assuming that the observer data are representative of the fishery”. The CAB provides no evidence that the observer data are indeed representative of the fishery and there is reason to believe otherwise (see Babcock & Pikitch, below). This important omission must be rectified by the CAB, failing which it is impossible to rely on the data in Tables 23 and 24 and the scoring is arbitrary and/or unreasonable.
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Scoring	
Performance Indicator	Click or tap here to select a Performance Indicator.
Reason	<p>Objection 11</p> <p>73. The percentages of observed sets for each of 2014, 2015 and 2016 are 29%, 53% and 34% respectively (see text and Table 22, at p.39). The UoA's bid for certification, regarding Principle 2, is based on data arising from these percentages.</p> <p>74. Draft Condition 1 (as set out at p.111 of the Second Report) acknowledged that, for ETP species, (a) “the data should represent at least at the 50% of observer sets” [sic] and (b) “a minimum of five years should be used”.</p> <p>75. The wording of Condition 1 in the Final Report (p.185) is different. It reads as follows:</p> <p style="padding-left: 40px;">“By the fourth annual surveillance audit, the client must demonstrate that information is adequate to measure trends and support a strategy to manage impacts on ETP species.”</p> <p>76. Despite the generic wording of the Condition 1, the “client action plan” for Condition 1 refers to a minimum of 50% of observer sets – as specified in the draft Condition 1 in the Second Report. However, the reference in draft Condition 1 in the Second Report to “a minimum of five years” has been replaced with (in the “rationale” at p.185 of the Final Report) to “[m]ore than three years”. So five has been reduced to three, but no reason for this reduction is given.</p> <p>77. IPNLF, in its response to the Second Report stated that: “The observer data reveal a large by-catch of sharks, particularly Silky sharks. We consider that the content of Condition 1 means that any decision on the certification of this UoA must wait till observer coverage has risen to 50% and until there are 5 years of data at that level of coverage. Anything else does not allow the FCR's Pls on ETP species to be applied meaningfully.”</p> <p>78. The CAB responded (p.272) that: “We maintain our analysis in the report.¹⁸ The observer data used are in</p>

	<p>excess of 20%. Condition 1 requires more years to better evaluate trends.” Footnote 18 read as follows: “Essentially, 20-25% observer coverage or data is considered adequate to characterize the catch in most fisheries, and the MSC CR states that at the SG80 level with regard to sharks, 20% observer coverage is adequate (GSA 2.4.5-2.4.7), and generally, for more normal species that 20% observer coverage provides diminishing returns in terms of the precision of the estimate of catch of a particular species.”</p>
Supporting rationale and or evidence	79. This is not answer. Condition 1 is therefore not supportable and the scoring of P2 is unreasonable.

Scoring

Performance Indicator	2.2.1 Secondary species outcome
Reason	<p>2.2.1(a) – Main secondary species stock status</p> <p><u>Objection 12</u></p> <p>80. The CAB scores the UoA at 100 for this SI. SG 100 requires that: “There is a high degree of certainty that main secondary species are within biologically based limits.”</p> <p>81. The Final Report, for both FAD and FSC, states (p.71) that: “there are no main secondary species in the UoA ... As there are no main species defined, all SGs are met by default”.</p> <p>82. Other than stating that there are no main secondary species, the CAB provides no basis for its conclusion that “all SGs are met by default”. The concept of “default” scoring is not used in the FCR.</p> <p>83. SA 3.2.1 of the FCR (p.135) states that: “If a team determines that a UoA has no impact on a particular component, it shall receive a score of 100 under the Outcome PI.” A determination that the UoA has “no impact” (not even which is less significant than other fisheries) is a high hurdle. In relation to secondary species, of which thousands of individuals are caught each year in FAD sets, a determination of no impact would require the most extensive data and independent study beyond the remit of any CAB.</p> <p>84. The CAB does not refer to SA 3.2.1 in the Final Report, no doubt because it could not surmount such a hurdle.</p>

	<p>Instead, in its response to IPNLF (p.247), it states simply that:</p> <p>“There is not an option for “not applicable”. The justification has been revised. We do not agree that the sustainability credentials of a fishery should not take into account the lack of main secondary species.”</p> <p>85. However, <u>if</u> the CAB were to seek to rely on SA 3.2.1, it would not be entitled to do so, for the following reasons:</p> <p>(1) First, SA 3.2.1 requires there to be a determination that there is “no impact”. This is different from the SI being inapplicable on the basis that the UoA has only an insignificant impact on certain species, such that they are not designated as “main”.¹⁰</p> <p>(2) Secondly, where the FCR considers that scoring is only appropriate if relevant, it uses the term “if necessary” in the scoring guideposts (see, for example, SI 2.2.2(a)); yet the scoring guideposts for SI 2.2.1(a) do not use the term “if necessary”.</p> <p>(3) Thirdly, the CAB provides no definition of “component” as used in SA 3.2.1. In this context, the “component” consists of the secondary species as a whole.</p> <p>86. Therefore, if it is right there are no main secondary species, the correct approach for this SI should be to regard it as not applicable and therefore to attribute no score.</p>
Supporting rationale and or evidence	<p>87. Awarding a score of 100 by default where the FCR makes no provision for such scoring is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable¹¹.</p>

Scoring

Performance Indicator

2.2.1 Secondary species outcome

¹⁰ Particularly where the component is said to be inapplicable not on the basis of any analysis, but on the basis of a presumption applied by virtue merely of the proportion of catches involved.

¹¹ In this Notice of Objection, “unreasonable” means unreasonable in the sense that no reasonable CAB could have reached such a decision on the evidence available to it.

Reason	<u>Objection 13</u>
	<p>88. For both FAD and FSC, the CAB states (pp.72 and 73) that: “SG100 is not met”. As justification, the CAB states that:</p> <p>“There are no main secondary species. RBF has not been used to score minor secondary species, meaning that the fishery cannot score more than 80 for PI 2.2.1.</p> <p>Following MSC interpretation: ‘P2 species: assessing negligible interactions’: http://msc-info.accreditationservices.com/questions/p2-species-assessing-negligible-interactions/, and ‘Minor species and scoring element approach’: http://msc-info.accreditationservices.com/questions/minorspecies-and-scoring-element-approach-at-sg100/.</p> <p>This scoring rationale is limited to a description of the minor secondary species taken in each set type, and concludes that the catches of these species would not hinder their recovery. The UoA is not scored at the SG100 level for either set type”</p> <p>89. The CAB’s conclusion that “that the fishery cannot score more than 80 for PI 2.2.1” is not supported by any reference to the FCR. However, the conclusion may be based on PF 5.3.2 and its two sub-clauses (FCR p.95). If so, the CAB needs to provide a clear explanation of how PF 5.3.2 is applicable. Otherwise, the CAB needs to explain what provision of the FCR it has relied upon. In addition, in the absence of SGs other than for SG 100, the CAB needs to explain why a score of 80, rather than one of less than 80, is met. (In that regard, the two sub-clauses of PF 5.3.2 both state that “the final PI score shall not be greater than 80”. Thus they do not preclude a score of less than 80.)</p> <p>90. The CAB’s justification refers to two MSC “interpretations”, namely: “P2 species: assessing negligible interactions” and “Minor species and scoring element approach”. Weblinks are provided for each of these, but both of these weblinks require us to log in. We are not able to log in, presumably because we are neither a CAB nor MSC staff. Therefore we do not have access to either of the “interpretations” (though one of them is quoted, in part at least, at p.306 of the Report). That renders the interpretations, in effect, private. That is unacceptable in the context of a standard which purports to be reviewable by third party stakeholders. We require full access to both of these interpretations in full. We reserve our position as to the CAB’s scoring of this SI, and indeed the PI as a whole, and on the substantive validity of the CAB’s reliance on the interpretations, until we have seen the interpretations.</p>

91. In the absence of a justification and in its reliance on a private interpretation, the scoring is arbitrary and/or unreasonable. Furthermore, reliance on a private interpretation is a serious procedural irregularity material to the fairness of the assessment.

Objection 14

92. SG 100, which is the only SG for this SI, requires that: “Minor secondary species are highly likely to be above biologically based limits.” or “If below biologically based limits’, there is evidence that the UoA does not hinder the recovery and rebuilding of secondary species.”
93. For both FAD and FSC, the CAB, after a brief review of secondary species bycatch, states (pp.72 and 73¹²) the following:
- “The low catches of these species in the EIO tuna purse seine fleet have negligible impacts on their stocks. While there is no evidence that all these species are highly likely to be above biologically based limits, the low catches provided by the expanded observer catch data are considered sufficient evidence to conclude that the UoA does not hinder their recovery or rebuilding.”
94. The CAB provides no evidence at all to justify its bare assertion:
- (1) First, it proceeds without any express consideration of the definitions of “biologically based limits” and “does not hinder” set out in Table SA8 (FCR, “Principle 2 Phrases”, p.134–135), which is normative.
 - (2) Secondly, despite an express acknowledgement that “there is no evidence that all these species are highly likely to be above biologically based limits”, it reaches its conclusion that the “low catches” will have “negligible impacts” on stocks without any assessment of the catches against the stock status of each of the individual species concerned. If the CAB is seeking to disregard bycatch mortality on the basis that this UoA comprises only a small number of vessels out of the total number impacting those species, then that must be wrong in principle; it would allow the overall impact to be disregarded, with the standard being met by all vessels, provided they were considered in sufficiently small groups. This would remove all pretence of legitimacy from the standard.

¹² The wording differs slightly, but the differences seem immaterial.

Supporting rationale and or evidence	95. As a result, the scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	2.2.2 Secondary species management strategy
Reason	<p><u>Objection 15</u></p> <p>96. Regarding PI 2.2.2, SA 3.8.1 (FCR, p.146), which is normative, states that: “The team shall score this PI <u>even if</u> the UoA has no impact on this component.” (Emphasis added.) The CAB takes the view that there are no secondary main species. If that is correct, and if it follows that the UoA has no impact on those species, the effect of SA 3.8.1 is that the CAB must nonetheless score the UoA against PI 2.2.2.</p> <p>97. The CAB, in its response to IPNLF (p.248), states that:</p> <p>“ “Component” refers to the Performance Indicator dealing with “secondary species [management strategy]”. Consideration is broken down into Scoring Issues, within which there are Scoring Guidelines. In this fishery, there are no main secondary species that the fishery necessarily should manage using measures or a partial strategy..SA3.8.1 says scoring at PI2.2.2 should proceed even if there is no impact on secondary species, which is dealt with at PI2.2.1. It is necessary to distinguish the needs related to impact/no impact (S3.8.1) and scoring options within PI2.2.1 which may refer to GSA3.5.1. We acknowledge this SI a difficult and perhaps grey area.”</p>
Supporting rationale and or evidence	98. This response is entirely opaque. It is inadequate to acknowledge that the SI is a difficult and grey area. In the absence of a proper rationale (or further clarification from the CAB), the scoring is arbitrary and unreasonable.

Scoring

Performance Indicator

2.2.2 Secondary species management strategy

Reason

Objection 16

99. SG 60 and SG 80 for this SI use the term “if necessary”. Table SA 8 (FCR, “Principle 2 Phrases”, p.134–135), which is normative, defines “if necessary” as follows:

“The term “if necessary” is used in the management strategy PIs at SG60 and SG80 for the primary species, secondary species, habitats and ecosystems components. This is to exclude the assessment of UoAs that do not impact the relevant component at these SG levels.” [Emphasis added]

100. For both FAD and FSC, the CAB states (pp.74 and 75) that: “As there are no secondary main species, neither measures nor a partial strategy are necessary. and [sic] the SG 60 and SG 80 guideposts do not need to be scored (MSC FCR v.2 GSA 3.5.1)”.

101. As can be seen, the CAB cites GSA 3.5.1 (FCR, p.436), which states that: “If the UoA has no (or negligible: see below) impact on this component, scoring issue (a) does not need to be scored for SG60 and SG80 [...]”.

102. GSA 3.5.1 is guidance. It is not normative. Its position in the FCR makes it clear that it is guidance relating exclusively to the use of “if necessary” where this term is used in SGs. Therefore it should be interpreted compatibly with the normative definition of “if necessary” in Table SA 8 (see above).

103. However, there is also SA 3.8.1 to be considered. Regarding PI 2.2.2, SA 3.8.1 (FCR, p.146), which is normative, states that: “The team shall score this PI even if the UoA has no impact on this component.” (Emphasis added.) The CAB takes the view that there are no secondary main species. If that is correct, and if it follows that the UoA has no impact on those species, the effect of SA 3.8.1 is that the CAB must nonetheless score the UoA against PI 2.2.2.

104. In the light of the above, it is not clear whether, in the scoring of this SI, the CAB has applied the definition of “if necessary” in Table SA 8 (coupled with the guidance in GSA 3.5.1) or SA 3.8.1. Both provisions are normative. In principle, one conflicts with the other. In the absence of clarification from the CAB as to which it has relied on and why, the scoring is arbitrary and/or unreasonable.

Objection 17

105. All SGs for this SI use the term “in place”. Table SA 8 (which is normative) states that:

“When a measure or strategy is “in place” the measure or strategy has been implemented, and if multiple measures have been identified to address an impact of the UoA, there is a specified process with a clear timetable and endpoint for implementation of all of the measures.”

106. So for a measure or strategy (or partial strategy) to be “in place”, it must have been implemented; and if there are multiple measures, they are only “in place” if there is a specified process with a clear timetable and endpoint for implementation of all of the measures. In other words, a loose array of measures is not sufficient.

107. SG 100 and SG 80 refer to a strategy and partial strategy, respectively, “for the UoA”. In setting out evidence to score this SI, the CAB refers to management undertaken by the Seychelles Fishing Authority, Echebatar and the European Union. Of these, only Echebatar is specific to the UoA.

108. On management undertaken by Echebatar, the references by the CAB are identical for both FAD and FSC (though they appear different at first glance, because of different use of bullet points) (pp.74 and 75):

(a) “policy on bycatch reduction, reporting and sustainability which includes research on the escape of unwanted species from purse seines through technical measures, with monitoring through full cooperation with the SFA observer programme.”

(b) research into bycatch and into “possible bycatch mitigation measures” (2013);

(c) crew training (or at least a study with crew training as an objective);

(d) guidelines on onboard procedures in relation to bycatch.

109. SG 80 refers to a “partial strategy”. Table SA 8 (normative) defines a “partial strategy” as follows:

“A “partial strategy” represents a cohesive arrangement which may comprise one or more measures, an understanding of how it/they work to achieve an outcome and an awareness of the need to change the measures should

they cease to be effective. It may not have been designed to manage the impact on that component specifically.”

110. Items mentioned in (a)–(d) above do not represent “a cohesive arrangement” or meet the other requirements of the definition of “partial strategy”. These items are not a “cohesive arrangement” because they are a loose arrangement of unrelated measures and there is no evidence of an understanding of how they work to achieve any particular outcome. Still less is there any evidence of an awareness of the need to change the measures should they cease to be effective. On this basis, the UoA does not reach SG 80. Indeed, we note that the CAB likewise considers that the measures it refers to “do not represent a cohesive and strategic arrangement” (citing Table SA 8).

111. SG 60 refers to “measures”. Table SA 8 (normative) defines “measures” as follows:

“ “Measures” are actions or tools in place that either explicitly manage impacts on the component or indirectly contribute to management of the component under assessment having been designed to manage impacts elsewhere.”

112. Some of the items mentioned in (a)–(d) above are indeed “actions or tools”, but not all are (for example, research into measures is neither a measure nor a tool). However, they are not “in place” as defined SA 8 (see above). That is because they are merely a loose array rather than being part of “a specified process with a clear timetable and endpoint for implementation of all of the measures”. On this basis, the UoA does not even reach SG 60.

113. The CAB, in its response to IPNLF (p.249), states simply that:

“We are aware of the normative and, on the basis of extensive experience, understand that there may be wide range of interpretations of it, even amongst experienced auditors. There are no main secondary species neither measures or a partial strategy are necessary. This approach follows the practice in many MSC assessments of fisheries that have been certified. The remainder of the stakeholder’s comments on SG60 and SG80 are therefore moot. The scoring rationale has been redrafted to clarify the evidence.”

Supporting rationale and or evidence	114. Our objections on SG 60 and SG 80 are not “moot”, as the CAB has not merely scored all SIs on a default basis, but also on the basis of a purported partial strategy. Pending further explanation from the CAB as to which of SA 3.8.1 and the definition of “if necessary” it has sought to rely upon when scoring SI 2.2.2(a), and why, the scoring is arbitrary and/or unreasonable.
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Scoring	
Performance Indicator	2.2.2 Secondary species management strategy
Reason	<p>2.2.2(b) – Management strategy evaluation</p> <p><u>Objection 18</u></p> <p>115. The CAB, in scoring SI 2.2.2(a) (see above), appears to have relied on the definition of “as necessary” in Table SA 8 to score SI 2.2.2(a) at 80 – i.e. in effect without having to have regard to the tests applied by SGs 80 and 60.</p> <p>116. In its scoring of SI 2.2.2(b), for both FAD and FSC, the CAB states (p.76) that: “As there are no secondary main species, the fishery meets SG 60 and SG 80 (MSC FCR v.2 GSA 3.5.1).”</p> <p>117. As can be seen, the CAB cites GSA 3.5.1 (FCR, p.436), which is guidance and states that: “If the UoA has no (or negligible: see below) impact on this component, scoring issue (a) does not need to be scored for SG60 and SG80 [...].”</p> <p>118. GSA 3.5.1 refers only to scoring issue (a) – i.e. to SI 2.2.2(a). It does not refer to scoring issue (b) – i.e. to SI 2.2.2(b).</p> <p>119. If the CAB has indeed relied on the definition of “if necessary” to score SI 2.2.2(a) at 80, it cannot then proceed to score the UoA against SI 2.2.2(b). That is because none of the SGs for that SI use the term “if necessary”. The CAB cannot apply the default approach it has used in the scoring of SI 2.2.2(a) to then create a fictional partial strategy for main secondary species in order to score against the SGs in 2.2.2(b). Instead, SI 2.2.2(b) must be regarded as non-applicable and therefore no score should be attributed.</p> <p>120. The CAB, in its response to IPNLF (p.250) states merely that: “Please refer to the response above.” We have already dealt with that response above.</p>

121. Awarding a score by default where the FCR makes no provision for such scoring is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 19

122. The CAB scores the UoA at 80. SG 80 requires that: “There is some objective basis for confidence that the measures/partial strategy will work, based on some information directly about the UoA and/or species involved”.

123. Table SA8 (FCR, “Principle 2 Phrases”, pp.134–135), which is normative, states that:

“Objective basis for confidence”, as used at the SG80 level in the P2 management PIs (Management Strategy Evaluation scoring issue) refers to the levels of information required to evaluate the likelihood that the management partial strategy will work.

