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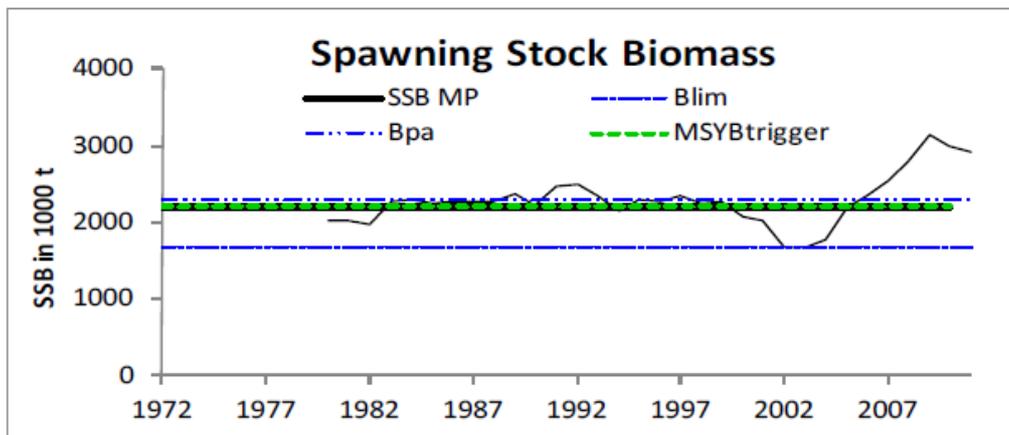
Date: 17 November 2011
Our reference: 1112PRAC20/AC
Subject: Guidance for the assessment of the management of fisheries on straddling and highly migratory stocks, including RFMO-governed fisheries.

To whom it may concern,

The Pelagic RAC (PRAC) would like to state at the outset that it very much welcomes the public consultation by MSC on "Guidance for the assessment of the management of fisheries on straddling and highly migratory stocks, including RFMO-governed fisheries". Furthermore we appreciate the extended deadline until 17 November, allowing the PRAC some time to make a response.

The PRAC considers the issue under consultation of paramount importance especially in relation to its many members who are MSC certified for their mackerel fishery. Mackerel is the key economic driver for EU pelagic industry and considerable time and effort has been devoted by the PRAC to ensuring that the mackerel stock has been sustainably managed and in particular in the development of a long-term management plan. Unfortunately two parties - Iceland and the Faroese Islands - operating outside the plan are putting the sustainable management of the stock in jeopardy. In light of this threat and since the mackerel stock is highly migratory and managed in many national jurisdictions as well as under an RFMO (NEAFC) your consultation document is very timely as the applicability of the MSC certification process to this stock is problematic.

As many as 13 different countries are currently active in the fishery of the highly migratory mackerel stock (Denmark, Germany, France, The Netherlands, Sweden, United Kingdom, Spain, Portugal, Ireland, Norway, Iceland, Faroese Islands and Russia). Having such a vast number of national jurisdictions involved in the fishery of one stock makes for a very complex management situation. Prior to 2009, the fisheries of 12 of these countries were jointly managed through annual agreements based on a LTM plan. These management arrangements, as well as limitations on catches in the NEAFC area were endorsed by NEAFC. This careful management arrangement has contributed to the recovery of the stock from around B_{LIM} in 2003 to over 3 million tonnes (well above B_{PA}) in 2009. (See figure below).



This massive expansion of the stock has led to increased distribution of the adult stock into Icelandic waters, which triggered a surge of Icelandic mackerel catches from 53 tonnes in 2002 up to around 150kt in 2011. Note that the ICES advice for catch limits in the latter period was in the range of 456 to 646 kt Iceland has now set itself an autonomous quota of almost 24% of the scientifically advised maximum even though their catches were less than 1% prior 2006. The Faroese Islands followed suit and stepped out of the tri-party arrangement endorsed by NEAFC in 2010 and increased its catches by an approximate 6 fold. Both parties now account for more than 47% of the scientifically advised maximum for 2011.

In light of the foregoing the PRAC considers that Principle 3 as presently constituted in the MSC criteria presents a problem, in relation to an external party (or external parties such as Iceland and the Faroese Islands in the example of mackerel) who are acting in an irresponsible manner, jeopardising the certifications of responsible states. Those that are acting irresponsibly outside the system can hold those that are acting responsibly to "ransom". The present MSC certification process for the assessment of the management of fisheries on straddling and highly migratory stocks, including RFMO-governed fisheries seems to be "aiding and abetting" unintentionally those that are acting irresponsibly. The PRAC welcomes the proposed amendments to the text on Principle 3 as it attempts to address this issue. However, the PRAC considers that it does not fully address the mackerel situation outlined above whereby two minor parties with catches of approximately less than 6% of the scientific advised TAC are now catching over 47% of the scientifically advised TAC. This should be fully clarified in the document.

