



INTENTIONAL HARASSMENT AND INTENTIONAL KILLING OF MARINE MAMMALS

Fisheries Standard Review Impact Assessment Report

S. McLennan, K. Mundnich & E. Quinn

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The views and opinions expressed in this report do not necessarily reflect the official policy or position of the Marine Stewardship Council. This is a working paper; it represents work in progress and is part of ongoing policy development. The language used in draft scoring requirements is intended to be illustrative only and may undergo considerable refinement in later stages.

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INTENTIONAL HARASSMENT AND INTENTIONAL KILLING OF MARINE MAMMALS IMPACT ASSESSMENT REPORT



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1. IMPACT ASSESSMENT FRAMEWORK

The aim of impact assessment is to provide clear information on the impacts of the options developed to sort out the policy issues identified in the project inception. It serves as a basis for comparing options against one another and against the business-as-usual scenario and identify a preferred option if possible. It does not replace decision-making but is used as a tool to support the decision-making process and underpin evidenced based decision-making, increasing transparency, making trade-offs visible and reducing bias.

Impact assessment should help to:

- Specify how proposed options will tackle the identified issues and meet objectives
- Identify direct and indirect impacts, and how they occur
- Assess impacts in both qualitative and quantitative terms.
- Help find perverse or unintended consequences before they occur.
- Where possible, make risks and uncertainties known.

This is achieved by following MSC's Impact Assessment Framework that outlines when and how to undertake Impact Assessment. This ensures an efficient, systematic and consistent approach to policy development to underpin a responsive, robust and credible program. In particular, the Impact Assessment Framework defines the different types of impact (see below) and a suite of methodologies best suited to assessing each type.

The impact types used in the Impact Assessment are defined as follows:

1. **Effectiveness:** The extent to which the change is deemed likely to be successful in producing the desired results and resolving the issue(s) originally identified.
2. **Acceptability:** The extent that the change is considered tolerable or allowable, such that the MSC program is perceived as credible and legitimate by stakeholders.
3. **Feasibility:** The practicality of a proposed change and the extent to which a change is likely to be successfully implemented by fisheries within a given setting and time period.
4. **Accessibility & Retention:** The extent to which the change affects the ability of fisheries (both currently certified and those potentially entering assessment in the future) to achieve and maintain certification (i.e., changes in scores, conditions and pass rates).
5. **Simplification:** The extent to which the change simplifies and does not further complicate the Standard such that it can be easily and consistently understood and applied.
6. **Auditability:** The extent to which the change can objectively be assessed by Conformity Assessment Bodies (CABs) and Accreditation Services International (ASI) to determine whether the specified requirements are fulfilled, and CABs can provide scores.

The Impact Assessment report presents the results of this process, whereby each of the options for proposed changes to the Fisheries Standard are tested to understand their potential effects across the six defined impact types.

2. INTENTIONAL HARASSMENT OR INTENTIONAL KILLING OF MARINE MAMMALS

2.1 Problem statement

Concern was raised in 2016 - 2017 concerning tuna fisheries seeking MSC certification that set on pods of marine mammals. Although current scope requirements do not allow the assessment of target fisheries on marine mammals, there is a lack of scope requirements that prevent fisheries from intentional harassment or killing of marine mammals that could take place in the course of fishing activities.

During the governance meetings in December 2019 - January 2020, the Board of Trustees recommended that the Executive should develop a scope requirement to prevent fisheries undertaking these kind of fishing operations from entering the MSC programme.

2.2 Objectives

The objective is to determine whether to introduce new scope requirements to exclude or prevent fisheries entering MSC programme which intentionally harass or kill marine mammals.

2.3 Options

2.3.1 Business-as-usual

The 'business-as-usual' scenario considered here would see no change to the Standard's requirements or guidance. Fisheries that intentionally intentional kill or harass marine mammals will remain eligible to be assessed and achieve MSC certification.

2.3.2 Change Option 1 – new scope requirement

A new scope requirement works to prevent fisheries (or more specially vessels within Units of Assessment or Units of Certification) from accessing the MSC programme if it's found that intentional marine mammal harassment/killing is undertaken during fishing operations. These vessels would remain ineligible to be assessed and achieve MSC certification for a period of at least two years.