124. The SG60 level for these PIs requires “plausible argument” based on expert knowledge; the SG80 level requires expert knowledge augmented by some information collected in the area of the UoA and about the specific component(s) and/or UoA; and the SG100 level requires all preceding information augmented by relatively complete information on the component, much of which comes from systematic monitoring and/or research.”

125. Therefore, the reference to “objective basis for confidence” in SG 80 requires “expert knowledge augmented by some information collected in the area of the UoA and about the specific component(s) and/or UoA”.

126. The CAB fails to identify any expert knowledge¹³. Instead:

- (1) Regarding FADs, it refers (p.76) merely to (a) some very high level statistics, without any consideration of confidence limits, (b) the introduction of non-entangling FADs (to which, it says, without citing any scientific evidence, a decline in bycatch is “probably related”), (c) a reduced number of FADs and (d) reduced effort.
- (2) Regarding FSC, it refers (p.76) merely to (i) some very high level statistics, without any consideration of

¹³ This is a specific requirement of the FCR in relation to such SIs. It is insufficient for the CAB to rely on its own general competence, unless specific expertise is actually identified, as the competence of the CAB is assumed throughout the assessment process. Here there is a specific requirement for expertise, and the expertise must be demonstrated, not assumed.

	confidence limits, (ii) the introduction of non-entangling FADs (to which, it says, again without citing any scientific evidence, a decline in bycatch is “probably related”) and (iii) reduced effort.
Supporting rationale and or evidence	<p>127. Items (a)–(d) and (i)–(iii) in the paragraph above do not meet the requirements of Table SA 8 regarding “objective basis for confidence”, and therefore the score of SG 80 is not justified. Scoring contrary to the provisions of the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p> <p>128. SG 60 requires that: “The measures are considered likely to work, based on plausible argument (e.g. general experience, theory or comparison with similar UoAs/species).” Table SA 8 (see above) states that: “The SG60 level for these Pls requires “plausible argument” based on expert knowledge”. The CAB fails to identify any expert knowledge. Therefore even a score of SG 60 is not justified and the scoring is objectionable on the same grounds as set out above.</p>

Scoring

Performance Indicator	2.2.2 Secondary species management strategy
Reason	<p>2.2.2(c) – Management strategy implementation</p> <p><u>Objection 20</u></p> <p>129. The CAB, in scoring SI 2.2.2(a) (see above), appears to have relied on the definition of “as necessary” in Table SA 8 to score SI 2.2.2(a) at 80 – i.e. in effect without having regard to the tests applied by SGs 80 and 60.</p> <p>130. In its scoring of SI 2.2.2(c), for both FAD and FSC, the CAB states (p.77) that: “As there are no secondary main species, the fishery meets SG 60 and SG 80 (MSC FCR v.2 GSA 3.5.1).”</p> <p>131. The CAB cites GSA 3.5.1 (FCR, p.436), which is guidance and states that: “If the UoA has no (or negligible: see below) impact on this component, scoring issue (a) does not need to be scored for SG60 and SG80 [...]”</p> <p>132. GSA 3.5.1 refers only to scoring issue (a) – i.e. to SI 2.2.2(a). It does not refer to scoring issue (b) – i.e. to SI 2.2.2(b).</p>

133. If the CAB has indeed relied on the definition of “if necessary” to score SI 2.2.2(a) at 80, it cannot then proceed to score the UoA against SI 2.2.2(c). That is because neither of the SGs for that SI use the term “if necessary”. The CAB cannot apply the default approach it has used in the scoring of SI 2.2.2(a) to then create fictional measures, or a fictional partial strategy or strategy, for scoring against the SGs in 2.2.2(c).
134. Instead, SI 2.2.2(c) must be regarded as non-applicable and therefore no score should be attributed.
135. The CAB, in its response to IPNLF (p.250) states merely that: “Please refer to the response above.” We have already dealt with that response above.
136. Awarding a score by default where the FCR makes no provision for such scoring is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 21

137. The CAB scores the UoA at 80. SG 80 requires that:
“There is some evidence that the measures/partial strategy is being implemented successfully.” Assuming (contrary to the above) that “measures” exist, the question is: is there “some evidence” that they are “being implemented successfully”?
138. For each of FAD and FSC, CAB identifies, as evidence of successful implementation, the following (p.77):
- (a) some very high level statistics;
 - (b) the introduction of non-entangling FADs (to which, it says, without citing scientific evidence, a decline in bycatch is “probably related”);
 - (c) “14 skippers and crew members of Echebastar group attended an ISSF Bycatch reduction workshop in tuna purse seine FAD fisheries”;
 - (d) “members of Echebastar group participated in the EU funded Sukarrieta GAP2 meeting held during 2012 to promote sustainability in Indian ocean tuna fisheries”; and
 - (e) members of Echebastar group participated in “a further bycatch mitigation workshop for purse seine skippers held in November 2012”.

	<p>139. However, this is not evidence of successful implementation. Regarding the high level statistics, there has been no consideration of confidence limits. And participation at a workshop does not provide any proof that good practice is being applied on vessels out at sea¹⁴. In addition, there is no attempt made by the CAB to relate its evidence of purported implementation to the measures identified in its justification for SI 2.2.2(a). There is a lack of scientific rigour in matching the purported implementation evidence with the measures evidence. In the absence of that rigour, that SG 80 is not met. There is no SG 60 for this SI.</p>
Supporting rationale and or evidence	<p>140. As a result, the scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	2.2.2 Secondary species management strategy
Reason	<p>2.2.2(d) – Shark finning</p> <p><u>Objection 22</u></p> <p>141. The CAB considers that the UoA meets SG 80, whereby: “It is highly likely that shark finning is not taking place.”</p> <p>142. As evidence, the CAB cites the following for both FAD and FSC (pp.78 and 79):</p> <p>(a) “Shark finning is illegal on EU registered vessels”;</p> <p>(b) Seychelles regulations on the subject apply, though the “feasibility/effectiveness” of their enforcement “has yet to be assessed” and there is “potential to fin sharks afforded by the Seychelles regulations”;</p> <p>(c) Echebastar company policy states that shark finning is not permitted;</p>

¹⁴ For instance, observer records show that an observer reported from Alakrana that two oceanic white tip sharks were “taken to the kitchen” (see line 262 of the original datasheet in the excel file). This is in direct contravention of IOTC Resolution 13/06 which prohibits the retention onboard, transshipment, landing or storing any part or whole carcass of oceanic whitetip sharks. It is quite possible that the master or other crew attended some of the mentioned workshops, but this did not prevent illegal activity from taking place on board the vessel.

(d) “Observer coverage of 100% introduced by Echebatar in 2014 would detect whether shark finning is occurring”; and

(e) “there are limited opportunities for shark finning at sea” because (i) “Usually, sharks are returned to the sea from the brailer before the catch enters the hopper”, (ii) any sharks entering chill tanks cannot be accessed until discharge.

143. Items (a)–(e) above do not create the requisite high likelihood that finning is not taking place:

- (1) Items (a), (b), (c) and (e) do not address the factual question as to whether it is taking place, but only address whether it is permitted and the degree of opportunity for finning.
- (2) Regarding (a) and (c), EU law and Echebatar company policy themselves are not practical barriers to finning.
- (3) Regarding (b), as can be seen, the shortfalls of the Seychelles regulations are expressly acknowledged by the CAB.
- (4) Regarding (e), if sharks are removed from the catch in order to be returned to the sea, then they can of course be removed from the catch for finning: the CAB’s purported analysis makes no sense.
- (5) Regarding item (d) above (observer coverage), the percentages of observed sets for each of 2014, 2015 and 2016 are (only) 29%, 53% and 34% respectively (see Table 22, at p.39). The CAB, in response to IPNLF raising these percentages, states (p.273) that: “Note the comment on observer coverage in the revised report. The report has been revised to clarify the difference between 100% observer coverage versus percentage of data available for analysis.” (Here, the reference to “revised” is a reference to the revisions made to the Second Report to convert it to the Final Report.)

144. The CAB must provide evidence, currently lacking in the Final Report, to demonstrate the existence of 100% observer coverage, in the light of the following points:

(a) The Final Report (p.2) states that: “there has been 100 % observer coverage for the Echebatar fleet since 2015”. So, by implication, there was not 100% observer coverage in 2014. Yet, later, the Final Report states (p.100) that: “Data from the first three years of 100% observer coverage is presented in this report” (p.100). The three years referred to are 2014, 2015 and 2016. It also states (p.185) that: “SFA has agreed to provide the necessary support to ensure continued 100% observer coverage of Echebatar

tuna purse seine vessels, as in place since January 2014". (See also p.148, referred to further below.) So the statements at pp.100 and 185 (and p.148) imply 100% observer coverage in 2014 and yet the statement at p.2 implies the opposite. This internal inconsistency casts doubt on whether and when, over the period 2014 to 2016 and beyond, there is "100% observer coverage".

(b) The low percentage (53%) of data "available for analysis" for 2015 is very surprising if there really was 100% observer coverage for that year: the Second Report was published in summer 2017, approximately 18 months on from the end of 2015. One would expect the passage of approximately 18 months to have allowed full analysis of the 2015 data. A possible explanation for only 53% of sets having been observed in 2015 is that there was not in fact 100% observer coverage in 2015.

(c) In practice, "100% observer coverage", i.e. coverage of 100% of sets, is just a concept. It cannot be reality. Observers need to go to the toilet; they may get ill from time to time. For any given period when there is an observer on board, it seems far more realistic to assume that only about 80% of the sets, and 80% of the processing activity arising from any given set, can be observed.

Currently, the only reference to evidence that IPNLF has been able to find in the Final Report is the following (p.148): "When IOTC required 5% observer coverage, Echebistar committed to the goal of 100% with effect from the 2014 fishing season, and the assessors have received confirmation from SFA that was implemented." Thus the assessors "received confirmation" from SFA that 100% observer coverage was implemented with effect from 2014. We need to see that "confirmation", and we reserve the right to comment on it.

145. In the Second Report (p.87), the CAB stated that: "Increased onboard observer coverage (*100% of all effort*) introduced by Echebistar during 2014 is considered to be a level of observer coverage that is capable of detecting whether shark finning is occurring." In the Final Report, that statement is replaced by the following: "Observer coverage of 100% introduced by Echebistar in 2014 would detect whether shark finning is occurring".

146. As noted in point (c) above, we consider that "100% observer coverage" is just a concept. 80% coverage is likely to be the reality for any given period when an observer is on board. The difference, i.e. 20%, is a significant opportunity for finning to take place, i.e. for the fins to be stripped from a shark and for the carcass to be thrown over the side. In addition, as noted in points (a) and (b) above, we are in doubt as to whether the CAB's claims

	<p>of “100% observer coverage” can be substantiated. Because of points (a), (b) and (c) above, not even SG 60 (which requires it to be “likely that shark finning is not taking place”) can properly be said to be met.</p> <p>147. The CAB, in its response to IPNLF (p.250), states that:</p> <p>“Note the difference between the number of observed sets and the available tabulation results. Research indicates that 20-25% observer coverage is adequate to characterize and quantify shark bycatch. There is no relationship between the “low” percentage of data available for analysis and the likelihood of shark finning. Several sources of evidence support a score of SG100. However, as Seychelles law allows for some shark finning, the rationale has been revised and the fishery fails to meet SIId SG100”</p> <p>148. As can be seen, the CAB states that “Research indicates that 20-25% observer coverage is adequate to characterize and quantify shark bycatch”. There are two defects in this statement. First, no reference is provided and so it is impossible for a stakeholder to refer to this research. Bare assertions are incompatible with certification. Secondly, SI 2.2.2(d) is not concerned with shark bycatch generally; it is concerned specifically with the illegal act of shark finning; and therefore the research referred to is not relevant to SI 2.2.2(d).</p> <p>149. The CAB also states that: “There is no relationship between the “low” percentage of data available for analysis and the likelihood of shark finning.” This is an astonishing statement in view of the degree of certainty needed by the SGs for this SI, because the statement suggests that the data that is not available for analysis, which creates uncertainty, has no bearing on the scoring for this SI. Otherwise, we fail to see how the CAB’s response to IPNLF states anything new to challenge our Objection on SI 2.2.2(d).</p>
Supporting rationale and or evidence	<p>150. The scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator

2.2.2 Secondary species management strategy

Reason	<p>2.2.2(e) – Review of alternative measures to minimise mortality of unwanted catch</p> <p><u>Objection 23</u></p> <p>151. As a prelude to scoring this SI at 100 by means of a justification, the CAB states that “[t]here are no main secondary species” and concludes that SG 60 and SG 80 are met.</p> <p>152. It is not clear how the CAB reaches this conclusion. That is because:</p> <p>(a) None of the scoring guideposts for this SI include the wording “if necessary”, and so the CAB cannot be relying on the definition of “if necessary” in Table SA 8 (see above);</p> <p>(b) The CAB cannot be relying on SA 3.2.1 (which reads “If a team determines that a UoA has no impact on a particular component, it shall receive a score of 100 under the Outcome PI”) because it does not seek to award a score of 100 by default.</p> <p>153. The CAB needs to explain, with reference to provisions of the FCR, the basis by which it has concluded that SG 60 and SG 80 are met for this SI.</p> <p>154. In the absence of further explanation, the scoring is contrary to the FCR and is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p> <p><u>Objection 24</u></p> <p>155. The first step in determining whether there is the requisite review of alternative measures is to identify those measures.</p> <p>156. SA 3.5.3.1 (FCR, p.140), which is normative and is applicable by virtue of SA 3.8.4, states that the term “alternative measures”, as used in SG 60, SG 80 and SG 100:</p> <p>“shall be interpreted by the team as alternative fishing gear and/or practices that have been shown to minimise the rate of incidental mortality of the species or species type to the lowest achievable levels”.</p> <p>157. It is apparent from the Report itself that FAD fishing has a far higher bycatch than FSC fishing. An obvious “alternative measure” would be to limit fishing to FSC, alternatively to minimise FAD fishing.</p>
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158. Such a measure is obviously “appropriate” to implement (SA 3.5.3.3: FCR p.140), in that it is more effective, comparable in terms of effect on target species and safety, does not negatively impact other species or habitats and is not cost prohibitive to implement. It would no doubt include a cost (in the expanded sense used in the guidance: see the example at FCR p.440) in that it is less profitable, but the test is whether that would be prohibitive. It is a high test and no steps have been taken even to seek to apply it.

159. The alternative measures are concerned with “any non-negligible” proportion of the catch (GSA 3.5.3: FCR p.436). Since the CAB has scored this SI, it must have determined that the bycatch is non-negligible in accordance with the precautionary principle (as per GSA 3.5.3).

160. Table GSA8 (FCR p.434) explains that

- (1) MSC Principles & Criteria in relation to bycatch require that fisheries should “make use of fishing gear and practices designed to avoid the capture of non-target species (and non-target size, age, and/or sex of the target species); minimise mortality of this catch where it cannot be avoided, and reduce discards of what cannot be released alive” (Criterion 3B.12).
- (2) In addition, FAO (Code of Conduct for Responsible Fisheries, 1995), states that “selective and environmentally safe fishing gear and practices should be further developed and applied, to the extent practicable, in order to maintain biodiversity and to conserve the population structure and aquatic ecosystems and protect fish quality. Where proper selective and environmentally safe fishing gear and practices exist, they should be recognized and accorded a priority in establishing conservation and management measures for fisheries.”

161. Table GSA 8 goes on:

“In order to operationalise the intent of criterion 3B.12 in the MSC Ps&Cs and the statement from FAO (1995), changes in the P2 Species PIs in CR v2.0 have been made with the following intent:

a. To motivate fishers to continually “think smart” about their impact on the environment (species and habitats); both in delivering the sustainable impact most efficiently, and continuing to reduce their impact beyond that

b. To balance this desire with efficiency by not spending a lot of money and time generating only marginal improvements.

To achieve this for species, a new scoring issue has been added to the P1 Harvest Strategy (PI 1.2.1) and P2 Species Management PIs (PI 2.1.2, 2.2.2, 2.3.2) requiring fisheries to continually review alternative measures to encourage the development and implementation of technologies and operational methods that minimise mortality of unwanted catch or ETP species, taking into account the practicality of the measures, their potential impact on other species and habitats and on the overall cost of implementing the measures.

Fisheries need to either review alternative measures that are shown to minimise mortality of the species or species group in question (SA3.5.3). Fisheries need also to consider alternative measures to reduce impacts on habitats. Fisheries should take account of the potential for both positive and negative impacts of alternative measures on species and habitats (refer to GSA3.14.2) when considering whether such measures should be implemented.

Alternative measures should avoid capture of the species in the first place or increase its survivability if released. Alternatively, in the case of in-scope species, they could utilise the unwanted catch in some way so that it would no longer be 'unwanted'. If there are no unwanted species, the scoring issue on reviewing alternative measures does not need to be scored in that PI."

162. The CAB should have considered how the alternative measures for review have been selected and whether appropriate gears and practices have been considered as part of the review (FCR 3.5.3.1 at p.438). This has not been done.

163. The CAB scores the UoA favourably for tinkering with FADs by using a non-entangling version (see below), but ignores the fishery's failure to consider an obvious alternative measure of far greater value. In the context of the PNA assessment, the same CAB scored the PNA highly for not fishing on FADs (an approach which was correct in principle, were it not for the fact that the vessels were actually still fishing on FADs "outside" the UoA).

164. The measures the CAB lists (in its justification under SI 2.2.2(e)) are as follows:

"Echebatar policy on bycatch reduction, encompasses reporting and sustainability aims includes research on facilitating the escape of unwanted species from purse seines;

100 % observer coverage (achieved from 2014 on) to identify discards and entanglement in FADs; and exclusive use of non-entangling FADs (IOTC resolutions 15/08 and 15/09) to minimize unobserved mortality.

All Echebistar vessel captains attend annual workshops run by AZTI and ISSF on best practices for reducing bycatch and improving the survival of released bycatch (evidence includes attendance records).

All unwanted catch is either released before being brailled aboard or is released immediately after being placed on the catch conveyor belt, either manually carried overboard, or placed on a second conveyor that is available on three Echebistar vessels.

Other management measures in place relate to recording of catch and effort data by fishing vessels in the IOTC area (Resolution 13/03); Resolution 13/11 on a ban on discards of bigeye, skipjack and yellowfin tuna.

Therefore, there is at least biennial review of the potential effectiveness and practicality of alternative measures to minimise UoA-related mortality of unwanted catch of all secondary species and they are implemented as appropriate.”

165. These may be summarised as follows:

- (a) “policy on bycatch reduction”;
- (b) attendance by all vessel captains at annual workshops;
- (c) release of “[a]ll” unwanted catch either pre-brailing or immediately post-brailing; and
- (d) existence of IOTC resolutions 13/03 and 13/11

166. No attempt has been made by the CAB to apply the interpretation of “alternative measures” in SA 3.5.3.1. This is because doing so would reveal a failure by the purported measures to meet the interpretation.