The PRAC notes from your consultation document that the treatment of Principle 3 performance indicators is different among assessment teams. You state: "They vary in the 'weight given to the international management under the RFMO and the national management which applies flag state control or jurisdiction within the EEZ or jurisdiction at the landings site.'" The PRAC acknowledges that this maybe the case, however consideration should be given to the fact that proper state control put in place by the vast majority of the thirteen states should have a high weighting rather than affording a high weighting to those that have not properly applied state control in accordance with articles 118 and 119 of UNCLOS, the United Nations Convention on the Law of the Sea, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).

The PRAC wonders whether the existing MSC certification process for highly migratory and straddling stocks such as mackerel involving 13 jurisdictions plus an RFMO (NEAFC),

which automatically removes certification from those acting responsibly due to reckless and irresponsible behaviour of two previous minor players is “fit for purpose”.

Having outlined the general concerns relating to mackerel MSC certification process, a proposal for a way forward is given below, i.e. by providing suggestions for specific amendments in the consultation document starting with paragraph GCB4.0.2:

GCB4.0.2

The PRAC agrees that the new text is a step forward, but given that it sets the scene for the remainder of the text, an addition should be made to include how to deal with the rogue state situations such as the mackerel situation outlined above.

GCB4.0.3

The intention of the proposed amendment is unclear. Does fishery imply the entire fishery even those parts that the flag state has no control over? If it does then the PRAC recommends that the words “main components” are added before the word “fishery” otherwise the existing MSC certification process remains the same.

GCB4.0.5/6/7

PRAC agrees that for straddling and highly migratory stocks national management as well as international (multi state or bilateral) agreements and management under RFMOs should be considered. The question is how this text will particularly apply to mackerel, as 11 flag states operate in a sustainable manner, with a bilateral agreement between the EU (10 Member States) and Norway. There is small international fishery under the auspices of NEAFC including all Coastal States plus Russia which amounts to about 9.5% of the scientific TAC. Two Coastal States which had minor catches and shares (less than 6%) in 2006 are now catching 47% of the scientific TAC. The PRAC is strongly advocating that the text in these articles should distinguish clearly between those previously minor parties acting irresponsibly and the 11 complying states. This is further covered under GCB4.0.8/9

GCB4.0.8/GCB4.0.9

The PRAC supports the idea of using examples to highlight the working together of international and national management systems. Unfortunately the examples provided do not provide clarity as regards the current mackerel situation. In the mackerel case both national and international management systems exist. In all but two involved there is agreement. Eleven parties have traditionally taken 90% of the sustainable TAC. The PRAC interprets that the new drafting of GCB4.0.8 would take this into account. The difficulty arises when external parties go outside the requirements under UNCLOS 118 and 119 and increase their catches and shares massively from initial minor quantities and shares. How is this to be interpreted by the assessment team? A concrete example here would be most useful. If it is interpreted that due to the huge unsustainable catch of the external parties which the other parties have no control over, the 90% stakeholders are put in jeopardy of losing their MSC certification, then this is neither fair nor reasonable.

AGCB4.2.4

In the context of mackerel, the fact that two of the parties don't have appropriate/effective management systems, does this imply that all others are redundant?

The PRAC supports the suggested amendments for assessing informal and traditional approaches in PI3.1.1.

To conclude the PRAC wishes to emphasise again that if the MSC process is not capable of taking into account the irresponsible actions of certain flag states without jeopardising the certification of responsible flag states then the MSC certification of highly migratory and straddling stocks should not be used as a certification process for these stocks. In other words it is "not fit for purpose", since this would imply the disqualification of many fisheries, which the Pelagic RAC would regret. One possible way of avoiding this happening and maintaining an MSC certification process for highly migratory and straddling stocks could be to develop an alternative MSC certificate specifically for these fisheries. This 'alternative' MSC-certificate (named for example 'MSC certificate for fisheries on straddling and highly migratory stocks') would assess the status of the stock in the usual manner (Principle 1), the effect of the fisheries in the wider ecosystem in the usual manner (Principle 2) but would only assess Principle 3 for the fishery under assessment in the context of their own management and not in the management context of the entire fishery on this stock (i.e. by all parties).

If you have any questions, please do not hesitate to contact the secretariat.

Looking forward to your response,

Yours sincerely,



Ms Aukje Coers
Pelagic RAC secretariat