2.3.3 Change Option 2 – new P2 requirement

A new P2 requirement (within ETP/OOS requirements) permitting intentional harassment/killing of marine mammals on basis that impacted populations remain healthy (i.e., have a population status at/above favourable conservation status). Determinations require a high degree of certainty, verified with current (within last 5 years), publicly available, independent estimates of the population size. Scoring is capped to a precautionary level (SG80).

The Executive developed this option on direction by the MSC Technical Advisory Board (TAB) during May 2022 meetings to specifically consider the sustainability component of the issue of

marine mammal harassment/killing. Development of this alternative was in part responding to polarised public consultation feedback received by the Executive. This option explicitly excludes consideration of any ethical component of the issue.

2.4 Summary of impacts

2.4.1 Impacts of business-as-usual

The BAU will not meet the intent of preventing fisheries that intentionally harass (e.g., pursue and encircle marine mammals) from being certified. If further fisheries enter the programme which are understood to intentionally harass or kill marine mammals there will be continued reputational impact.

2.4.2 Impacts of the change option(s)

Change Option 1 – New scope requirement to prevent intentional harassment or killing of marine mammals in the MSC program

Option 1 would largely address reputational risks to the MSC program. However its implementation may lead to fisheries switching to practices characterised by higher levels of unwanted catch (e.g., practices such as FADs) as evidenced by the consultation. The option will not significantly impact feasibility or accessibility given its narrow scope so is acceptable to vast majority of fishery partners (as evidenced by the consultation). However, the change was opposed by impacted fishery representatives and some fishery managers. Additionally, the option will likely increase the net cost of assessments given a slight increase in information needs. Auditability reviews revealed some concerns around ambiguity of wording which has been mitigated through additional guidance and clarifying process requirements. Training and calibration will help with this in the longer term.

Change option 2 – New requirement within Principle 2 to assess the impact of intentional harassment/killing.

Option 2 may present a better case for sustainability relative to Option 1 as fisheries will be driven to demonstrate a high assessment “bar” is met and less likely to switch to practices with higher bycatch levels (e.g., use of FADs) to remain in the programme. Whilst the option does improve accessibility and feasibility relative to Option 1, albeit with a high “sustainability bar”, it’s unlikely to address reputational risks to the extent that Option 1 would, given that harassment/killing of marine mammals will still be permitted. Therefore, whilst it should be more acceptable to impacted fishery representatives, it’s very unlikely to be acceptable to NGO stakeholders on ethical grounds. As this option was only recently developed it has not been subject to public consultation so there is some uncertainty around levels of acceptance amongst stakeholders. Like Option 1, auditability reviews raised some concerns around ambiguous terms/concepts though on the whole confirmed that the option is auditable. Training and CAB calibration will help with application of the requirements in the longer term

2.5 Impacts

2.5.1 Overview of impacts

The impact assessment presented in Table 1 below is based on feedback from pilot testing, auditability review, Board of Trustees, Stakeholder Advisory Council and TAB, and expert judgement of the project and outreach leads, senior colleagues, feedback provided by outreach co-readers, and feedback from public consultation.

Table 1: Impact assessment reporting table for the issue of intentional killing and intentional harassment.