167. The interpretation in SA 3.5.3.1 states that the term “alternative measures”, as used in SG 60, SG 80 and SG 100: “shall be interpreted by the team as alternative fishing gear and/or practices that have been shown to minimise the rate of incidental mortality of the species or species type to the lowest achievable”.

168. In that regard: items (b) and (d) above are not “fishing gear and/or practices”; the only example of “fishing gear and/or

practices” in (a) above is non-entangling FADS; and the practice referred to in item (c) above reveals nothing about the state (for example dead or moribund) of the animals that are released.

169. In reality, the only measures put forward by the CAB as “alternative measures” are use of non-entangling FADS and release of “[a]ll” unwanted catch. However, these are measures that are already a part of the fishery, according to the CAB. So there is nothing “alternative” about these measures. The CAB cannot expect to rely on such measures for the purpose of meeting any of the SGs in this SI.

170. In addition, the CAB presents no empirical evidence of any benefit arising from non-entangling FADS.

171. First, there is uncertainty in the Final Report as to when non-entangling FADS were introduced or were being used exclusively. For example:

p.97 (justification for scoring of SI 2.3.2(e)): “since 2015 Echebatar exclusively uses non-entangling FADS to reduce this risk”

p.211 (CAB response to IPNLF): “The Echebatar fleet adopted the use of non-entangling FADS several years ago”

p.219 (CAB response to PEW): “The Echebatar fleet has exclusively used non-entangling FADS since 2014”

p.229 (CAB response to PNA): “since 2014, the Echebatar fleet has exclusively used non-entangling FADS”

These statements refer to, variously, “since 2015”, “since 2014” and “several years ago”. Clarity is needed on when (year and month) (a) non-entangling FADS were first used by the Echebatar fleet and (b) they became used exclusively.

172. Secondly, no empirical evidence is presented in the Final Report to substantiate claims that non-entangling FADS are having a beneficial effect. For example:

p.214 (CAB response to IPNLF): “With regard to sea turtle entanglement in FADS, the new non-entangling FADS have significantly reduced this problem, as is reflected in the catch data for the Echebatar fishery.”

p.331 (CAB response to Peer Reviewer B): “The Echebatar fleet exclusively uses non-entangling FADs, and we believe this accounts for the difference between the higher bycatch rates in the published 2000-2010 data and the observer data for this fleet in the 2014-2016 period.”

The Final Report does not contain any data on bycatch from prior to 2014 (see Tables 23 and 24). We note the use of “we believe” in the extract above. Belief is not sufficient. Scientific proof is needed. If the CAB wishes to rely on the allegedly beneficial effects of non-entangling FADS, it must present scientific evidence in the Final Report itself. If this requires data from, say, the first (failed) attempt at certification, so be it. But all of the data concerned need to be presented and analysed in the Final Report.

173. Furthermore, the CAB focuses on the exclusive use by the UoA of non-entangling FADS (see for example: p.2, “The exclusive use of non-entangling FADS”; p.47, “The Echebatar vessels exclusively use non-entangling FADS”; p.63, “Echebatar vessels exclusively use non-entangling FADS”). However, it is a fact of purse seine fisheries that vessels will set opportunistically on passing FADS. The existence of this practice is expressly acknowledged by the CAB in the Final Report (p.47), where it states: “An interesting aspect of this fishery, is that while one vessel may deploy a FAD and place its own beacon on it, any vessel can and will fish the FAD on a first come first arrival basis.”

174. The emphasis in the Final Report on exclusive use of non-entangling FADS suggests that vessels in the Echebatar fleet may not undertake this opportunistic practice. If that is indeed the case, the CAB must provide a very clear statement to that effect. Failing production of such a statement, it would have to be assumed that Echebatar vessels do undertake the opportunistic practice and, therefore, they cannot be regarded as using exclusively non-entangling FADS. Indeed, the fact that the CAB has not sought to define the UoA by reference to non-entangling FADS (cf. the suggestion by Peer Reviewer B, at p.337: “Also, mention is made that all FADs are non-entangling. Can this be independently verified? Why not define this as part of the UoA?”) implies some acknowledgement that this practice may or does occur.

175. A prime example of a measure that would be an “alternative measure” for the purposes of SA 3.5.3.1 would be a reduction in the use of FADs (whether non-entangling or not) within this UoA. Such a reduction would easily meet the requirement to “have been shown to minimise the rate of incidental mortality of the species”. Yet the CAB does

not mention that as an “alternative measure”. The CAB must show why that cannot be applied as an “alternative measure”.

176. The Global FAD Science Symposium¹⁵ was convened in Santa Monica, USA from March 20-23, 2017 specifically to look at best practice in tuna fisheries.

177. The symposium investigated the various management measures established by regional fishery management organisations (RFMOs) for fishing with FADs, evaluated FAD research and issued recommendations for the responsible management of fishing with FADs. They concluded as follows:

A well-managed purse seine fishery has the following attributes regarding target species: (1) target stocks are maintained around the target levels and away from biological limits that could severely impact the stocks; (2) Where a target stock is overfished, a rebuilding program is in place with a clear timetable and milestones to rebuild the stock to around the target level; (3) assessments of the target stocks are conducted regularly to inform decision makers.

Clearly, these cannot be achieved by managing FAD use alone. They require agreement on a number of elements such as management objectives for each stock (targets, limits, etc.) and decisions about allocation, both among gears and within the purse seine fishery.

Nevertheless, there are a number of management actions for FAD use that are high priority and consistent with the above principles. These are actions that will mitigate the impact of FAD use on overfished target tuna stocks, including bigeye in the Atlantic and Pacific oceans and yellowfin in the Indian and (to a lesser extent) Atlantic oceans.

Examples of best practices for target species include:

- 1) Setting catch limits specifically for juvenile tunas caught by purse seine operations, particularly of overfished stocks;
- 2) Shifting some purse seine fishing effort from FAD sets to sets on unassociated tuna schools (free schools), either voluntarily or through annual FAD set limits;

¹⁵ Global FAD Science Symposium. 2017. What does well-managed FAD use look like within a tropical purse seine fishery? John Hampton, Gerry Leape, Amanda Nickson, Victor Restrepo, Josu Santiago, Justin Amade, Richard Banks, Maurice Brownjohn, Emmanuel Chassot, Ray Clarke, Tim Davies, David Die, Daniel Gaertner, Grantly Galland, Dave Gershman, Michel Goujon, Martin Hall, Miguel Herrera, Kim Holland, Dave Itano, Taro Kawamoto, Brian Kumasi, Alexandra Maufroy, Gala Moreno, Hilario Murua, Jefferson Murua, Graham Pilling, Kurt Schaefer, Joe Scutt Phillips, Marc Taquet. Santa Monica, USA.

3) Avoiding setting on FADs with large concentrations of juvenile or overfished tunas, including by: a) avoiding hotspots, where overfished species are relatively abundant or vulnerable (this could include time-area closures); b) developing techniques to use FAD acoustic technology to avoid sets that are likely to contain high numbers of overfished species, recognizing that this practice will require technological and methodological advances; c) avoiding purse seine setting techniques or equipment that are more likely to select overfished species (if such things can be identified); d) using improved datasets to develop science-based, FAD deployment limits.

178. In the light of the above, the CAB has failed to demonstrate the existence of “alternative measures”, as required by the FCR. Awarding a score contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 25

179. The CAB scores this SI at 100. SG 100 requires that:

“There is a biennial review of the potential effectiveness and practicality of alternative measures to minimise UoA-related mortality of unwanted catch of all secondary species, and they are implemented, as appropriate.”

180. The CAB, after listing the measures referred to above, states, the following:

“Therefore, there is at least biennial review of the potential effectiveness and practicality of alternative measures to minimise UoA-related mortality of unwanted catch of all secondary species and they are implemented as appropriate.”

181. However, no evidence at all is provided of a biennial review. Without such evidence, the CAB’s assertion of the existence of such a review cannot hold. Awarding a score contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 26

182. SA 3.5.3.3 (FCR, p.140), which is normative and is applicable by virtue of SA 3.8.4, defines the term “as appropriate”, as used in SG 80 and SG 100, as follows:

“ “As appropriate” ... in the context of implementing reviewed

	<p>measures shall be interpreted by the team as situations where potential alternative measures reviewed are:</p> <ul style="list-style-type: none"> a. Determined to be more effective at minimising the mortality of unwanted catch than current fishing gear and practices, b. Determined to be comparable to existing measures in terms of effect on target species catch, and impacts on vessel and crew safety, c. Determined to not negatively impact on other species or habitats, and d. Not cost prohibitive to implement.” <p>183. No attempt has been made by the CAB to apply the interpretation of “as appropriate” in SA 3.5.3.3. That is clear from the fact that, as noted above, the CAB simply states that the measures it lists “are implemented as appropriate” – i.e. it simply repeats the wording of SG 80 and SG 100. The CAB must apply SA3.5.3.3, and provide evidence in that regard, before reaching any conclusion about the scoring of this SI, unless it proposes to score the SI at SG 60.</p> <p>184. The CAB, in its response to IPNLF (p.251), states simply that:</p> <p>“Please refer to the comments above. In addition, evidence is presented to support our conclusion that the fishery meets SG100. The scoring rationale has been redrafted to clarify the evidence supporting a score of 100 for this SI.”</p>
Supporting rationale and or evidence	185. Awarding a score contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable

Scoring

Performance Indicator

2.2.3 Secondary species information

Reason	<p>2.2.3(a) – Information adequacy for assessment of impacts on main secondary species</p> <p><u>Objection 27</u></p> <p>186. The CAB scores the UoA at 100. SG 100 requires that: “Quantitative information is available and adequate to assess with a high degree of certainty the impact of the UoA on main secondary species with respect to status.”</p> <p>187. It is not clear to us whether this score is on the basis that, as claimed by the CAB (p.81), “[t]here are no main secondary species” or, alternatively, whether it is based on scoring despite the CAB’s claim.</p> <p>188. If it is the former, it is necessary to consider SA 3.2.1 and SA 3.3.1 of the FCR. SA 3.2.1 reads: “If a team determines that a UoA has no impact on a particular component, it shall receive a score of 100 under the Outcome PI.” Thus the scope of SA 3.2.1 is restricted to “the Outcome PI”. PI 2.2.3 is not an Outcome PI; instead, it is an Information PI. Therefore SA 3.2.1 is not directly applicable to PI 2.2.3.</p> <p>189. However, SA 3.3.1 also needs to be considered. This states that: “If a team determines that the UoA has no impact on a particular component and has therefore scored 100 under the Outcome PI, the Information PI shall still be scored.” The CAB has indeed scored the secondary species Outcome PI (i.e. PI 2.2.1) at 100 (see above); therefore, under SA 3.3.1, the secondary species Information PI must still be scored.</p> <p>190. The three SGs of SI 2.2.3(a) each refer to main secondary species (and to no other species). Therefore it is very hard to see how the CAB has scored SI 2.2.3(a). It is highly unsatisfactory that stakeholders are left guessing about how, in relation to provisions of the FCR (including SA 3.2.1, and SA 3.3.1), the CAB has gone about scoring this SI.</p> <p>191. In the absence of clarification, the scoring is arbitrary and/or unreasonable.</p> <p><u>Objection 28</u></p> <p>192. SA 3.3.1 of the FCR does not allow an automatic score of 100. Yet the CAB appears to have taken that approach, in that it sets out some generic justification text (see below) and then states that:</p> <ul style="list-style-type: none"> “• SG 60 is met • SG 80 is met • SG 100 is met.”
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193. Clearly, the CAB has failed to work through SG 60, SG 80 and SG 100 in turn. This is required by FCR 7.10.6 (p.36 of the FCR). The CAB is therefore in breach of FCR 7.10.6

194. Awarding a score contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 29

195. If SI 2.2.3(a) is to be scored in an absence of main secondary species, it is assumed that the SGs must be interpreted as referring, at least in part, to adequacy of information for detecting if, at any point in the future, secondary species change their status from “minor” to “main”. Hence the degrees of certainty in the SGs must be interpreted as referring to, amongst other things, that task.

196. In that regard, SG 100 is not met and instead, only SG 80 is met. SG 100 requires that: “Quantitative information is available and is adequate to assess with a high degree of certainty the impact of the UoA on main secondary species with respect to status.” (Emphasis added.)

197. Yet with the state of the processing and analysis of observer-generated data at relatively low levels (see above), it is not possible, with “a high degree of certainty” to conclude that any secondary species will, or will not, change their status from “minor” to “main”.

198. Instead, the best that can be said is, as stated in SG 80, that: “Some quantitative information is available and is adequate to assess the impact of the UoA on the main secondary species with respect to status.” (Emphasis added.)

199. The CAB’s justification, for FAD and FSC jointly, reads as follows (p.81):

“The observer catch monitoring program is adequate to characterize the FAD and FSC catch composition. There are no main secondary species, that is species approaching 5% of the catch for either set type, and no single secondary species even makes up more than 1% of the catch. There is a high degree of certainty that there would not be any new data that would indicate that any single secondary species would reach more than 5% of the catch, and therefore there is quantitative evidence available and adequate to assess with a high degree of certainty the impact of the UoA on the main secondary species with respect to status, because it is highly unlikely that there will ever be main secondary species.”

	<p>200. This purported justification cannot be sustained. First, it refers only to the 5% threshold. It makes no reference to the 2% threshold or to FCR 3.4.4. Secondly, it refers to a “high degree of certainty” that no new data would reveal a change in status. But, as noted, the state of the processing and analysis of observer-generated data is at relatively low levels (see above) – and, as is very widely known and accepted, the marine environment is heterogenous, rather than homogenous, and changes can arise over both space and time. Thirdly, it states that “it is highly unlikely that there will ever be main secondary species”. This is pure speculation.. The CAB’s justification is wholly inadequate, especially for a claim that the UoA meets SG 100.</p> <p>201. The CAB, in its response to IPNLF (p.251), states simply that: “Please refer to the responses above.”</p>
Supporting rationale and or evidence	202. The scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	2.2.3 Secondary species information
Reason	<p>2.2.3(c) – Information adequacy for management strategy</p> <p><u>Objection 30</u></p> <p>203. The CAB states (p.82), for both FAD and FSC, that: “As noted in the justification to PI 2.2.1 SI a, there are no secondary main species and therefore no measures or partial strategy are necessary (MSC FCR v.2 GSA 3.5.1).</p> <p>204. As can be seen, the CAB cites GSA 3.5.1 (FCR, p.436), which is guidance and states that: “If the UoA has no (or negligible: see below) impact on this component, scoring issue (a) does not need to be scored for SG60 and SG80 [...]”</p> <p>205. GSA 3.5.1 relates exclusively to the use of “if necessary” in SGs (see above). None of the SGs for SI 2.2.3(c) use “if necessary”, so it is not clear why the CAB is citing GSA 3.5.1. It may be that it is seeking to rely on the use of “if</p>

	<p>necessary” in the SGs for SI 2.2.2(a), on the basis that these SGs refers to “measures”, “partial strategy” and “strategy” as do the SGs for SI 2.2.3(a).</p> <p>206. However, if so, that is problematic. If the CAB has indeed relied on the use of “if necessary” to score SI 2.2.2(a) at 80, it cannot then proceed to score the UoA against SI 2.2.3(c). The CAB cannot apply the default approach it has used in the scoring of SI 2.2.2(a) to then create fictional measures, or a fictional partial strategy or strategy, for scoring against the SGs in 2.2.3(c). Instead, SI 2.2.3(c) must be regarded as non-applicable and therefore no score should be attributed.</p> <p>207. The CAB, in its response to IPNLF (p.253), states simply that: “Please refer to the responses above.”</p>
Supporting rationale and or evidence	<p>208. Awarding a score contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	2.3.2 ETP species management strategy
Reason	<p>2.3.2(c) – Management strategy evaluation</p> <p><u>Objection 31</u></p> <p>209. The CAB scores the UoA at 80. SG 80 requires that: “There is an objective basis for confidence that the partial strategy/strategy will work, based on information directly about the UoA and/or the species involved”. Table SA 8 (FCR, ‘Principle 2 Phrases’, p.134–135), which is normative, states that:</p> <p>“ “Objective basis for confidence”, as used at the SG80 level in the P2 management PIs (Management Strategy Evaluation scoring issue) refers to the levels of information required to evaluate the likelihood that the management partial strategy will work.</p> <ul style="list-style-type: none"> • The SG60 level for these PIs requires “plausible argument” based on expert knowledge; • The SG80 level requires expert knowledge augmented by some information collected in the area of the UoA and about the specific component(s) and/or UoA;

- The SG100 level requires all preceding information augmented by relatively complete information on the component, much of which comes from systematic monitoring and/or research.”

210. Therefore, the reference to “objective basis for confidence” in SG 80 requires “expert knowledge augmented by some information collected in the area of the UoA and about the specific component(s) and/or UoA”.

211. The CAB fails to identify any expert knowledge. Instead, it refers merely to (a) the observer data, which has significant limitations (see above), (b) some data about sea turtles, which it seeks to use as an indicator and (c) the use of non-entangling FADS. The items (a), (b) and (c) do not meet the requirements of Table SA 8. Therefore the score of SG 80 is not justified.

212. Furthermore: (a) because SG 80 refers to “partial strategy/strategy”, as set out above regarding SI 2.3.2(a), there is no “strategy” and so SG 80 is not met; and (b) SA3.11.1 (FCR, p.152), which is normative, requires that “[w]hen scoring the ETP Management Strategy PI SGs teams shall consider the need to minimise mortality”. There is no indication that the CAB has applied this requirement.

213. SG 60 requires that: “The measures are considered likely to work, based on plausible argument (e.g. general experience, theory or comparison with similar UoAs/species).” Table SA 8 (see above) states that: “The SG60 level for these PIs requires “plausible argument” based on expert knowledge”. The CAB fails to identify any expert knowledge. Therefore a score of SG 60 is not justified.

214. The CAB, in its response to IPNLF (p.256), states that:

“Table SA8 as noted by the INPLF stakeholder further defines the requirement for SG80 as: *expert knowledge augmented by some information collected in the area of the UoA and about the specific component(s) and/or UoA*.

The assessment team justification of its scoring at the SG80 level, provides more than “*some information collected in the area of the UoA*” it presents real data. It describes the overall low bycatch of ETP species in the Echebatar purse seine fishery, as demonstrated by the observer data. For sea turtles, it compares the bycatch rates reported for the fishery in general a decade ago to bycatch rates as observed in the Echebatar fishery. This is stronger than “*expert knowledge augmented by some information*”. The SI score remain [sic] at the SG80 level.”

215. The first paragraph of the CAB's response is simply a repeat of text we have already set out from Table SA 8. Regarding the second paragraph, "real data" is still just "information". We have already expressed concerns about the limitations of these data (see above). "Real data" is not "stronger" than "expert knowledge augmented by some information". That depends on the quality of the data. Babcock & Pikitch (HOW MUCH OBSERVER COVERAGE IS ENOUGH TO ADEQUATELY ESTIMATE BYCATCH?) said that If the observer samples are an unbiased sample of the fishery, their literature review and simulation studies suggest that coverage levels of at least 20 percent for common species, and 50 percent for rare species, would give reasonably good estimates of total bycatch. Furthermore (Babcock, p.10):

- (1) Even if the observed trips are representative of the fishery, estimates of total bycatch can be biased when low sample sizes are used. If the statistical distribution of the bycatch is particularly "clumped," meaning that most sets have zero bycatch while a few have very high bycatch, then a small sample size will lead to biased estimates of total bycatch. Bycatch commonly has this sort of distribution. In 2001, for example, 25% of the dolphin bycatch in the eastern tropical Pacific tuna purse seine fishery occurred in a single set (IATTC 2001, M. Hall, IATTC, pers. comm.). With such data, a much larger sample size is needed to get an accurate bycatch estimate.
- (2) Small sample bias is common if total bycatch is estimated with a ratio estimator. With a ratio estimator, the average ratio of bycatch to landed catch is estimated from the observer sample, and this value is multiplied by the total landed catch to estimate total bycatch. While ratio estimators generally give more precise estimates of total bycatch than can be achieved with a simple sample (Saila 1983), the ratio estimator can be biased at low sample sizes (Cochran 1977, Rao 2000). Various methods to adjust for bias in ratio estimators, including bootstrap bias correction methods (Chernick 1999), have been proposed and are sometimes used (Hall 1999 and references therein).
- (3) The level of bias caused by small sample sizes can be estimated for a particular fishery by using simulation studies. For example, Hall (1999) reported on a study of the biases of discard ratio estimates of dolphin bycatch in tropical tuna fisheries.⁶ That study showed that for the dolphin-tuna fishery data all of the ratio estimation methods demonstrated high levels of bias at low sampling fractions (below 20%), although bootstrap bias correction methods greatly improved the estimates (Hall 1999).

	<p>(4) The problem of bias caused by low sample sizes is commonly ignored in observer program sampling design, but can be solved by increasing the sampling fraction. Also, simulation studies similar to Hall (1999) should be used to test the proposed estimators of total bycatch, and to develop estimation methods that are unbiased for the fishery being sampled.</p> <p>216. 20-25% is therefore inadequate for sharks and rays and other rare bycatch species</p> <p>217. The CAB's argument that the data is good, is therefore not sound, as the relatively low levels of sampling is would not give a reasonably good estimate of total bycatch for rare species such as the ETP species found in this fishery.</p> <p>The additions to the justification that have been made by the CAB to the Final Report, subsequent to the publication of the original version, make no difference in respect of our points above.</p>
Supporting rationale and or evidence	<p>218. Scoring contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	2.3.2 ETP species management strategy
Reason	<p>2.3.2(d) – Management strategy implementation</p> <p><u>Objection 32</u></p> <p>219. The CAB scores the UoA at 80. SG 80 requires that: “There is some evidence that the measures/strategy is being implemented successfully.” If we assume that measures (though not a strategy) exist, the question is: is there “some evidence” that they are “being implemented successfully”?</p> <p>220. No genuine evidence is provided by the CAB of successful implementation of these measures: the CAB refers only to (a) the observer data, which has significant limitations (see above), (b) some data about sea turtles, which it seeks to use as an indicator and (c) some published papers which are not based on data collected from this UoA and about which the CAB makes no attempt to show why they should</p>

have application. Accordingly, SG 80 is not met. There is no SG 60.

221. The CAB, in its response to IPNLF (p.256), states that:

“As noted above, we conclude that there is a strategy. The scoring rationale has been redrafted to clarify the evidence supporting a score of 80 for Sld. We consider there is ample evidence to demonstrate the measures / strategy have implemented and have been effective at minimizing mortality of ETP species.”

222. Regarding the second paragraph of the CAB’s response, the redrafting of the scoring rationale for SG 80 has been minimal. The only substantive changes are as follows:

(a) in the first line, “relatively low” has been replaced with “low”;

(b) in the first paragraph, the following text change has occurred:

Second Report	Final Report
... and the interaction rates reported in the 2000-2010 period. As presented in the justification for PI 2.3.1, Sla the sea turtle interaction rate in the 2000-2010 period is 1 sea turtle captured per 25 sets, and the Echebatar observer data indicated a rate of 1 sea turtle per 150 sets. This reduction is most likely due to the introduction and use of non-entangling FADs.	... as compared to the interaction rates reported in the 1995-2011 period (Bourjea et al. 2014). The sea turtle interaction rate in the 1995-2011 period was about 1 sea turtle captured per 25 sets, and the Echebatar observer data indicated a rate of 1 sea turtle per 150 sets. This reduction is most likely due to the introduction and use of nonentangling FADs.

(c) insertion, at the end of the SG 80 justification, of the following text: “and that the measures/strategy is being implemented successfully”.

Supporting rationale and or evidence

223. The response does not remedy the pre-existing defects. Scoring contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Scoring	
Performance Indicator	2.3.2 ETP species management strategy
Reason	<p>2.3.2(e) – Review of alternative measures to minimize mortality of ETP species</p> <p><u>Objection 33</u></p> <p>224. The CAB scores the UoA at 100. SG 100 requires that: “There is a biennial review of the potential effectiveness and practicality of alternative measures to minimise UoA-related mortality ETP species, and they are implemented, as appropriate.”</p> <p>225. This requires:</p> <ul style="list-style-type: none"> - the identification of “alternative measures” to minimise UoA mortality of ETP species; - a biennial review of the potential effectiveness and practicality of such measures; and - implementation, as appropriate. <p>226. There are some key terms in SG 100, including the following: “alternative measures”; the measures’ purpose being to “minimise” mortality; “biennial” (meaning taking place every other year); “review”; the need for the measures to be “implemented”; and the caveat “as appropriate”.</p> <p>227. The term “alternative measures” is defined in SA3.5.3 (FCR, p.140), as follows: “ “Alternative measures” in scoring issue (e) shall be interpreted by the team as alternative fishing gear and /or practices that have been shown to minimise the rate of incidental mortality of the species or species type to the lowest achievable levels” .”</p> <p>228. It can be seen that “alternative measures” is a concept with specific content. The measures must “have been shown to minimise [bycatch] to the lowest achievable levels”.</p> <p>229. In the Final Report (pp.93-94), the CAB sets out a purported justification for its score of 100. We have identified the following, from this justification, as candidates for consideration as “alternative measures”:</p> <p>(a) “a limitation on the number of FADs” (linked to IOTC Resolution 15/08)</p>

(b) “more detailed specifications of catch reporting from FAD sets” (linked to IOTC Resolution 15/08)

(c) “development of improved FAD designs to reduce the incidence of interactions” (linked to IOTC Resolution 15/08)

(d) “since 2015 Echebastar exclusively uses non-entangling FADs”

(e) “Annual workshops for vessel Captains covering best practices in the fishery”

(f) “Support for research to understand and minimize entanglements of ETP species in FADs”

230. A number of things are striking from this list. First, items (a)–(d) relate exclusively to FAD fishing, yet they amount to tinkering, without addressing a change from FAD to FSC fishing. Second, Items (e) and (f) are sufficiently broad to be almost meaningless against the definition of “alternative measures”. Third, the UoA includes both FAD and FSC fishing, but the CAB has failed to set out any “alternative measures” in respect of FSC fishing. In addition, the CAB has provided no evidence at all that items (a) –(c) in the list above are being implemented – i.e. that they are anything more than text in an IOTC resolution.

231. All of the SGs for this SI require a “review”.

232. In the Final Report (p.93), the CAB states that: “Both Echebastar and IOTC conduct at least biennial review of measures and strategies to minimize bycatch, mortality and unobserved mortality of ETP species.” However, without clarity on whether some measures are being implemented and without information on FSC-related measures, it is hard to see what could actually be being reviewed.

233. At the same time, the CAB has failed to consider the definition of “as appropriate” in SA 3.5.3 and, as evidence of the alleged biennial nature of the review, it has failed to state in what years the said reviews have been conducted.

234. The fact of the matter is that the UoA cannot show that it meets this SI, even at SG 60.

235. The CAB, in its response to IPNLF (p.256) states that:

“The justification for this SI has been revised. The rationale now addresses alternative measures to minimise UoA-related mortality of ETP species. With regard to unwanted catch, all ETP catch is considered non-negligible, however, as noted previously, very low catches of ETP species are unlikely to

	hinder the recovery of a ETP species. We conclude that SG100 is met as evidence indicates that Echebastar regularly reviews (i.e. more often than biennial) the potential effectiveness and practicality of alternative measures to minimise UoA related mortality ETP species, and they are implemented, as appropriate.”
Supporting rationale and or evidence	<p>236. The response does not remedy the pre-existing defects. Scoring contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p> <p>237. Furthermore, the objection with respect to 2.2.2(e) is repeated.</p>

Scoring

Performance Indicator	2.3.3 ETP species information
Reason	<p>2.3.3(a) – Information adequacy for assessment of impacts</p> <p><u>Objection 34</u></p> <p>238. The CAB scores the UoA at 80. SG 80 requires that: “Some quantitative information is adequate to assess the UoA related mortality and impact and to determine whether the UoA may be a threat to protection and recovery of the ETP species.” (There is an alternative if the MSC’s risk based framework is used to score PI 2.3.1, which it is not.)</p> <p>239. SA 3.12.2 (FCR, p.154), which is normative, states that: “SA3.6.1–SA3.6.4 shall apply here (except SA3.6.2.2) noting that the paragraphs apply to all ETP species (i.e., there is no ‘main’ for ETP).”</p> <p>240. That means that for the assessment in hand, the following clauses shall apply: SA 3.6.2; 3.6.2.1; 3.6.3 and its sub-clauses; and 3.6.4. However, there is no evidence that the CAB has applied clauses SA 3.6.2, 3.6.2.1, 3.6.3 (and its sub-clauses) and 3.6.4 to the UoA when scoring SI 2.3.3(a). It is mandatory to do so. This omission must be rectified by the CAB.</p> <p>241. The CAB, in its response to IPNLF (p.257), states that: “SA3.6.3: at SG80, notes that the information adequacy required for the estimation of the impact of the UoA on the</p>

outcome of the species should be balanced against the likely impact on that particular species. In the case of ETP species, the principal source of information is independent observer data, and the details of that program have been described and total interactions by species are estimated. We do not see a need to duplicate that information. At SG80, this SI requires that some quantitative information is adequate to assess the UoA related mortality and impact and to determine whether the UoA may be a threat to protection and recovery of the ETP species. The rationale provides evidence to support the fishery meeting SG80.”

242. The CAB has missed the point. We are seeking evidence that the CAB has applied clauses SA 3.6.2, 3.6.2.1, 3.6.3 (and its sub-clauses) and 3.6.4 to the UoA when scoring SI 2.3.3(a). The CAB refers only to SA 3.6.3, but certainly does not do so adequately (in view of the important detail set out in the sub-clauses of SA 3.6.3).

243. The response does not remedy the pre-existing defects. Scoring contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 35

244. In assessing SI 2.3.3(b) (see below), the CAB has placed a condition on the UoA, as follows:

“By the fourth annual surveillance audit, the client must demonstrate that information is adequate to measure trends and support a strategy to manage impacts on ETP species.” [Emphasis added.]

(Of note, the text of this Condition differs significantly from the version in the Second Report, which reads as follows: “The fishery needs more than three years of catch data to measure trends and support the strategy to manage impacts on ETP species. At present, there are only three years of data available for evaluation in this assessment, and a minimum of five years should be used. Additionally, the data should represent at least at the 50% of observer sets. Therefore, the fishery is required to present catch data on at least 50% of all sets for the first two years following certification. This will result in a total of five years of data available to measure trends and support the strategy to manage impacts on ETP species.” The CAB seems to have offloaded part of this Condition text into a (mere) Recommendation.)

245. The stated rationale for this Condition is as follows:

	<p>“More than three years of information is needed <u>to measure trends</u> and support a strategy to manage impacts on ETP species. and ensure that ETP bycatch levels remain at levels consistent with those for 2014-2016.” [Emphasis added.]</p> <p>246. It can be seen that this Condition relates not just to supporting a management strategy (the subject matter of SI 2.3.3(b)) but also to measuring trends. Measuring trends is relevant to SI 2.3.3(a). If the Condition is required for SI 2.3.3(b), it should also be required for SI 2.3.3(a), which indicates that the highest that SI 2.3.3(a) should score is SG 60.</p> <p>247. The CAB, in its response to IPNLF (p.257), states that: “The Condition articulates the distinction between the need to measure trends (SIb), and the adequacy of information to assess impacts (SIa)”</p>
Supporting rationale and or evidence	<p>248. The response does not remedy the pre-existing defects. The scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	2.3.3 ETP species information
Reason	<p>2.3.3(b) – Information adequacy for management strategy</p> <p><u>Objection 36</u></p> <p>249. The CAB scores the UoA at 60 (and sets a Condition – see above). SG 60 requires that: ‘Information is adequate to support measures to manage the impacts on ETP species.’</p> <p>250. SA 3.12.2 (FCR, p.154), which is normative, states that: ‘SA3.6.1–SA3.6.4 shall apply here (except SA3.6.2.2) noting that the paragraphs apply to all ETP species (i.e., there is no ‘main’ for ETP).’</p> <p>251. That means that for the assessment in hand, the following clauses shall apply: SA 3.6.2; 3.6.2.1; 3.6.3 and its sub-clauses; and 3.6.4. However, there is no evidence that the CAB has applied clauses SA 3.6.2, 3.6.2.1, 3.6.3 (and its sub-clauses) and 3.6.4 to the UoA when scoring SI 2.3.3(b). It is mandatory to do so. This omission must be rectified by the CAB.</p>

	<p>252. The CAB, in its response to IPNLF (p.258), states that:</p> <p>253. “Please see the previous comment. The principal source of information on interaction with ETP species is independent observer data and the estimated total interactions by species (PI2.3.1 SIb). The justification for this SI has been revised.”</p>
Supporting rationale and or evidence	<p>254. The response does not remedy the pre-existing defects. Scoring contrary to the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	3.1.1 Legal and/or customary framework
Reason	<p>3.1.1(a) – Compatibility of laws or standards with effective management</p> <p><u>Objection 37</u></p> <p>255. In the Second Report (pp.160–161), the CAB’s assessment for this SI focused on flag States (Spain and Seychelles), in the context of IOTC. With the possible exception of the Seychelles, it did not consider the various coastal States involved – i.e. the coastal States in whose waters the Echebaster vessels fish. (Those coastal States are listed in, for example, Tables 40, 41 and 42 at pp.132–134 of the Final Report; they are listed in Tables 4–6 at pp.146–147 of the Second Report.)</p> <p>256. In its response to the Second Report, IPNLF pointed out that omission, stating that:</p> <p>“Even though the catches in the waters of some of these coastal States may be relatively small, each of them needs to be considered.</p> <p>This is a significant omission and needs to be remedied with reference to the national legal system of each coastal State concerned. One would expect to see, at the very least, a table of relevant provisions of the current national legislation of the coastal States. There is no such table. In the absence of this matter being addressed, the UoA would need to be FAILED for this SI.</p> <p>The fact that some of the coastal States concerned have active SFPAs with the EU, and that SFPAs are considered</p>

earlier in the section on P3, is not sufficient. According to the CAB (p.151), the only coastal States that have active SFPAs with the EU are Madagascar, Mauritius and Seychelles. That is not all of the coastal States concerned. In addition, for Madagascar, Mauritius and Seychelles it is not sufficient to consider only the SFPAs: the coastal States' national legislation must also be considered."

257. The CAB, in its response to IPNLF (p.260), states that:

"The stakeholder's comment led to a rigorous consideration of the issue. We concluded that SFPAs / private agreements / individual vessel licensing should be considered under the fishery specific Component 3.2. The three jurisdictions considered under Component 3.1 are IOTV [sic], EU and Seychelles. The rationale for this approach is provided in the main body of the text. SFPAs are now considered under Component 3.2. Due to a misunderstanding the previous draft did not consider the licenses issues to Echebatar vessels by the Governments of Kenya and Tanzania. This omission has been corrected and the two are considered under Component 3.2. The text has been edited to strengthen the scoring rationale."

258. As can be seen, the CAB refers to "Component 3.1" and "Component 3.2" of Principle 3. The basis for this terminology is the FCR. Thus Figure SA 3 in the FCR (p.167) makes clear that P3 has two components: "Governance & Policy" and "Fishery Specific Management System". The FCR states that the former (which the CAB refers to as "Component 3.1") is applicable to Pls 3.1.1, 3.1.2 and 3.1.3 and that the latter ("Component 3.2") is applicable to Pls 3.2.1, 3.2.2, 3.2.3 and 3.2.4.

259. Therefore, it is the "Governance & Policy" component of P3 that is applicable to SI 3.1.1(a).

260. The change of approach by the CAB between the Second Report and the Final Report means that the CAB's rationale under SI 3.1.1(a) has changed. The justification for the scoring of SI 3.1.1(a) has been lengthened, but the new justification in effect reverses the emphasis in the previous one: it now focuses on IOTC, with reference to flag States (which it now regards as EU and Seychelles – see Objection 39 below), instead of, as previously, focusing on flag States in the context of IOTC.

261. The CAB's justification regarding SI 3.1.1(a) continues to fail to refer to coastal States. Indeed, coastal States are excluded from the CAB's assessment of the "jurisdictional categories that apply to the management of the Echebatar purse seine fishery for skipjack tuna considered under Component 3.1" (p.131). Instead, those categories are stated to be the following three: IOTC; EU; and Seychelles.