	Description	Business-as-usual. No change to requirements or guidance.	Change Option 1. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations	Change Option 2. A P2 requirement (within ETP/OOS outcome PI) permitting intentional harassment/killing of marine mammals on basis that impacted populations remain healthy
Effectiveness	<i>Is the change effective at meeting the MSC's intent?</i>	<ul style="list-style-type: none"> - The BAU will not meet the intent of preventing fisheries that intentionally harass (e.g., pursue and encircle marine mammals) from being certified. - If further fisheries enter the programme which are understood to intentionally harass or kill marine mammals there will be continued reputational impact and likely further stakeholder campaigns advocating MSC act to address these concerns. 	<ul style="list-style-type: none"> + The change would reduce MSC reputational risk and address decision made by the Board of Trustees (BoT). It may act to incentivise fisheries to stop intentionally killing or harassing marine mammals. - Based on feedback received from commercial fisheries, this option could incentivise purse seine tuna fisheries to shift from dolphin-sets to FADs-sets, thus raising the risk of incremental yellowfin tuna juvenile catches and ETP species bycatch. - In the longer term this option may slightly impact the MSC vision and mission given that in an absolute sense it is limiting the total number of fisheries which are eligible for MSC certification and fisheries where improvements to practices could be made (through the proposed scope requirement). 	<ul style="list-style-type: none"> +- The change would reduce MSC reputational risk (compared to BAU) though not to the extent as Option 1 given the change permits marine mammal harassment/killing. It's unclear whether this option would address the BoT recommendation. +- The option would provide explicit consideration of the "sustainability" dimension; however, the ethical considerations would not be resolved (as would be the case Option 1). + This option will reduce the risk of unintentional incentives (relative to Option 1) to move towards practises characterised with higher unwanted catch levels (e.g. FADs) +-The proposal would impact the MSC vision/mission arguably to a lesser extent than Option 1 given that more fisheries will be able to access the programme and there are incentives for better data collection and reducing impacts on marine mammals through the option.
	<i>The option seems effective at resolving the issue(s) consistently and reliably</i>	2 = Disagree	4 = Agree	3 = Neither Agree nor Disagree

Description		Business-as-usual. No change to requirements or guidance.	Change Option 1. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations	Change Option 2. A P2 requirement (within ETP/OOS outcome PI) permitting intentional harassment/killing of marine mammals on basis that impacted populations remain healthy
Acceptability	<i>Is the change acceptable to stakeholders?</i>	<ul style="list-style-type: none"> - NGOs who raised the issue will not find business-as-usual acceptable. - Retailers and consumers would likely be very concerned by business-as-usual. This is evidenced by stakeholder campaign emails on certification of a fishery that encircles marine mammals. + Tuna purse seine fisheries that undertake dolphin-sets defend this practice by arguing that this type of operation results in the capture of mostly adult tuna, high survival of dolphins and low bycatch of other species. - Staying in BAU, after having submitted the Preferred Option for public review, may be a major reputational risk for the MSC programme. 	<ul style="list-style-type: none"> + The vast majority of fisheries in the programme would not be impacted by the change. + Most NGOs expressed strong support for the option. - One certified fishery may lose their certification (and between 4-6 fisheries would be impacted) which will mean that current work on reducing marine mammal impact may stop. These fishery partners, along with relevant government, and RFMO, have expressed their strong disagreement with this option. 	<ul style="list-style-type: none"> → Generally unclear given lack of consultation, however there are insights we can draw for consultation of Option 1. In this context it's unlikely that NGOs who supported Option 1 would support Option 2 to the same extent given the ethical dimension. Conversely those rejecting Option 1 (e.g., RFMO and industry representatives) would prefer Option 2 because accessibility has improved (given it's a requirement rather than complete exclusion via scope).
	<i>The option seems acceptable to stakeholders</i>	4 = Agree	3 = Neither agree nor disagree	3 = Neither agree nor disagree
Feasibility	<i>Is the change feasible to fishery partners?</i>	+ The BAU would not represent any change so would be acceptable to most fishery partners.	+ A vast majority of MSC fisheries in the programme will find this change feasible. About 4-6 fisheries would be impacted and at least 2 fisheries (1 certified and 1 fishery still planning to join the programme) would not be able to meet the new requirement.	<ul style="list-style-type: none"> + As per Option 1 given the low prevalence of MSC fisheries likely to be impacted by the proposal. - The evidentiary/information burden is higher than Option 1 given the need for assessment teams to demonstrate high levels of certainty.