262. All three SGs for SI 3.1.1(a) require, amongst other things, the existence of “an effective national legal system”. However, in addition, it is clear that the national legal system is not intended to be the only element of the SGs; thus each SG also refers to “cooperation with other parties”.
263. In the case of the fish stock targeted by the Echebatar UoA (i.e. skipjack tuna), “cooperation with other parties” is absolutely necessary. Indeed, in terms of cooperation through RFMOs, such cooperation is required under international law (including under UNCLOS and UNFSA). So it is right and proper that scoring of SI 3.1.1(a) considers IOTC, which is the relevant RFMO in this case.
264. But that should not preclude from scoring the consideration of (a) other forms of cooperation (including arrangements between Echebatar and coastal States or between the EU and coastal States) or (b) relevant national legal systems (including those of flag States and coastal States). As noted above, flag States (albeit as EU and Seychelles) have been mentioned in the justification but with the emphasis very much on IOTC; coastal States (whether in the context of national legal system or in the context of cooperation) have been completely omitted.
265. IPNLF objects to the CAB’s omission of reference to coastal States in its justification for the scoring of SI 3.1.1(a).
266. We note that GSA 4.1 (FCR, pp.471-473), in Table GSA 9 (FCR, p.471), states that the focus of the “Governance and Policy” component of P3 “[c]aptures the broad, high-level context of the fishery management system within which the UoA is found”. However, GSA 4.1 does not state at any point that, for fisheries for highly migratory species (such as skipjack), it is only the RFMO level that should be covered by the “Governance and Policy” component of P3. Indeed, that seems to be accepted by the CAB because its justification does refer to flag States (albeit as EU and Seychelles) as well as to IOTC.
267. With regard to coastal States, the CAB, at p.131, states that:
- “Each of the coastal / island states is an IOTC Contracting Party (CP) / covered by the EU (France) as a CP and the three types of fishery operating within their EEZs. This ensures they “cooperate to ensure effective conservation and management of the resources”. As indicated by GSA 4.1.1, the assessment team has considered which jurisdictional levels apply to the management system for Echebatar and concluded that the Echebatar fishing activities within individual EEZs do not impact directly on

the delivery of P1 and P2 outcomes, and as such should not be individually assessed as jurisdictional categories under C3.1, rather they should be considered under the fishery specific analysis within C3.2.” [Emphasis added.]

In the above extract, “C3.1” means Component 3.1 of P3 and “C3.2” means Component 3.2 of P3 (see above).

268. At p.135, apparently as a continuation of its rationale for the exclusion of coastal States from Component 3.1 of Principle 3, the CAB states that:

“In addition to those jurisdictions [i.e. IOTC; EU; and Seychelles, as referred to at p.131], Component 3.2 takes into consideration vessels licensed under:

- SFPAs;
- Private agreements; and
- Fisheries Law of individual countries (individual vessel licenses).

The validity of this approach i.e. not taking account of the private / SFPA / vessel licenses under Component 3.1 is justified due to the non-permanent nature of these agreements which means that they should not be considered within “the broad, high-level context of the fishery management system within which the UoA is found” (MSC CR 2,0 Table GSA 9). Any future annual surveillance audits would consider changes in the management approach and the implications for the continued certification of the fishery.” [Emphasis added.]

269. Taken together, the CAB’s statements at pp.131 and 135, as set out above, seem to be the CAB’s justification for excluding coastal States from consideration under SI 3.1.1(a).

270. The CAB’s approach is wrong.

271. First, non-permanence of access agreements (p.135) is not relevant, for the following reasons:

(a) There is no basis in the FCR for exclusion of a level of governance from Component 3.1 of Principle 3 based on whether or not elements of that level are permanent.

(b) What is permanent is that coastal States play an essential role in this UoA by enabling, through providing access to their EEZs, Echebastar vessels to access the target stock. The fact that non-permanence may be a feature of some, or even all, of the access agreements is irrelevant. It is the permanence of the role of coastal States that is relevant.

(c) If the CAB wished to use permanence of instruments as a criterion for exclusion of a level of governance from Component 3.1, it would have to exclude both IOTC and EU measures. Measures made by both of those organisations are not permanent, in that they can lapse and/or be replaced.

272. Secondly, the CAB does not provide any basis for its assertion that “Echebastar fishing activities within individual EEZs [of coastal States] do not impact directly on the delivery of P1 and P2 outcomes” (p.131).

273. It is clear that Echebastar fishing activities within coastal States’ EEZs do directly impact on the delivery of P1 and P2 outcomes because such fishing activities are significant in terms of tonnes of skipjack (and other species) fished by Echebastar vessels in those EEZs – especially, but certainly not exclusively, in the case of Madagascar, Seychelles and Tanzania.

274. The extent of the fishing in coastal States’ EEZs is set out in Tables 40, 41 and 42 at pp.132–134. Table 42, which is for “All vessels” of Echebastar shows that in 2016, 7,341 tonnes of skipjack (the target species for this UoA) were caught in (eight) coastal States’ EEZs – which is 36% of the overall catch of the UoA. (The figure of 7,341 tonnes is derived by subtracting the “international” figure of 12,905 tonnes from the “total” figure of 20,246 tonnes.)

275. A table in the Second Report (Table 6, at p.147), which has been omitted from the Final Report, shows that in each of 2014, 2015 and 2016, the catch of skipjack in coastal States’ EEZs was 3,649 tonnes, 5,968 tonnes and 13,666 tonnes respectively. This shows that the catch in coastal States’ EEZs has been growing (with a significant jump between 2015 and 2016) on an annual basis.

(Of note, there are discrepancies between Table 6 in the Second Report and Table 42 in the Final Report. The latter relates just to 2016. As noted above, it shows that 7,341 tonnes of skipjack were caught in coastal States’ EEZs. In contrast, Table 6 (Second Report) shows that, in 2016, 13,666 tonnes of skipjack were caught in coastal States’ EEZs. One of these tables must be wrong. Although, as noted, Table 6 has been omitted from the Final Report, we request an explanation from the CAB for the differences between these two tables.)

276. Thus the catch in coastal States’ EEZs, even if viewed solely through the lens of Table 42 in the Final Report (rather than Table 6 in the Second Report), is very significant.

277. What is more, the ability for Echebastar to catch tuna in coastal States’ EEZs is essential for the success of the

UoA because only by this means can Echebastar vessels follow tuna in their migration around the Indian Ocean. In that respect, the Final Report (p.131) states that fisheries access agreements (whether private or public) for Echebastar vessels “allow purse seiners and other tuna catching vessels to follow the migratory patterns of tuna by fishing within the EEZs of individual coastal/island states”.

278. Thirdly, we take issue with the CAB’s statements that “[e]ach of the coastal / island states is an IOTC Contracting Party (CP) / covered by the EU (France) as a CP” and that “[t]his ensures they “cooperate to ensure effective conservation and management of the resources” (p.131). It seems that the CAB is seeking to use IOTC as a means of covering assessment of coastal States. This is unacceptable. Coastal States are not vassals of IOTC, and hence the CAB’s wording “[t]his ensures” is inappropriate, for the following reasons:

(a) The CAB has provided no evidence of coastal States converting IOTC conservation and management measures into national law. In the absence of that, there is no evidence that the measures would have legal effect at the national level, whether by virtue of the domestic legal framework or constitution, despite wording in the IOTC Agreement (i.e. at the international level), such as Articles IX(1) and (4) and X(1), about binding effect.

(b) Member States of IOTC are able to object to conservation and management measures, whereupon they are not binding for that State (Article IX(5) and (6)). This is noted by the CAB at p.135 of the Final Report. There has been no analysis by the CAB of which relevant IOTC conservation and management measures have been objected to by which coastal States, and the option to object anyway remains valid into the future. In any event, the capacity to object remains available for the future for any new conservation and management measure.

(c) IOTC, like all RFMOs, is a forum in which politics play a significant role. In addition, with its large number of member States (more than 30), IOTC involves interests other than just those relevant to Echebastar fishing activities. There will be some subject areas of conservation and management where, for political reasons, agreement cannot be reached within IOTC and where individual objections (see above) will not solve the problem. In those instances, action at the coastal State level will be needed to fill gaps left by IOTC.

(d) There will be some relevant fisheries management matters that are simply not within the competence of IOTC – for example matters that fall outside the material scope of the IOTC Agreement (cf Article V of that Agreement). Coastal States are sovereign and, as such, they have a

power to act in their own right, subject to any obligations they may have under international law.

279. In addition, we note that the Final Report, at pp.150-155, includes several pages of information on coastal States (in alphabetical order: Comoros; Eparses (which, according to the Final Report (p.151) is “part of the French Southern and Antarctic Lands”); Kenya; Madagascar; Mauritius; Mayotte (which, according to the Final Report (p.154) is “an insular department and region of France”); Mozambique; Seychelles; and Tanzania. It also includes text of some fisheries access agreements at Appendix 12 (pp.405-469) (on which see Objection 38 below). This information is new compared to the Second Report. But inclusion of information in the pages preceding the scoring of P3 Pls, and inclusion of other information in an appendix, cannot be a substitute for a justification explaining the use of the information in scoring. In addition, we note that no information is included in respect of Reunion which, like Mayotte, is “an insular department and region of France”.
280. Further, we note that the information provided in respect of Kenya is quite concerning. In that respect, it is stated at p.152 of the Final Report that: “The 2017 [IOTC] compliance report (IOTC-2017-CoC14-CR12_Rev2 [E] IOTC Compliance Report) concluded: general lack of compliance with IOTC measures and response from Kenya; and not presenting reports and information as required by IOTC Resolutions and the [IOTC].” That information will be considered further below. However, it is important to note here that the CAB states: “However, these issues are not related to the UoA.” (Emphasis added.)
281. A similar view is taken by the CAB in respect of evidence regarding Madagascar (p.153), Mauritius (p.154), Mozambique (p.154) and Tanzania (p.155).
282. We disagree that “these issues are not related to the UoA”. These issues are clearly related to the UoA. Regarding Kenya, for example, Echebatar vessels fished in the EEZ of Kenya in 2016, 2015 and 2014. Though the Final Report states that Echebatar vessels “are not fishing Kenyan waters” and adds that “nor is it likely that activity will be resumed in 2018”, continued fishing in Kenyan waters is not ruled out. Kenya has been found to be showing a “general lack of compliance with IOTC measures”. That lack of compliance may apply to how IOTC measures are enforced regarding the activities of Echebatar vessels when operating in Kenya’s EEZ. The same applies to Madagascar, Mauritius, Mozambique and Tanzania – and indeed potentially any other coastal State in whose EEZ Echebatar vessels fish.

283. This illustrates how, in seeking to minimise the role of coastal States in Principle 3, the CAB is not performing a full and proper assessment of the UoA.
284. With regard to the compliance record of coastal States, we would also like to bring attention to the matter of Comoros. Under the heading “IUU Fishing”, the Final Report (p.149) states that the EU’s IUU Regulation (EU Regulation 1005/2008, as amended; hereafter, “the IUU Regulation”) “allows steps to be taken against countries that turn a blind eye to IUU fishing: if there is not a response to a preliminary warning, a country may be identified and black listed for not acting against IUU fishing”.
285. States can be identified by the EU under the IUU Regulation as “non-cooperating” in fighting illegal, unregulated and unreported (IUU) fishing. When this happens, they are said to receive a “red card” – having first received a warning in the form of a so-called “yellow card”. A variety of serious consequences arise from receiving a red card, as set out in Article 38 of the IUU Regulation, including, amongst others, the following:
- “private trade arrangements between nationals of a [EU] Member State and such countries in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of such countries shall be prohibited” [Article 38(6)];
 - “the [European] Commission shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such countries” [Article 38(9)].
286. The Final Report (p.150) states that “Comoros was warned with a yellow card in October 2015 (European Parliament 2017)”. This statement is made by the CAB, almost in passing, to explain why an EU fishing access protocol with Comoros has not been signed. No reference to the yellow card received by Comoros was made in the Second Report, published in August 2017.
287. The reference in the Final Report to a “yellow card” is not an accurate description of the current state of affairs. In May 2017, Comoros was formally identified as “non-cooperating”, i.e. it received a red card. This happened by means of a Decision adopted by the European Commission on behalf of the EU (Commission Implementing Decision 2017/889), which entered into force on 25 May 2017. May 2017 pre-dates not only the Final Report but also the Second Report.
288. Comoros was identified as “non-cooperating” for several reasons. One related to “Comorian flagged fishing and fishing-related vessels ... operating outside the Comorian

EEZ and the area of competence of the IOTC, in particular in the eastern Atlantic” (recital (55)). However, there were other reasons too – including non-compliance by Comoros with various IOTC Resolutions, as explained in recitals (76)-(79) of the European Commission’s Decision. The Decision remains in force to date.

289. Irrespective of the reasons why Comoros has received its red card, the point is that Comoros has been labelled by the EU as “non-cooperating” in fighting IUU fishing.

290. The Final Report (Table 42, p.134) states that in 2016, 520 tonnes of skipjack (as well as 249 tonnes of yellowfin) were fished by Echebatar vessels in Comoros waters. 520 tonnes is 2.6% of the total Echebatar catch of skipjack for 2016.

291. It is totally inappropriate that a UoA that is seeking MSC certification should be fishing, no matter to what extent, in the waters of a coastal State that has received a red card under the IUU Regulation.

292. The CAB should have known of the existence of the red card since its coming into force in May 2017. Yet it was not mentioned in the Second Report (published in August 2017) or in the Final Report (in either version). This omission is surprising and very concerning. The existence of a red card for Comoros must now be taken into account by the CAB in its scoring of relevant SIs (notably SIs 3.2.3(a), (b) and (c) – on which see further below).

293. As noted above, one consequence of the red card is that private trade arrangements between nationals of a Member State and the Comoros in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of the Comoros shall be prohibited (Article 38(6) of the IUU Regulation, cited above).

294. Article 38(6) refers to “nationals of a Member State”. The term “nationals” is distinct from vessels flagged to a Member State; that is clear from the wording of the IUU Regulation. The term “nationals” means natural or legal persons. We note that, on page ii of the Final Report, the company address of Echebatar is stated as being in Bermeo, Spain. On that basis, we assume that Echebatar, as a company, is a legal person and hence a national (of Spain) for the purposes of Article 38(6).

295. On the basis of that assumption, by virtue of Article 38(6), private trade arrangements between Echebatar (or any entity acting on their behalf, such as ANABAC) and the Comoros in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of the Comoros shall be prohibited. That prohibition applies to

the Spanish-flagged vessels within Echebatar.

296. We appreciate that the prohibition under Article 38(6) does not apply to the Seychelles-flagged vessels within Echebatar. However, in the circumstances, it would be a highly cynical move by Echebatar, and contrary to the spirit of MSC certification, if Echebatar were to allow its Seychelles-flagged vessels to be the beneficiaries of any private trade arrangement between Echebatar (or ANABAC) and the Comoros.

297. Thus it is clear that both Spanish-flagged and Seychelles-flagged Echebatar vessels should not be fishing in the waters of Comoros, the former by virtue of EU law and latter by virtue of the spirit of MSC certification.

298. That stop on fishing in Comoros waters by Echebatar vessels should have taken effect from 25 May 2017, i.e. the date of entry into force of the red card. Yet the Final Report (p.150) states that the private arrangement between ANABAC and Comoros ran till the end of 2017. Questions therefore arise about the validity, under EU law, of that agreement between 25 May 2017 and 31 December 2017. A key question for the CAB to answer is whether or not the arrangement has been renewed since 31 December 2017 and, if so, which Echebatar vessels (and of what flag), if any, are beneficiaries under that renewed arrangement.

299. The CAB's exclusion of coastal States from its justification of scoring under SI 3.1.1(a) is a means of enabling it to purport to demonstrate compliance with SGs for SI 3.1.1(a) (and other SIs within PI 3.1.1) when in fact that compliance does not, or may not (subject to the proper assessment being carried out), exist – even at SG 60. SI 3.1.1(a) needs to be re-scored by the CAB, based on a full re-assessment that takes into coastal States, including those coastal States' fisheries management and their fisheries access arrangements relating to Echebatar vessels, to deliver management outcomes consistent with Principles 1 and 2.

300. Scoring contrary to the FCR (by wrongly excluding consideration of coastal States) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 38

301. As noted above, the Final Report includes text of some fisheries access agreements at Appendix 12 (pp.405-469). This material is referred to at pp.150-155, where the CAB sets out information on: Comoros; Eparses; Kenya; Madagascar; Mauritius; Mayotte; Mozambique; Seychelles;

and Tanzania. The various access arrangements referred at pp.150-155 can be summarised as follows:

		Spanish-flagged vessels		Seychelles-flagged vessels
Comoros	1	SFPA, but no protocol in force since end of 2016	2	Private (ANABAC), from 2014 to end-2017
Eparses	3	[access arrangements not clear: "under the terms of the CFP"]	4	"agreement signed between the French Antarctic Territories and ... Seychelles"
Kenya	5	[access arrangements not clear: "individual vessel licensing in accordance with the Kenyan fisheries law"]	6	[access arrangements not clear: "individual vessel licensing in accordance with the Kenyan fisheries law"]
Madagascar	7	SFPA, with protocol in force covering 01.01.15 to 31.12.18	8	Private (ANABAC), from June 2015 "for a period of 3 years"
Mauritius	9	SFPA, with protocol covering 28.01.14 to 27.01.17; new protocol in force after "adoption procedures" completed	10	Pair of bilateral State-to-State agreements
Mayotte	11	[access arrangements not clear]	12	[EU-Seychelles agreement]

Mozambique	13	SFPA, but no protocol in force since January 2015	14	[access arrangements not clear]
Seychelles	15	SFPA, with protocol covering 28.01.14 to 27.01.17	16	-----
Tanzania	17	[access arrangements not clear: "individual vessel licensing in accordance with the Tanzanian fisheries law"]	18	[access arrangements not clear: "individual vessel licensing in accordance with the Tanzanian fisheries law"]

302. The CAB needs to provide further information about those agreements where we have stated in the table above that the access arrangements are "not clear", i.e. items 3, 5, 6, 11, 14, 17 and 18.

303. In addition, examination of Appendix 12 shows the following gaps, all of which need to be addressed by the CAB:

(a) regarding item 2 in the table above, Articles 1 and 2(d) of the instrument set out in Appendix 12 (pp.405-411) are redacted;

(b) regarding item 4 in the table above, Appendix 12 merely sets out a French Antarctic Territory instrument (pp.412-425), with no apparent agreement with Seychelles;

(c) regarding item 8 in the table above, Articles 9, 10 and 14, and potentially the latter part of Article 20, of the instrument set out in Appendix 12 (pp.426-453) are redacted and appendix 6 of the instrument appears to be missing (unless it is at p.448 – it is hard to read the numbering).

304. In the absence of further information, the scoring is arbitrary and/or unreasonable.

Objection 39

305. In the Second Report (pp.160–161), as already noted, the CAB's assessment for this SI focused on flag States (Spain

and Seychelles), in the context of IOTC. It stated that:

“The fishery policy of Spain (EU) and Seychelles, working in conjunction with IOTC and other parties, provides a coherent basis for effective management of the skipjack resource in the IO through the procedures established for data collection, stock analysis, scientific advice (UNSFA Art. 10) and management tools.”

306. IPNLF, in its response to the Second Report, raised an issue about the adequacy of this assessment, both in relation to Spain and Seychelles (see further below). However, the response of the CAB has been to fundamentally change how it addresses Spain as a flag State. In the Final Report, in its justification for scoring of SI 3.1.1(a), it has completely removed any reference to Spain and now, instead, refers to EU as the flag State for the Echebstar vessels that are flagged to Spain. Its rationale for this change of approach (p.260) is as follows:

“The fisheries responsibilities of individual member states are limited to the waters under national jurisdiction. Fisheries outside the national waters up to the limit of the EU EEZ are subject to EU regulations as encapsulated in the CFP and supported by a range of EU documents and regulations. The CFP applies to EU fisheries in distant fishing grounds such as the Indian Ocean. The direct reference to Spain was an error and the text has been edited to strengthen the scoring rationale.”