Description		Business-as-usual. No change to requirements or guidance.	Change Option 1. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations	Change Option 2. A P2 requirement (within ETP/OOS outcome PI) permitting intentional harassment/killing of marine mammals on basis that impacted populations remain healthy
			- However, the information/evidentiary burden would increase costs for fisheries and CABs (though likely not to the extent of Option 2).	- The requirement for data to be from within the last 5 years was raised as a feasibility challenge in the context of pilot testing/auditability reviews. E.g., EU data update cycle is ca. 10 years.
	<i>The option seems technically feasible for fishery partners</i>	<i>5 = Completely agree</i>	<i>4=Agree</i>	<i>4=Agree</i>
	<i>The option seems affordable for fishery partners</i>	<i>4=Agree</i>	<i>3 = Neither agree nor disagree</i>	<i>3 = Neither agree nor disagree</i>
	<i>The option seems possible given the management contexts of fishery partners</i>	<i>4 = Agree</i>	<i>4 = Agree</i>	<i>4 = Agree</i>
	<i>The option seems doable within 5 years for fishery partners</i>	<i>5 = Completely agree</i>	<i>4 = Agree</i>	<i>4 = Agree</i>
Accessibility and retention	<i>Does the change affect the accessibility and retention of fisheries in the MSC Program?</i>	+ Business-as-usual does not affect current accessibility and retention of fisheries in the MSC program.	+ The limited scope of requirements will not have significant impacts in absolute terms for retention. - Analysis confirms that at least one certified fishery will be impacted and at least one engaged fishery will be impacted. Additional 4-6 fisheries would also be impacted. - As far as accessibility is concerned there will be an impact on fisheries looking to enter which currently intentionally encircle/pursue marine	+ - As per Option 1 in terms of the amount of fisheries likely to impacted, however arguably slightly lower risk in an absolute sense as more fisheries will retain access to programme, albeit requiring a high evidence bar to reach SG80. -Some additional time/effort costs for fisheries which interact with Marine Mammals relative to Option 1 given that specific impact assessment will need to be undertaken.

Description		Business-as-usual. No change to requirements or guidance.	Change Option 1. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations	Change Option 2. A P2 requirement (within ETP/OOS outcome PI) permitting intentional harassment/killing of marine mammals on basis that impacted populations remain healthy
			mammals however this number is thought to be relatively low in the context of pipeline fisheries (1 fishery currently).	
	<i>The option seems accessible to fisheries seeking certification in the future</i>	5 = Completely agree	4 = Agree	4 = Agree
	<i>The option seems accessible to currently certified fisheries</i>	5 = Completely agree	4 = Agree	4 = Agree
Simplification	<i>Does the change simplify the Standard?</i>	+ Business-as-usual would mean no added requirements.	- Addition of new scope requirements and steps that fisheries and CABs have to follow would not simplify the Standard.	- The proposal would add more complexity to the standard relative to Option 1.
	<i>The option seems to simplify the Standard</i>	5 = Completely agree	2 = Disagree	2 = Disagree
Auditability	<i>Is the change auditable by CABs?</i>	+ Yes, the BAU is auditable by CABs.	+ - Some concerns raised by auditors during pilot testing over process and ambiguous terminology have been mitigated through new guidance. + Additional changes in the process requirements (FCP) for confirming scope, including the verification of evidence, will mitigate concerns raised through pilot testing.	+ - As with Option 1: the requirements will add complexity to the standard and is some ambiguity of certain concepts/definitions. These can be largely resolved through clarifications, training and CAB calibration.
	<i>The option seems to be auditable by CABs</i>	5 = Completely agree	4 = Agree	4 = Agree

2.5.2 Pilot testing and auditability review – Option 1

This change option went for auditability review in November 2021. There were no substantive issues raised, and only feedback regarding minor auditability improvements.

During pilot testing undertaken in February 2022, concerns were raised about auditability of key concepts (e.g., intentional, anticipated, harassment, entities) as well as the required information or evidence to confirm the scope. These definitions have been clarified in guidance and process to confirm scope criteria is now detailed in FCP, including the required information.

2.5.3 Pilot testing and auditability review – Option 2

This option was subject to an auditability review by ASI and three CAB assessors in June 2022. Note that the recommendations from pilot testing undertaken in February 2022 on Option 1 were also considered in the drafting of these requirements.

ASI highlighted that the requirements were generally auditable and not at conflict with other requirements in Principle 2. They did not identify any unforeseen loopholes or consequences. Some concerns on ambiguity were raised, including certain definitions and general feedback that the requirement will inevitably remain more challenging to evaluate in some contexts than others.

CABs considered that the changes were auditable and effective, but again raised concerns of potential unintended consequences in certain contexts. CABs highlighted expected time and cost implications for assessments of fisheries that interact with marine mammal ETP/OOS units. Concerns were also raised on the acceptability of the proposal, both for conservation stakeholders as well as affected fishery clients. Stakeholders may question why marine mammals are assessed differently to other ETP/OOS species and why intentional harassment is held to a higher bar than incidental bycatch when the population-level impacts of these interactions could be the same or higher for incidental bycatch.

2.5.4 Consultations – Option 1

During February-April 2022, stakeholders were able to provide feedback on Option 1 within the proposed Standard and associated program documents through an online survey. In general, several industry and management representatives were not supportive of this proposal in terms of its acceptability (Figure 1) – these were mainly those that identified as representatives from commercial fisheries, government/management and CABs. Stakeholder from supply chain showed divided support. NGOs were the single group that expressed strong support for the proposal. In terms of effectiveness, both commercial fisheries and supply chain reflected a range of sentiments (Figure 1). CABs appeared to be more inclined to disagreeing with the effectiveness of the proposal, while NGOs are inclined to agreeing with it.

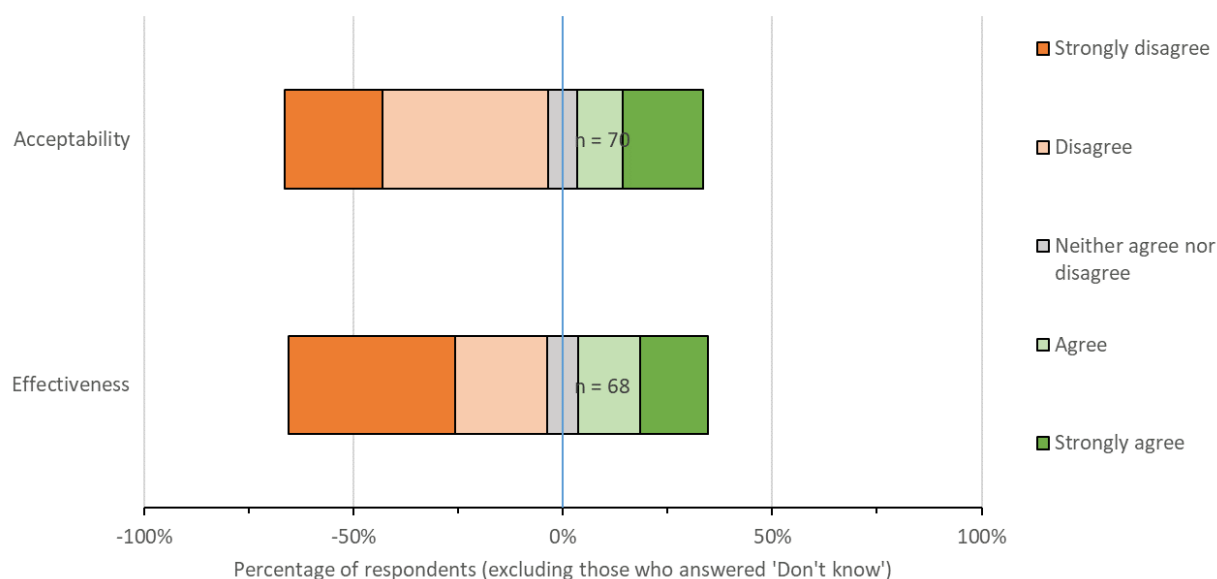


Figure 1. Proportion of responses to the public consultation on a five-point Likert scale with respect to Option 1. Respondents were asked whether they agreed with a statement regarding the acceptability and the effectiveness of the proposed revisions.

Along with the survey responses, 19 letters were received addressing this new proposed scope criterion, from representatives of commercial wild harvest fisheries associations or consultants, national or regional governance/management, non-governmental associations, and seafood supply chain. Seven of the letters expressed support to the proposed change and/or agree with intent, while other seven letters strongly reject the proposed change and/or request not to adopt it. The remaining five letter raised mainly to specific concerns, without expressing a clear support or rejection. The main categories are presented in Table 2.