307. The statement that “[t]he fisheries responsibilities of individual member states are limited to the waters under national jurisdiction” is wrong in law. It is made in the absence of any analysis of relevant materials.

308. However, before addressing that statement, it is necessary to deal with a more fundamental error made by the CAB. The CAB refers to the EU as a flag State (p.156, and p.3 of executive summary). As a matter of law, that statement is incorrect. Article 91(1) of UNCLOS provides as follows:

“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly.”

309. It follows that the flag State of a vessel is the State that has conferred its nationality on that vessel and has authorised that vessel to fly its flag.¹⁶ Since there is no such thing as EU nationality, certainly as far as ships are concerned, it

¹⁶ See further Case No. 19, *M/V Virginia G (Panama v. Guinea-Bissau)* [2014] ITLOS Reports 4, at paras 109 and 113; and R. A. Barnes, “Flag States” in D. R. Rothwell et al (eds.), *The Oxford Handbook of the Law of the Sea* (OUP, 2015) 304 at 304-310.

follows that the EU is not, and cannot be, the flag State of any vessel.

310. That position is confirmed by the “Basic Regulation” of the EU’s CFP (Regulation 1380/2013, as amended), Article 4(1)(5) of which defines a “Union fishing vessel” as “a fishing vessel flying the flag of a Member State and registered in the Union”.

311. That the EU is not a flag State is also recognised in the IOTC Agreement, to which the EU (but not its Member States) is a party, Article IV(5) of which provides that: “[f]or the purposes of this Agreement, the term “whose vessels” in relation to a Member Organization means vessels of a Member State of such Member Organization.” In other words, the term “whose vessels” when applied in the context of the EU means the vessels of (i.e. having the nationality and flying the flag of) relevant EU Member States.

312. It is true that in an Advisory Opinion given in response to a request from the Sub-Regional Fisheries Commission, the International Tribunal for the Law of the Sea (ITLOS) stated that where an international organization, in the exercise of its exclusive competence, has concluded an agreement with a third State that provides for access by vessels flying the flag of a Member State of that organization to the waters of that third State, “the obligations of the flag State become the obligations of the international organization”.¹⁷

313. However, that statement by ITLOS needs to be treated with care and read in context. ITLOS was dealing with the liability of an international organization, specifically the EU, in the specific context of (a) a fisheries access agreement involving the EU and (b) illegal fishing by vessels flagged to EU Member States within the waters of a member State of the Sub-Regional Fisheries Commission under such an access agreement. As ITLOS observed,¹⁸ the EU noted that in the fisheries access agreements that the EU had concluded with individual coastal States, it had undertaken to ensure that vessels flying the flag of EU Member States complied with the legislation of the coastal State in question. Read in context and with reference to the question that the ITLOS was asked, the Advisory Opinion cannot be regarded as saying that the EU is a flag State in place of its Member States. Rather, ITLOS was deciding that in the specific circumstances in question, it was the EU and not its Member States that would have liability.

¹⁷ Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion on 2 April 2015 [2015] ITLOS Reports 4, at para.172.

¹⁸ Advisory Opinion, para.171.

314. Returning to the CAB's statement that "[t]he fisheries responsibilities of individual member states are limited to the waters under national jurisdiction", this statement is wrong in law as demonstrated by the following:

(a) The corollary of the fact that the EU is not a flag State (see above) is that, in an EU context, the rights and obligations of flag States are to be exercised by individual EU Member States, not the EU, albeit that there may be relevant EU law that governs the way in which EU Member State flag responsibilities are to be exercised. This is evidenced by the declarations relating to the division of competence between itself and its Member States that the EU made on becoming (i) a party to UNCLOS¹⁹ and (ii) a party to the UN Fish Stocks Agreement.²⁰

(b) Various pieces of EU legislation provide evidence that flag State responsibilities are primarily to be exercised by Member States, including in areas beyond the 200-mile zones of EU Member States. For example:

- one of the basic principles of the "Control Regulation" (Regulation 1224/2009, OJ 2009 L343/1, as amended) is that "Member States shall . . . control activities outside Community [i.e. Union] waters carried out by Community fishing vessels flying their flag" (Article 5(2)). What this obligation involves is spelt out in detail in various provisions: see, for example, Articles 6, 9, 11, 26, 33-35, 46, 72, 74, 80, 85 and 86.
- Article 31(8) of the Basic Regulation provides that "Member State shall ensure that all Union fishing vessels flying their flag and operating outside Union waters are in a position to provide detailed and accurate documentation of fishing and processing activities". Article 36(3) of the Regulation provides that "Member States shall adopt appropriate measures for ensuring control, inspection and enforcement of activities carried out within the scope of the CFP, including the establishment of effective, proportionate and dissuasive penalties".
- Regulation 2017/2403, on the sustainable management of external fishing fleets (the new Fishing Authorisation Regulation or 'FAR', replacing Regulation 1006/2008), which deals with fishing beyond European Union waters,

¹⁹ [http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#European Community Upon signature](http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#European%20Community%20Upon%20signature)

²⁰ http://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_declarations.htm#EC. Paragraph 7 reads: "[...] measures applicable in respect of masters and other officers of fishing vessels, e.g., refusal, withdrawal or suspension of authorization to serve as such, are within the competence of the Member States in accordance with their national legislation. Measures relating to the exercise of jurisdiction by the flag State over its vessels on the high seas, in particular provisions such as those related to the taking and relinquishing of control of fishing vessels by States other than the flag State, international cooperation in respect of enforcement and the recovery of the control of their vessels, are within the competence of the Member States in compliance with Community law."

makes multiple references to obligations of flag Member States.

315. It is clear from the above that, contrary to the assertion of the CAB, the fisheries responsibilities of individual EU Member States are not limited to the waters under national jurisdiction.

316. For that reason, it is entirely wrong for the CAB to exclude consideration of Spain, as a flag State, from the scoring of SI 3.1.1(a). Spain must be considered.

317. In IPNLF's response to the Second Report, regarding the CAB's assessment of flag States, we stated that:

"As an assessment, both in relation to Spain (EU) and Seychelles, this is inadequate. We appreciate that earlier in the section on P3, the CAB sets out some evidence. However, the assessment of SI 3.1.1(a) needs to make proper cross-references to that evidence in order for it to be clear whether or not SGs under this SI are met.

The assessment refers to the "fishery policy" of Spain. However, it provides, neither at pp.160–161 nor earlier in the section on P3, any evidence relating to the fishery policy of Spain (except a brief mention at p.152). Instead, the evidence earlier in the section on P3 relates only to the EU. The fishery policy of Spain itself, as the flag State, is relevant and needs to be considered with adequate evidence."

318. In the light of our point about the need to consider Spain, specifically, as a flag State, we reiterate our point above that "[t]he fishery policy of Spain itself, as the flag State, is relevant and needs to be considered with adequate evidence". There is simply no avoiding this. The CAB must address this omission in the scoring of SI 3.1.1(a).

319. Awarding a score contrary to the FCR (by wrongly excluding consideration of Spain as a flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 40

320. There are precise requirements as to what is needed to meet SG 60, SG 80 and SG 100 under this SI: see SA 4.3.2, SA 4.3.3 and SA 4.3.4 (FCR, pp.170–172), all of which are normative. (In addition, there is guidance in GSA 4.3 (FCR, pp.474–476).) The CAB has failed to set out clearly (or at all) how the UoA meets each of the tests referred to in SA 4.3.2 (to meet SG 60) or SA 4.3.3 (to

	meet SG 80.) Therefore it has failed to justify that even SG60 is met.
Supporting rationale and or evidence	Awarding a score without due consideration of the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	3.1.1 Legal and/or customary framework
Reason	<p>3.1.1(b) – Resolution of disputes</p> <p><u>Objection 41</u></p> <p>321. The CAB scores the UoA at 80. SG 80 requires that: “The management system incorporates or is subject by law to a transparent mechanism for the resolution of legal disputes which is considered to be effective in dealing with most issues and that is appropriate to the context of the UoA.”</p> <p>322. The CAB states (p.157) that:</p> <p>“As evidenced in the main text above, each jurisdiction has a mechanism for dealing with disputes: IOTC: meetings, expert panels, potential intervention through the ICJ; EU: application of IOTC procedures; and Seychelles: application of IOTC procedures, appeals board, amicable settlement.”</p> <p>323. This statement is made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from the assessment process for this PI. Assessment of SI 3.1.1(b) needs to consider the “mechanism for the resolution of legal disputes” (a term used in all three of the SGs for this SI) in respect of the following:</p> <ul style="list-style-type: none"> - IOTC - the relevant SFPAs - the relevant private agreements between ANABAC and coastal States - any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements

- disputes between coastal States and third country vessels (unless covered under access arrangements)
- disputes between Spain and its own flag vessels
- disputes between Seychelles and its own flag vessels
- disputes between the flag State of the supply vessel and the supply vessel

324. Therefore, the reference by the CAB, as cited above, to just IOTC, EU and Seychelles is completely inadequate. The assessment regarding each of the items in the list above must be specific to the terms of the SGs of SI 3.1.1(b) and cannot be simply by means of a general reference “the main text above”.

325. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 42

326. The CAB (p.157) states that:

“As there is no evidence of legal disputes related to the 3 jurisdictions, it may be concluded that the proactive approach is appropriate. However, this also means that the mechanisms have not been tested.”

327. GSA 4.3 (FCR, p.475) states:

“The level of ... effectiveness of the systems can be determined by:

- Information on the proportion of stakeholders that are aware of the existence of any dispute resolution arrangements;
- The history and stories of how disputes have been dealt with in the past;
- Ascertaining whether the presence or absence of unresolved disputes can be considered significant indicators of the existence and/or effectiveness of dispute resolution mechanisms.”

328. The CAB states that “there is no evidence of legal disputes”. Yet, as can be seen, GSA 4.3 does not include absence of evidence of disputes as one of the acceptable forms of evidence it refers to. That is not surprising: lack of evidence of legal disputes should not mean that there are no legal disputes, still less that, as required by SG 80, there is a transparent mechanism for the resolution of legal disputes which meets the required criteria. The test in SG 80 is clear and the CAB, if it wishes to claim a score of 80,

	needs to show (for each of the items in the list in Objection 41 above) that it is met – other than by resorting to stating that “there is no evidence of legal disputes”.
Supporting rationale and or evidence	329. Awarding a score without due consideration of the FCR is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	3.1.1 Legal and/or customary framework
Reason	<p>330. 3.1.1(c) – Respect for rights</p> <p><u>Objection 43</u></p> <p>331. The CAB scores the UoA at 80. SG 80 requires that: “The management system has a mechanism to observe the legal rights created explicitly or established by custom of people dependent on fishing for food or livelihood in a manner consistent with the objectives of MSC Principles 1 and 2.”</p> <p>332. The CAB (p.158) refers to some aspects of IOTC, some aspects of the EU’s CFP and some aspects of Seychelles law. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from the assessment process for this PI. Assessment of SI 3.1.1(c) needs to consider the SGs in respect of the following:</p> <ul style="list-style-type: none"> - IOTC - the relevant SFPAs - the relevant private agreements between ANABAC and coastal States - any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements - the relevant individual coastal States <p>333. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or</p>

unreasonable.

Objection 44

334. Despite the CAB having decided, wrongly, that SFPAs fall outside the scope of Component 3.1 of Principle 3, it is notable that the CAB refers (p.158) to two aspects of SFPAs. These are as follows: “The CFP that is applicable to SFPAs has a human rights clause” and “EU policy requires, that EU flag vessels only catch that part of the available quota that is surplus to the domestic catching capacity of the coastal state’s own fishing fleet”. Those references are inadequate to meet SG 80, for the following reasons:

(a) No sources beyond “[t]he CFP” and “EU policy” are specified; those sources need to be specified so that stakeholders can look for these references and read them in context.

(b) The reference to a “human rights clause” is meaningless in the absence of the wording of the clause itself. The clause must be set out.

(c) The presence a “human rights clause”, whatever that may mean, is not a “mechanism” as referred to in SG 60 or SG 80.

(d) The capacity of the domestic fleet may not be enough to catch what is needed for domestic consumption. So the policy referred to of only catching surplus is not necessarily sufficient to avoid prejudicing the needs of those dependent on fishing.

335. The CAB refers to some aspects of Seychelles. However, according to the auditors in the assessment (p.29 of Second Report):

“The decision-making process has an impact on the livelihoods of Seychelles fishers (see MSC CR GSA 4.8). While improvements have been made, local stakeholders do not recognise the existing system as effective. [...]

... there is no concrete evidence that the Seychelles government responds to the issues raised by fishers who depend on tuna for their livelihoods in a transparent, timely and adaptive manner. [...]

336. The CAB, in the Final Report, does nothing to counter these observations by the auditors. In its response to IPNLF (p.262), the CAB states that:

“The rationale has been redrafted. The mechanisms to “observe legal rights” in Seychelles are the Fisheries Law

and the need for co-management (e.g. fishery management plans). The effectiveness of those mechanisms is considered in PI 3.2.2 Sla and this results in a condition.” [Emphasis added.]

337. We assume that the CAB’s reference to “Sla” is an error, and in fact the reference should be to “Sld”. That is because, under PI 3.2.2, only SI 3.2.2(d) is scored at 60 and therefore only SI 3.2.2(d) has a condition. We have looked at the CAB’s justification for scoring of SI 3.2.2(d) (on which, see further below). No reference at all is made to Seychelles in that justification. We therefore maintain our points about Seychelles as made above.

338. On that basis, SG 80 for this SI is not met, and the SI should instead be scored only at 60. The scoring is arbitrary and/or unreasonable.

Objection 45

339. SA 4.3.7 (FCR, p.172), which is normative, states that “[t]he team shall interpret “observe” in scoring issue (c) at SG80 to mean that”:

“There are more formal arrangements such as bylaws or regulation that make explicit the requirement to consider the legal rights created explicitly or by custom of people dependent on fishing for food or livelihood; and

Those peoples’ long-term interests are taken into account within the legal and/or customary framework for managing fisheries.”

340. The CAB has made no attempt to assess the UoA against this normative interpretation of the term “observe”, other than by presenting the evidence it says enables SG 60 to be reached and then adding without resort to any further evidence:

“The scoring of SG60 provides evidence of formal arrangements to observe the legal rights and long-term interests of people dependent on fishing for food or livelihood.”

341. This is startling. The CAB is, in effect, implying that meeting SG 60 is sufficient to meet SG 80. That is not the case, as evidenced by the different wording of the SGs. The CAB must provide evidence that SG 80 is met and must, in addition, assess the UoA against the wording of SA 4.3.7. The scoring is arbitrary and/or unreasonable.

Supporting rationale and
or evidence

Scoring

Performance Indicator 3.1.2 Consultation, roles and responsibilities

Reason

342. **3.1.2(a) – Roles and responsibilities**

Objection 46

343. The CAB scores the UoA at 80. SG 80 requires that: “Organisations and individuals involved in the management process have been identified. Functions, roles and responsibilities are explicitly defined and well understood for key areas of responsibility and interaction.”

344. The CAB (p.159) refers to some aspects of IOTC and some aspects of the EU. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from Component 3.1 of Principle 3 and hence from the assessment process for this PI. Assessment of SI 3.1.2(a) needs to consider the SGs in respect of the following:

- IOTC
- the relevant SFPAs
- the relevant private agreements between ANABAC and coastal States
- any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements
- the relevant individual coastal States
- the relevant individual flag States

345. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 47

346. The CAB states (p.159) that “the roles of the various actors are well defined and understood”. This is wrong. Amongst other things, the role of the industry and coastal State governments in making private agreements is not well defined and understood (or, to use the wording of SG 80, “explicitly defined and well understood”): see European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; EJF, Oceana, Pew, WWF, November 2016; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.

Indeed, there is a considerable lack of transparency, including in relation to the roles of the actors concerned, about the process of making private agreements (see Condition 8, at p.8, notwithstanding that its text refers to “fishery-specific objectives”; and references above). Therefore, SG 80 cannot be met for this SI.

347. The CAB, in response to IPNLF (p.263), states that:

“The stakeholder’s point on private agreements is moot as private agreements are not considered under Component 3.1. [...]”

Our point on private agreements is far from moot, for the reasons set out above. The scoring is arbitrary and/or unreasonable.

References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership Agreements well managed by the Commission?” 2015
https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

EPRS - European Parliamentary Research Service. “Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)”. April 2016
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI\(2016\)579331_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf)

EJF, Oceana, Pew, WWF. “European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters”. November 2016.
<http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf>

EPRS - European Parliamentary Research Service. “Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet”. July 2017
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI\(2017\)608651_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf)

Oceana. “Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined”. September 2017.
<http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was>

European Commission. “COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008”. October 2017
<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF>

Objection 48

348. The CAB, having referred to various actors, states (at p.159) that: “The activities of each of these actors are well known, and their role in the management process is documented and understood.” In our view, this bald assertion is wholly inadequate.

	349. The CAB, in response to IPNLF (p.263), states that: “[...] Regarding the stakeholder’s concern about “generally understood” the scoring rationale has been strengthened.”
Supporting rationale and or evidence	350. We consider that the scoring rationale has not been strengthened in any material way and that the CAB’s response does nothing to dilute our objection. The scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	3.1.2 Consultation, roles and responsibilities
Reason	<p>3.1.2(b) – Consultation processes</p> <p><u>Objection 49</u></p> <p>351. The CAB scores the UoA at 60 (in relation to which, see Condition 6 at p.8). SG 60 requires that: “The management system includes consultation processes that obtain relevant information from the main affected parties, including local knowledge, to inform the management system.”</p> <p>352. The CAB (p.160) refers to some aspects of IOTC, some aspects of the EU and some aspects of Seychelles. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from Component 3.1 of Principle 3 and hence from the assessment process for this PI. Assessment of SI 3.1.2(b) needs to consider the SGs in respect of the following:</p> <ul style="list-style-type: none"> - IOTC - the relevant SFPAs - the relevant private agreements between ANABAC and coastal States - any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements - the relevant individual coastal States - the relevant individual flag States <p>353. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a</p>

	<p>flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p> <p><u>Objection 50</u></p> <p>354. SA 4.4.4–4.4.5 (FCR, p.174), which are normative, state that:</p> <p>“SA4.4.4 Consultation processes that exist at a multinational level and a national level shall be included and considered, subject to SA4.1.3.</p> <p>SA4.4.5 Teams shall interpret “local knowledge” to mean: qualitative, and/or anecdotal, and/or quantitative information, and/or data that come from individuals or groups local to the fisheries managed under the UoAs’ management system.”</p> <p>355. The CAB seems to have made no attempt to assess the UoA against SA 4.4.5 or to address SA 4.4.4 in relation to relevant coastal States (other than the Seychelles). These omissions must be rectified.</p> <p>356. The CAB, in response to IPNLF (p.263), states that:</p> <p>“The stakeholder’s point on private agreements is moot as private agreements are not considered under Component 3.1.”</p> <p>.</p>
Supporting rationale and or evidence	<p>357. Our point on private agreements is far from moot, for the reasons set out above. Our point is anyway broader than private agreements. The CAB’s response does nothing to dilute our objection and the scoring is arbitrary and/or unreasonable</p>

Scoring

Performance Indicator	3.1.2 Consultation, roles and responsibilities
Reason	<p>358. 3.1.2(c) – Participation</p> <p><u>Objection 51</u></p> <p>359. The CAB scores the UoA at 80. SG 80 requires that: “The consultation process provides opportunity for all interested and affected parties to be involved.”</p>

	<p>360. The CAB (pp.160-161) refers to some aspects of IOTC, some aspects of the EU and some aspects of Seychelles. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from Component 3.1 of Principle 3 and hence from the assessment process for this PI. Assessment of SI 3.1.2(c) needs to consider the SGs in respect of the following:</p> <ul style="list-style-type: none"> - IOTC - the relevant SFPAs - the relevant private agreements between ANABAC and coastal States - any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements - the relevant individual coastal States - the relevant individual flag States <p>361. For example, the CAB presents no evidence as to whether “all interested and affected parties” in the coastal States concerned (other than the Seychelles) are provided with an opportunity to be involved, notably prior to or during negotiation by the coastal State of access arrangements with the EU or with ANABAC. In the absence of evidence in this regard, which is a requirement for SG 80, it follows that the UoA cannot meet SG 80.</p>
Supporting rationale and or evidence	<p>362. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag State) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	3.1.3 Long term objectives
Reason	<p>363. 3.1.3(a) – Objectives</p> <p><u>Objection 52</u></p> <p>364. The CAB scores the UoA at 100. SG 100 requires that: “Clear long term objectives that guide decision-making, consistent with MSC Fisheries Standard and the precautionary approach, are explicit within and required by</p>

management policy.”

365. The CAB (pp.162-163) refers to some aspects of IOTC, some aspects of the EU and some aspects of Seychelles. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from Component 3.1 of Principle 3 and hence from the assessment process for this PI. Assessment of SI 3.1.3(a) needs to consider the SGs in respect of the following:

- IOTC
- the relevant SFPAs
- the relevant private agreements between ANABAC and coastal States
- any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements
- the relevant individual coastal States
- the relevant individual flag States

366. For example, GSA 4.5 (FCR, p.479), which is guidance, states that: “The CAB should consider if decisions have been taken on the basis of the ecological health of the UoA and associated ecosystems, or for other reasons that are not compatible with achieving sustainability over the long term.” The CAB should consider this for each of the coastal States concerned, including in relation to any private agreements.

367. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag States) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Objection 53

368. SG 80 and SG 100 for this SI are the same except that SG 100 adds that the objectives concerned must be not just explicit within the management policy but also “required by” the management policy.

369. In seeking to increase the score from 80 to 100, the CAB makes a reference to text from “IOTC 12-01” and then adds that:

“The evidence available for IOTC, EU and Seychelles leads to the conclusion that the long-term objectives and the need for the precautionary approach are explicit. This is

	<p>evidenced by Resolution 17/01 on yellowfin.”</p> <p>370. We take issue with this evidence, as used by the CAB to justify an uplift from 80 to 100, for the following reasons:</p> <p>(a) the evidence presented (the text from “IOTC 12-01” and a reference to “Resolution 17/01”) relates just to IOTC, rather than to any other parts of the management policy;</p> <p>(b) the text cited from “IOTC 12-01” focuses on aspects of the precautionary approach rather than on long-term objectives;</p> <p>(c) no details are provided regarding the relevance of “Resolution 17/01”, apart from that it relates to yellowfin; and</p> <p>(d) the text used by the CAB, as cited above, refers to the long-term objectives and the need for the precautionary approach just needing to “explicit”; there is no reference to them being “required”.</p>
Supporting rationale and or evidence	<p>371. Overall, it is clear that the CAB, on the basis of the evidence presented, cannot justify an uplift to a score of 100. The scoring is arbitrary and/or unreasonable.</p>
Scoring	
Performance Indicator	3.1.2 Consultation, roles and responsibilities
Reason	<p>3.2.1(a) – Objectives</p> <p>Objection 54</p> <p>372. The CAB (pp.164-166) refers to aspects of IOTC, some aspects of the EU, some aspects of Seychelles and an ANABAC/OPAGAC “code of good practice”. Regarding private agreements, the justification (p.164) states simply that: “The approach to private agreements / vessel licensing is within the context of the IOTC. The coastal / island states with agreements / licensing are all members of the IOTC.”</p> <p>373. These limited references are made on the mistaken premise that the only jurisdictions covered under this SI are IOTC, EU and Seychelles. This premise is mistaken because, as noted under Objections 37 and 39 above, coastal States and Spain, as a flag State, have been wrongly excluded from Component 3.1 of Principle 3 and hence from the assessment process for this PI. Assessment of SI 3.1.3(a) needs to consider the SGs in</p>

	<p>respect of the following:</p> <ul style="list-style-type: none"> - IOTC - the relevant SFPAs - the relevant private agreements between ANABAC and coastal States - any kinds of relevant access arrangements other than SFPAs and ANABAC/coastal State private agreements - the relevant individual coastal States - the relevant individual flag States
Supporting rationale and or evidence	374. Awarding a score contrary to the FCR (by wrongly excluding consideration of coastal States and Spain as a flag States) is a serious irregularity (procedural and/or non-procedural) and/or the resulting scoring is arbitrary and/or unreasonable.

Scoring

Performance Indicator	3.2.2 Decision-making processes
Reason	<p>375. 3.2.2(c) – Use of precautionary approach</p> <p>Objection 55</p> <p>376. The CAB scores the UoA at 80. SG 80 requires that: “Decision-making processes use the precautionary approach and are based on best available information.” SG 80 is the only scoring guidepost for this SI.</p> <p>377. The CAB states that (p.169): “The use of the precautionary approach is explicit within decision making process within the IOTC, the EU and Seychelles, and by implication private agreements”. (Emphasis added.)</p> <p>378. The reference by the CAB to “by implication” seems to suggest that, because of the use of the precautionary approach being allegedly explicit within the decision-making process within IOTC, EU and Seychelles, the use of the precautionary approach will somehow arise automatically in private agreements.</p> <p>379. No evidence at all is presented by the CAB to support that argument. In the absence of such evidence, it is necessary instead to consider the private agreements themselves – yet the CAB has also failed to do this.</p> <p>380. In response to IPNLF’s comments on the Second Report in relation to SI 3.2.2(c), the CAB states (p.265):</p>

“All the coastal / island states with private agreements or direct vessel licensing are members of IOTC or represented in IOTC (French OT). They follow the precautionary approach. The scoring of P3 Pls is not based on an elemental approach.”

381. Thus the CAB, in effect, repeats the argument it set out in its justification regarding this SI (see above). Again, it presents no evidence at all to support the validity of its argument and, again, it fails to consider the text of the private agreements themselves.

382. The CAB states that the scoring of P3 Pls is “not based on an elemental approach”. At p.3 of the Final Report’s executive summary, it states that: “The approach to scoring P3 does not use the elemental approach; rather it considers the way the relevant identified elements work together to meet the various guidelines.”

383. Private agreements are one of the “relevant identified elements” of the fishery. The CAB is claiming that it has considered the way in which this element works with the other elements. (We would add that it refers to meeting “the various guidelines”. We presume it means the scoring guideposts.) Yet it is clear that the CAB has not considered how private agreements work with the other elements. Instead, it has simply presented an unsubstantiated argument (i.e. “and by implication private agreements”) about them.

384. Regarding SI 3.2.2(c), SA 4.8.1 and SA 4.8.2 (FCR, p.178), which are normative, state that:

SA 4.8.1: “The team shall verify that the absence of adequate scientific information is not used as a reason for postponing or failing to take conservation and management measures.”

SA 4.8.2: “The team shall interpret that at SG80 and SG100 the precautionary approach in this PI to mean that decision-making processes use caution when information is uncertain, unreliable or inadequate.”

385. Two private agreements, albeit apparently redacted in parts in both cases, are presented in Appendix 12 of the Final Report. Those private agreements are as follows:

ANABAC–Comoros government: Seychelles-flagged vessels fishing in Comoros waters

ANABAC–Madagascar government: Seychelles-flagged vessels fishing in Madagascar waters

	<p>386. We have looked at those agreements, which are located at pp.405–411 and pp.426–453 respectively in the Final Report. The first point to make is that both agreements are provided only in French. The working language of the MSC Objection procedure is English, not French, and therefore both agreements must be made available by the CAB in English. (The same applies to the other materials in Appendix 12 that are currently available only in French.)</p> <p>387. Regarding both the ANABAC–Comoros agreement and the ANABAC–Madagascar agreement, there are provisions relating to fisheries management. However, none can be said to expressly or implicitly require the use of the precautionary approach – including, but not limited to, as set out in SA 4.8.1 and SA 4.8.2 above.</p> <p>388. We would add that the ANABAC–Comoros and ANABAC–Madagascar agreements are not the only two private agreements that are relevant in the Echebatar fishery and the CAB must provide, in English, the text of all such agreements (including, but not limited to, the agreement with TAAF; currently only a TAAF instrument, rather than an agreement, is provided).</p>
Supporting rationale and or evidence	<p>389. In view of (a) the CAB’s failure to justify its claim that the use of the precautionary approach arises “by implication” in private agreements and (b) the apparent absence, in each relevant private agreement, of provisions requiring the use of the precautionary approach, the scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	3.2.2 Decision-making processes
Reason	<p>3.2.2(d) – Accountability and transparency of management system and decision-making process</p> <p><u>Objection 56</u></p> <p>390. The CAB scores the UoA at SG 60. SG 60 requires that: “Some information on the fishery’s performance and management action is generally available on request to stakeholders.”</p> <p>391. SA 4.8.5 (FCR, p.179), which is normative, states that:</p> <p>“At the SG60 level, at least a general summary of information on subsidies,</p>

allocation, compliance and fisheries management decisions should be available to stakeholders on request.”

392. To justify the score of 60, the CAB (p.170) states that: “A wealth of information is available on the performance of the purse seine skipjack fishery, mainly through IOTC reports and statistics but also from the SFP web site.”

393. However, this does not meet the test in SA 4.8.5. SA 4.8.5 requires that a general summary of information on four subjects should be available to stakeholders on request. Those four subjects are as follows: subsidies; allocation; compliance; and fisheries management decisions.

394. Simply stating that there is a “wealth of information” is not sufficient. No systematic attempt has been made by the CAB to demonstrate that SA 4.8.5, with its four clearly-stated subject areas, is met. Therefore the CAB has failed to adequately justify that even SG 60 is met.

395. The scoring is arbitrary and/or unreasonable.

Objection 57

396. The CAB scores the UoA at 60. SG 60 requires that: “Some information on the fishery’s performance and management action is generally available on request to stakeholders.”

397. SA 4.8.5 (FCR, p.179), which is normative, states that:

“At the SG60 level, at least a general summary of information on subsidies, allocation, compliance and fisheries management decisions should be available to stakeholders on request.”

398. The CAB states (p.170) that “limited specific information is available on the fisheries conducted under private arrangements”. It is not stated what “specific information”, though “limited”, is available. In addition, the CAB is silent as to whether or not this information is available to stakeholders on request (cf. SG 60 and SA 4.8.5).

399. The CAB made a similar statement in the Second Report. In response to IPNLF’s critique of that statement, the CAB responded (p.266) as follows: “The private agreements are included in a report annex. The scoring of P3 Pls is not based on an elemental approach.”

400. The CAB is referring to the inclusion of private agreements in Appendix 12 of the Final Report. In that regard, see below.

401. The CAB also states that the scoring of P3 Pls is “not based on an elemental approach”. At p.3 of the Final Report’s executive summary, it states that: “The approach to scoring P3 does not use the elemental approach; rather it considers the way the relevant identified elements work together to meet the various guidelines.”

402. Private agreements are one of the “relevant identified elements” of the fishery. The CAB is claiming that it has considered the way in which this element works with the other elements. (We would add that it refers to meeting “the various guidelines”. We presume it means the scoring guideposts.) Yet it is clear that the CAB has not considered how private agreements work with the other elements. Instead, it has simply made a single, unelaborated, statement (i.e. “limited specific information is available on the fisheries conducted under private arrangements”) about them.
403. Condition 6, which relates to SI 3.2.2(d) and reads as follows, helps to frame the problem:
- “By the third annual surveillance audit ... [i]nformation on the fishery’s performance and management action relevant to the Seychelles fishery and private agreements is available on request, and explanations are provided for any actions or lack of action associated with findings and relevant recommendations emerging from research, monitoring, evaluation and review activity.” [Emphasis added.]
404. The implication of Condition 6 is that information on the fishery’s performance and management action relevant to private agreements is not currently available.
405. In the Second Report, the CAB (at p.152) set out text from EJF, Oceana, Pew, WWF (November 2016), as follows:
- “A major gap that limits the effective oversight of vessels fishing under private agreements is the lack of requirements for details of these agreements to be reported to the EU flag State and the European Commission, or for key information to be made publicly available. The lack of public information on these agreements makes it extremely difficult to determine the number of EU vessels fishing under such agreements, where these vessels are fishing and for which species, in order to assess the impact on local fish stocks”
- Other documents, including some more recent than the above document, refer to the same problems: European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.
406. Two private agreements, albeit apparently redacted in parts in both cases, are presented in Appendix 12 of the Final Report. Those private agreements are as follows:
- ANABAC–Comoros government: Seychelles-flagged vessels fishing in Comoros waters
- ANABAC–Madagascar government: Seychelles-flagged vessels fishing in Madagascar waters
407. We have looked at those agreements, which are located at pp.405–411 and pp.426–453 respectively in the Final Report. (We reiterate the point, already made above in respect of SI 3.2.2(c), about the need for these documents to be available in English.)

408. Regarding both the ANABAC–Comoros agreement and the ANABAC–Madagascar agreement, there are provisions relating to fisheries management. However, it is not clear, for example, what number of vessels are fishing under these agreements and for what quantities of fish (and, at least in the case of the ANABAC–Comoros agreement, for what species). (Indeed, as noted above, some provisions of both agreements are redacted.)

409. We would add that the ANABAC–Comoros and ANABAC–Madagascar agreements are not the only two private agreements that are relevant in the Echebasta fishery and the CAB must provide, in English, the text of all such agreements (including, but not limited to, the agreement with TAAF; currently only a TAAF instrument, rather than an agreement, is provided).

In view of (a) the CAB’s failure to show that, in respect of private agreements, the test in SG 60 is met and (b) the apparent absence, in each relevant private agreement, of information that allows the test in SG 60 to be met, the scoring is arbitrary and/or unreasonable.

References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership Agreements well managed by the Commission?” 2015
https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

EPRS - European Parliamentary Research Service. “Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)”. April 2016
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI\(2016\)579331_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf)

EJF, Oceana, Pew, WWF. “European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters”. November 2016.
<http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf>

EPRS - European Parliamentary Research Service. “Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet”. July 2017
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI\(2017\)608651_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf)

Oceana. “Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined”. September 2017.
<http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-w-as>

European Commission. “COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008”. October 2017
<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF>

Objection 58

	<p>410. The CAB scores the UoA at 60. SG 60 requires that: “Some information on the fishery’s performance and management action is generally available on request to stakeholders.”</p> <p>411. SA 4.8.5 (FCR, p.179), which is normative, states that:</p> <p>“At the SG60 level, at least a general summary of information on subsidies, allocation, compliance and fisheries management decisions should be available to stakeholders on request.”</p> <p>412. Therefore, for a score of 60, there must be “at least a general summary of information” on the following four things: subsidies, allocation, compliance and fisheries management decisions. One of those four things is subsidies. Yet the CAB, in its justification, fails to state that a general summary of information on subsidies is available.</p>
Supporting rationale and or evidence	<p>413. The Final Report states (at pp.16 and 173) that “[t]he Echebatar fleet, in common with other EU fleet segments, works without subsidy”. However, we consider that the EU’s SFPAs, in that they involve payment by the EU to the relevant coastal States, are a form a subsidy; and the Spanish-flagged Echebatar vessels benefit from SFPAs. In addition, the Final Report (p.144) states that: “Standing (2016) reports that several subsidies are provided to the fisheries sector in Seychelles [...]”. Therefore, we consider that subsidies are relevant to this UoA and that the requirements of SG 60 must be shown by the CAB to be met in that regard. In that absence of that, the scoring is arbitrary and/or unreasonable.</p>

Scoring				
Performance Indicator	3.2.3 Compliance and enforcement			
Reason	3.2.3(a)	–	MCS	implementation
	<u>Objection</u>			59
	<p>414. SA 4.9.2 (FCR, p.181), which is normative, states that:</p> <p>“SA4.9.2 The team’s judgement on this PI shall be informed, to the extent possible, by independent and credible information from relevant compliance and enforcement agencies or individuals and/or stakeholders.”</p> <p>415. There is no evidence, from the CAB’s justification for this SI, that the team’s judgment has been informed “to the extent possible, by independent and credible information from relevant compliance and enforcement agencies or individuals and/or stakeholders”. Instead, the justification relates to processes and assumptions.</p>			

416. SA 4.9.2 needs to be applied by the CAB, otherwise the scoring is arbitrary and/or unreasonable.

Objection 60

417. The CAB scores the UoA at 80. SG 80 requires that: “A monitoring, control and surveillance system has been implemented in the fishery and has demonstrated an ability to enforce relevant management measures, strategies and/or rules.”

418. The CAB states (p.172) that certain MSC requirements “are ... explicit in the private fishing agreements”. By implication from earlier text, the MSC requirements it appears to refer to are “daily reporting, entry and exit reports, transshipments and landings, VMS, areas to be fishing and observers”.

419. In response to IPNLF’s comments on the Second Report in relation to SI 3.2.3(a), the CAB states (p.267):

“The main text covering fishing rights in the EEZs of the various coastal / island states has been substantially amended. All the coastal / island states with private agreements or direct vessel licensing are members of IOTC or represented in IOTC (French OT). The vessels themselves must follow the onerous regulations of their flag state. We consider that the scoring rationale provides the justification for the allocated score.”