Table 2. Themes of the consultation responses and action taken to address the feedback in relation to Option 1. The illustrative responses are direct quotes or partial quotes from the written text, some of which have been abbreviated for brevity.

Response theme	Illustrative responses	Action taken
Strong rejection of the proposal and request not to adopt it	<p>“The proposed scope criterion is likely to cause harm MSC’s goals for more sustainable and well-managed fisheries, as well as to its reputation as a science- and process-driven standard holder”.</p> <p>“Likely ecosystems effects due to incentive to move from dolphins-sets to FADs-sets”.</p> <p>“Best available scientific evidence supports the assumption that purse-seine fishery is not having significant adverse impact on any of the dolphin stocks in the Eastern Pacific Ocean”.</p>	<p>No changes made to the proposal. It follows the recommendation from MSC governance bodies in December 2019 and January 2020 to develop a scope requirement specifically to prevent fisheries who intentionally harass or kill marine mammals from entering the MSC programme.</p>

Concern on interpretation of key concepts, potential auditability issues	Problems of application or interpretation of certain concepts (harassment, intentional and anticipated). “Some interactions may be anticipated but are not intended”. “Many fisheries have deterrence equipment or hazing protocols designed to avoid lethal outcomes for chance interactions with marine mammals. However, while the fisheries do not intentionally seek these interactions, at least some interactions are anticipated which would remove such fisheries from MSC scope according to the definition”. “Harassment/killing of marine mammals is incidental and are not to be considered an intentional harassment”.	Fisheries Standard requirement and guidance provide now further clarification on interpretation and intent of these key concepts.
Entities to be confirmed within scope	“Asks for definition of entities”.	The subject has now changed to vessels and confirmation of the scope refers to activities undertaken within the UoA.
Clarification on the process and required information to confirm the scope	“Clarification is needed regarding the information or evidence to confirm scope”.	FCP contains now a clear process to confirm the scope criteria, including relevant information to be verified.

2.5.5 Consultation – Option 2

Option 2 was developed during and after TAB meetings held in May 2022. It has not been subject to public consultation and some uncertainty remains around levels of acceptance amongst stakeholders.

2.6 Discussion

In summary, option 1 precludes fisheries which intentionally harass/kill marine mammals from entering the fishery program thus dealing, in the main, with the reputational concerns and ethical side of the issue. Whilst acceptable to many stakeholders, the option will limit program accessibility, impact fisheries (few) and may incentivise less sustainable practices for certain tuna fisheries. The second option permits intentional harassment/killing of marine mammals within the program on the basis that impacted populations are healthy as demonstrated by a high “sustainability bar”: good evidence, high levels of assessment certainty and precautionary score capping. Whilst the option presents a better case for sustainability and accessibility than the first option, it’s unlikely to be acceptable to many stakeholders on ethical grounds. Both options, whilst adding some complexity, are auditable.

2.7 Description of work undertaken post MSC Board of Trustees (BoT) decision

The MSC Board of Trustees (BoT) approved Option 2 for adoption within the revised fisheries standard. The BoT directed the MSC Executive to continue working to refine the new requirement, building a better understanding of impact. In response, the MSC Executive carried out further internal consultation work, auditability testing and impact assessment work. A summary of main impacts/issues identified, and proposed changes are presented below (Table 3).

Table 3. Summary of main changes to preferred option

Issue identified	Impact type	Considerations/Change
Minor auditability issues flagged regarding wording structure and sequencing	Simplification/Auditability	Minor/editorial changes made to structure of requirement to clarify intent. For example, some requirements consolidated, guidance restructured to improve readability and the scoring example updated.
Interpretation of “integral” – some requests for clarification on the term’s intent	Effectiveness	Additional clarifications provided. For example, provided further definitions on the terms: “make use of” and “target”.
Interpretation of “integral” - some questions raised regarding scale of application. E.g. assessors queried whether the requirements needed to apply to entire UoC	Effectiveness	Requirement amended to make clear that requirement applies to any vessel within UoC.
Clarification sought regarding situations when risk-based framework (RBF) applied or when direct marine mammal impacts are considered “negligible” as per ETP/OOS requirements (SA3.8.2.5)	Effectiveness	Wording clarified within the requirement making clear that it applies irrespective of whether RBF is applied, or whether interactions are otherwise considered “negligible” as per SA3.8.2.5.
Concern for data-deficient fisheries to meet new requirement given the higher evidentiary bar	Accessibility	No change. Whilst it’s recognised that data deficient fisheries would be significantly challenged by conditions on this requirement (e.g. developing population assessments), it was felt that a higher evidentiary bar is necessary given the clear directive from the BoT.