420. By this statement, the CAB seems to consider that it does not need to assess the private agreements and that, instead, a combination of IOTC membership of the coastal States and “the onerous regulations” of the relevant flag States cover matters. That is a strange position to take in view of (a) the important role of private agreements in the fishery and (b) the express recognition by the CAB, in its justification for scoring of SI 3.2.3(a) (see above), of private agreements.

421. Two private agreements, albeit apparently redacted in parts in both cases, are presented in Appendix 12 of the Final Report. Those private agreements are as follows:

ANABAC–Comoros government: Seychelles-flagged vessels fishing in Comoros waters

ANABAC–Madagascar government: Seychelles-flagged vessels fishing in Madagascar waters

422. We have looked at those agreements, which are located at pp.405–411 and pp.426–453 respectively in the Final Report. (We reiterate the point, already made above in respect of SI 3.2.2(c), about the need for these documents to be available in English.)

423. Because the documents are in French, it is not entirely clear to us what MCS provisions they contain. The contents summaries of the agreements provided by the CAB at pp.151 and 153 do refer to some MCS provisions; but this is only as one-liner summaries, and so we will need the text of the

relevant provisions in English in order to be clear about what provisions do (or do not) exist.

424. We would add that the ANABAC–Comoros and ANABAC–Madagascar agreements are not the only two private agreements that are relevant in the Echebastar fishery and the CAB must provide, in English, the text of all such agreements (including, but not limited to, the agreement with TAAF; currently only a TAAF instrument, rather than an agreement, is provided).

Regarding MCS provisions in private agreements more generally, see: European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; EJF, Oceana, Pew, WWF, November 2016 ; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.

425. Furthermore, SG 80 requires not only that “[a] monitoring, control and surveillance system has been implemented in the fishery” but that, in addition, that system “has demonstrated an ability to enforce relevant management measures, strategies and/or rules”.

426. The CAB presents no evidence at all that the MSC provisions of the private agreements have “demonstrated an ability to enforce relevant management measures, strategies and/or rules”. (Indeed, the CAB refers to “weaknesses in individual countries”.)

427. We would add that in the scoring of this SI, the red card that Comoros has received under the IUU Regulation (see Objection 37 above) must be taken into account by the CAB.

In view of (a) the CAB’s failure to demonstrate, by reference to English translations of all relevant private agreements, its assertion that MSC requirements “are ... explicit in the private fishing agreements” and (b) the CAB’s failure to show that the MSC provisions of the private agreements have “demonstrated an ability to enforce relevant management measures, strategies and/or rules”, the scoring is arbitrary and/or unreasonable.

References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership Agreements well managed by the Commission?” 2015
https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

EPRS - European Parliamentary Research Service. “Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)”. April 2016
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI\(2016\)579331_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf)

EJF, Oceana, Pew, WWF. “European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters”. November 2016.

	<p>http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf</p> <p>EPRS - European Parliamentary Research Service. “Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet”. July 2017 http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf</p> <p>Oceana. “Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined”. September 2017. http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was</p> <p>European Commission. “COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008”. October 2017 https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF</p>
Supporting rationale and or evidence	<p>428. In view of (a) the CAB’s failure to demonstrate, by reference to English translations of all relevant private agreements, its assertion that MSC requirements “are ... explicit in the private fishing agreements” and (b) the CAB’s failure to show that the MSC provisions of the private agreements have “demonstrated an ability to enforce relevant management measures, strategies and/or rules”, the scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	3.2.3 Compliance and enforcement
Reason	<p>3.2.3(b) Sanctions</p> <p>Objection 61</p> <p>429. The CAB scores the UoA at 80. SG 80 requires that: “Sanctions to deal with non-compliance exist, are consistently applied and thought to provide effective deterrence.”</p> <p>430. SG 80 requires that there are sanctions to deal with non-compliance and that (a) they are consistently applied and (b) they are thought to provide effective deterrence.</p> <p>431. The CAB cites evidence that sanctions exist under the SFPAs and under Seychelles national fisheries law. Regarding private agreements, it adds that (p.173): “Infractions and sanctions are covered to some degree in the private agreements.” No specific evidence for that statement is provided. This is inadequate. Private agreements are an important part of this UoA and their provisions on sanctions should be set out clearly to justify the CAB’s statement.</p>

432. In response to IPNLF's comments on the Second Report in relation to SI 3.2.3(b), the CAB states (p.268):

"The vessels are subject to the regulations of the flag states that incorporate the IOTC regulations and resolutions. Sanctions on illegal activity would be applied by the flag state. The situation is very clear – IUU fishing will be sanctioned by inclusion of an offending vessel on the IUU list. A number of other sanctions exist. The fisheries in the private agreements / direct vessel licenses are subject to the same approach and are not independent. Echebistar vessels are subject to 100 % observer coverage and strict reporting requirements. We consider that the scoring rationale provides the justification for the allocated score."

433. By this statement, the CAB seems to imply that it does not need to assess the private agreements and that, instead, the application of sanctions by the flag State concerned would cover matters. That is a strange position to take in view of (a) the important role of private agreements in the fishery, (b) the express recognition by the CAB, in its justification for scoring of SI 3.2.3(b) (see above), of private agreements and (c) the existence in international law of an enforcement jurisdiction for coastal States in their EEZs (see Article 73 of UNCLOS).

434. Two private agreements, albeit apparently redacted in parts in both cases, are presented in Appendix 12 of the Final Report. Those private agreements are as follows:

ANABAC–Comoros government: Seychelles-flagged vessels fishing in Comoros waters

ANABAC–Madagascar government: Seychelles-flagged vessels fishing in Madagascar waters

435. We have looked at those agreements, which are located at pp.405–411 and pp.426–453 respectively in the Final Report. (We reiterate the point, already made above in respect of SI 3.2.2(c), about the need for these documents to be available in English.)

436. Because the agreements are in French, it is not entirely clear to us what sanctions are established by them. However, the contents summaries of the agreements provided by the CAB at pp.151 and 153 do not refer to any provision on sanctions in either the ANABAC–Comoros agreement or the ANABAC–Madagascar agreement.

437. We would add that the ANABAC–Comoros and ANABAC–Madagascar agreements are not the only two private agreements that are relevant in the Echebistar fishery and the CAB must provide, in English, the text of all such agreements (including, but not limited to, the agreement with TAAF; currently only a TAAF instrument, rather than an agreement, is provided).

Regarding sanctions provisions in private agreements more generally, see: European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; EJF, Oceana, Pew, WWF, November 2016 ; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.

438. Even if evidence does become available that sanctions are established by the private agreements, there needs to be evidence that they are consistently applied *and* that they are thought to provide effective deterrence. Evidence for neither of these requirements, let alone of both of them (as is required by SG 80), is provided by the CAB.

439. In that regard, we would add that GSA 4.9 (p.483), which is guidance, states that:

“At SG80 and SG100 for scoring issue (b), in some fisheries management systems, or for particular types of fisheries, it may be difficult to demonstrate an ability to enforce relevant management measures, strategies and/or rules if violations are rare. However, an absence of violations (or absence of a record of sanctions and penalties for violations) does not necessarily indicate that compliance and enforcement are effective; it could mean that MCS is in fact ineffective and what is happening is an absence of detection.”

440. We would add that in the scoring of this SI, the red card that Comoros has received under the IUU Regulation (see Objection 37 above) must be taken into account by the CAB.

References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership Agreements well managed by the Commission?” 2015
https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

EPRS - European Parliamentary Research Service. “Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)”. April 2016
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI\(2016\)579331_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf)

EJF, Oceana, Pew, WWF. “European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters”. November 2016.
<http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf>

EPRS - European Parliamentary Research Service. “Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet”. July 2017
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI\(2017\)608651_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf)

Oceana. “Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined”. September 2017.
<http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was>

European Commission. “COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation

	(EC) No 1006/2008". https://ec.europa.eu/transparency/reqdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF	October 2017
Supporting rationale and or evidence	441. In view of the CAB's failure to provide evidence to show that a score of 80 is met, the scoring is arbitrary and/or unreasonable.	

Scoring

Performance Indicator	3.2.3 Compliance and enforcement		
Reason	3.2.3(c)	–	Compliance
	<u>Objection</u> 62		
	442. SA 4.9.1–4.9.2 (FCR, p.181), which is normative, states that: <p>“SA4.9.1 In scoring issue (c) the team should consider whether “fishers cooperate, where necessary, with management authorities in the collection of catch, discard and other information that is of importance to the effective management of the resources and the fishery” as one of the elements that should influence scoring.</p>		
	443. SA4.9.2 The team's judgement on this PI shall be informed, to the extent possible, by independent and credible information from relevant compliance and enforcement agencies or individuals and/or stakeholders.”		
	444. These requirements must be applied by the CAB. Regarding SA 4.9.2, we note that the CAB refers to a stakeholder interview with Echebaster whereas SA 4.9.2 refers to “independent” information (albeit “to the extent possible”). The CAB must demonstrate adherence to SA 4.9.2.		
	445. As a result of these omissions, the scoring is arbitrary and/or unreasonable.		
	<u>Objection 63</u>		
	446. The CAB scores the UoA at 100. SG 100 requires that: “There is a high degree of confidence that fishers comply with the management system under assessment, including, providing information of importance to the effective management of the fishery.”		
	447. The CAB, in its justification, makes no reference at all to private agreements.		
	448. In response to IPNLF's comments on the Second Report in relation to SI 3.2.3(c), the CAB states (p.269): <p>“In our view, the nature of the private agreements bears no relation to compliance as the vessels must meet the requirements of the IOTC and their flag states. Nor,</p>		

is it possible to consider issues on cooperation on an EEZ by EEZ basis. As noted in the rationale, in the past (2012) a single Spanish purse seiner was subject to the judicial system. At the moment, there is an unproved allegation that an Echebaster vessel fished illegally in the Maldives EEZ. No other transgressions or potential transgressions have been identified. If there have been any, then it is for the stakeholder to provide evidence. In the absence of such evidence we must assume that the stakeholder does not have the basis to contest the scoring of the SI. We reviewed the Maldives report. While we find it difficult to understand the scoring rationale and why SI SG100 was not met, we presume it is due to some fishers do not complete log books. This is not the case for Echebaster vessels. We consider that the scoring rationale provides the justification for the allocated score.”

449. Thus the CAB’s position is that “the nature of the private agreements bears no relation to compliance as the vessels must meet the requirements of the IOTC and their flag states” (emphasis added). By this, the CAB seems to imply that it does not need to assess the private agreements and that, instead, the application of sanctions by the flag State concerned would cover matters.

450. That position is, in effect, brushing aside the enforcement jurisdiction of a coastal State in its EEZ pursuant to Article 73 of UNCLOS as an irrelevance – a position that it not only disrespectful of the coastal States and their sovereign rights but also without any basis in international law. It is an extraordinary position. The role of coastal States regarding compliance by foreign-flagged vessels in their EEZs, whether in the context of private agreements or otherwise, is very relevant and it is unacceptable for the CAB to focus exclusively on the role of flag States.

451. 100 is too high a score for this UoA. In view of the lack of transparency about private agreements and about the activities of vessels fishing under those agreements (see SI 3.2.2(d) above), there simply cannot be “a high degree of confidence” as required by SG 100.

452. We would add that SA 4.9.1 (FCR, p.181), which is normative, states that:

“In scoring issue (c) the team should consider whether “fishers cooperate, where necessary, with management authorities in the collection of catch, discard and other information that is of importance to the effective management of the resources and the fishery” as one of the elements that should influence scoring.”

453. Regarding SA4.9.1, there is no evidence that the CAB has applied this requirement regarding private agreements.

Regarding compliance under private agreements, see also: European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; EJP, Oceana, Pew, WWF, November 2016 ; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.

454. We would add that in the scoring of this SI, the red card that Comoros has received under the IUU Regulation (see Objection 37 above) must be taken into account by the CAB.

455. References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership

	<p>Agreements well managed by the Commission?" 2015 https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf</p> <p>EPRS - European Parliamentary Research Service. "Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)". April 2016 http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf</p> <p>EJF, Oceana, Pew, WWF. "European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters". November 2016. http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf</p> <p>EPRS - European Parliamentary Research Service. "Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet". July 2017 http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf</p> <p>Oceana. "Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined". September 2017. http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was</p> <p>European Commission. "COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008". October 2017 https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF</p>
Supporting rationale and or evidence	456. In view of the CAB's failure to provide evidence to show that a score of 100 is met, the scoring is arbitrary and/or unreasonable.

Scoring			
Performance Indicator	3.2.4 Monitoring and management performance evaluation		
Reason	3.2.4(a) – Evaluation coverage Objection 64		

	<p>457. The CAB scores the UoA at SG 80. SG 80 requires that: “There are mechanisms in place to evaluate key parts of the fishery-specific management system.”</p> <p>458. One “key” part of the fishery-specific management system is that part relating to fishing in the waters of coastal States under private agreements. This part is “key” because private agreements apply to access by Echebatar vessels to several EEZs.</p> <p>459. The UoA would not work without that access, because of the highly migratory nature of the UoA target species (skipjack). It is notable that the UoA is not defined with reference to <u>just</u> (a) the high seas component of the Indian Ocean and (b) EEZs where the EU’s SFPAs apply.</p> <p>460. Mechanisms are not in place to evaluate this key part of the management system. Indeed, the CAB acknowledges this when it states (p.75) that: “Mechanisms to evaluate the fishery management system and local stakeholder concerns for ... private agreements <u>are lacking</u>.” (Emphasis added.)</p> <p>461. In response to IPNLF’s comments on the Second Report in relation to SI 3.2.4(a), the CAB states (p.269):</p> <p>“Note previous comments on private agreements. While these are an important part of the overall fishery-management system as together they account for less than 10% of the total Echebatar catch; the key parts are related to the IOTC (and indirectly to the private agreements) and flag countries. Fishing vessels in the various EEZs must respond to exactly the same regulations. For the reasons stated we do not consider that the fishery meets SG100 Sla.”</p>
Supporting rationale and or evidence	<p>462. Ignoring a part of the management system simply because it accounts for less than a certain amount of the catch is without basis in the FCR. There is no alternative: the CAB must evaluate private agreements against the scoring guideposts for SI 3.2.4(a). In the absence of doing so, any scoring is arbitrary and/or unreasonable.</p>

Scoring

Performance Indicator	3.2.4 Monitoring and management performance evaluation
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Reason	3.2.4(b) – Internal and/or external review
	<p>Objection 65</p> <p>463. The CAB scores the UoA at SG 80. SG 80 requires that: “The fishery-specific management system is subject to regular internal and occasional external review.”</p> <p>464. Fishing in the waters of coastal States under private agreements is one part of the fishery-specific management system. (Indeed, as noted above regarding SI 3.2.4(a), this is a key part of the system.)</p> <p>465. The CAB states (p.176) that:</p> <p style="padding-left: 40px;">”Res (IOTC) 14/05 requires the list of all fishing vessels operating under private agreements to be submitted to IOTC. Vessel licenses must be renewed annually. This indicates a review of the vessel performance.”</p> <p>466. The relevance of the list of vessels under IOTC Resolution 14/05 is not stated. The CAB refers to annual renewal of vessel licences, on which see below.</p> <p>467. The CAB adds (p.176) that: “As yet, there is <u>not</u> a regular formal external review of private agreements.” (Emphasis added.)</p> <p>468. In response to IPNLF’s comments on the Second Report in relation to SI 3.2.4(b), the CAB states (p.270):</p> <p style="padding-left: 40px;">“The annual renewal of licenses provides a basis for reviewing performance. The external review is the periodic revision of the agreements. We consider that the scoring rationale provides the justification for the allocated score.”</p> <p>469. The above statement refers to two things: an “annual renewal of licenses” (as a basis for reviewing performance) and a “periodic revision of the agreements” (as the external review). Only the first of these is mentioned in the justification text for this SI.</p> <p>470. Several points arise, as follows:</p> <ol style="list-style-type: none"> 1) Regarding “annual renewal of licenses” (as a basis for reviewing performance of private agreements): First, assuming that it is <u>vessel</u> licences that are being referred to, it is not clear <u>who</u> is renewing these licences. Secondly, no evidence is presented that licences are renewed, whether on an annual basis or otherwise. Thirdly, it is not at all clear how renewal of licenses equates to a review of a private agreement. 2) Regarding “periodic revision of the agreements” (as the external review): First, this argument is not presented in the justification text for this SI. Secondly, no evidence is presented that the agreements are periodically reviewed. (Instead, reference is merely made to their non-permanent nature.) Thirdly, SA 4.10.1 (FCR, p.182), which is normative, states that: “Teams shall interpret “external review” at SG80 and 100 to mean external to the fishery specific management system, but not necessarily

international.” Yet it is not clear how periodic revision of the agreements can be regarded as external to the fishery specific management system.

Regarding review of private agreements, see also: European Court of Auditors, 2015; EPRS - European Parliamentary Research Service, April 2016; EJF, Oceana, Pew, WWF, November 2016 ; [EPRS - European Parliamentary Research Service, July 2017](#); Oceana, September 2017; European Commission, October 2017.

471. In the absence of further information, the scoring is arbitrary and/or unreasonable.

References:

European Court of Auditors. “Special Report: Are the Fisheries Partnership Agreements well managed by the Commission?” 2015
https://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

EPRS - European Parliamentary Research Service. “Briefing: Initial Appraisal of a European Commission Impact Assessment: Sustainable management of external fishing fleets: Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)”. April 2016
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI\(2016\)579331_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579331/EPRS_BRI(2016)579331_EN.pdf)

EJF, Oceana, Pew, WWF. “European vessels fishing under the radar: The need to regulate private and chartering agreements for access to external waters”. November 2016.
<http://www.whofishesfar.org/files/Private.Agreements.ENG.1DEC.high.pdf>

EPRS - European Parliamentary Research Service. “Briefing: EU Legislation in Progress: New rules for managing the EU external fishing fleet”. July 2017
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI\(2017\)608651_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608651/EPRS_BRI(2017)608651_EN.pdf)

Oceana. “Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined”. September 2017.
<http://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was>

European Commission. “COM(2017) 633 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008”. October 2017
<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-633-F1-EN-MAIN-PART-1.PDF>

Supporting rationale and or evidence	
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Please repeat table as needed for each Performance Indicator and score to be included in the Objection.

Additional Information

1.7 Objection in line with [PD2.7.3](#)

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Using the template below, please list all additional information not forming part of the record (as defined in [PD2.6.5.1](#)) that is relevant to the circumstances at the date of the determination that you feel has not been considered. Be sure to provide the reasons why you or your organisation believes that the particular information in question:

- Was known or should reasonably have been known to any party to the assessment process;
- Should reasonably have been made available to the CAB; or,
- If considered, could have been material to the determination or the fairness of the assessment.

Additional Information

Please identify...

Information	Please see the Objections above.
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Reason why information was known or should reasonably have been known

The materials were publically available.

Reason why information could have been material to the determination or the fairness of the assessment.

Please see the Objections above.