Concerns regarding the evidentiary burden for fisheries to continue to meet the requirement. Given the need to ensure population assessments are less than 5 years old, fisheries may be required to perpetually update relevant population assessments	Accessibility/Feasibility	No change. Whilst it's recognised that the high evidentiary bar will be a challenge to meet (albeit for a relatively small number of affected fisheries), its necessary to retain given the intent of the requirements and clear directive from the BoT.
Interpretation of "necessary"	Effectiveness	New definition proposed to clarify our intent of this term.
Queries as to whether "anticipated" be removed as it may be a source of misinterpretation	Effectiveness/Auditability	No change. Decision to retain wording to cover scenarios characterised by actions determined to be tactical/necessary and where impact is incidental though could be anticipated to kill/harass. E.g. depredation actions which are understood to cause mortality as demonstrated through research.
Queries as to whether CABs need to rationalise why requirements are not applied in all scenarios characterised by marine mammal interaction	Simplification	No change. Whilst this move would aid transparency it may represent additional complexity which may not improve effectiveness.

2.8 Conclusions

The final requirement wording is presented in Annex 2, with all final changes highlighted. As a reminder, this requirement will permit intentional harassment/killing of marine mammals within the program on the basis that impacted populations are healthy as demonstrated by a high "sustainability bar": good evidence, high levels of assessment certainty and precautionary score capping.

Work carried out post BoT decision (Summer 2022) has led to changes which will improve auditability and effectiveness through clarification of intent. However, some accessibility/feasibility issues identified will continue to represent significant challenges to fisheries, albeit a relatively small number of them.

ANNEX 1 – OPTIONS 1 & 2 DRAFT REQUIREMENTS

Option 1 – New Scope requirement and guidance

New scope requirement (1.1.5)

1 Scope

1.1 Scope requirements of the MSC Fisheries Standard


1.1.1

1.1.2


1.1.3

1.1.4

Intentional harassment or intentional killing of marine mammals

1.1.5 The client or client group shall not include any vessel that has been implicated in the intentional harassment or intentional killing of marine mammals whilst undertaking fishing operations in the last 2 years. 

- a. The term “intentionally” means any action which is not deemed to be “incidental” to fishing operations.
 - i. The term “incidental” describes consequences or results which were neither intended nor anticipated.
- b. The term “harassment” in the context of 1.1.5 means any act of pursuit, torment, or annoyance which:
 - i. has the potential to injure a marine mammal in the wild, or
 - ii. has the potential to disturb a marine mammal in the wild by causing disruption of behavioural patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

- 1.1.5.1 If a vessel has been implicated in the intentional harassment or intentional killing of marine mammals whilst undertaking fishing operations, the client or client group shall exclude the vessel from the UoA, UoC and the fishery certificate for 2 years.
 - a. The client or client group shall inform their CAB immediately if a vessel has been excluded.
 - b. The client or client group shall provide all relevant information to their CAB to demonstrate that the vessel has been excluded. 

GS1 Scope

GS1.1 Scope requirements of the MSC Fisheries Standard ▲

GS1.1.5, GS 1.1.6 and GS1.1.7 Exclusion of vessels

The MSC's intent is to prevent access to a certificate where there is evidence of intentional harassment or killing of marine mammals, serious crimes or shark finning offences whilst undertaking fishing operations. This is achieved by preventing vessels implicated in these activities from being included on a fishery certificate.

The implication of a vessel should be taken to mean that a person, or persons, undertook intentional harassment or killing of a marine mammal, a serious crime or a shark finning offence onboard the vessel at some point in the last 2 years.

In cases where fishing operations are not vessel-based, the requirement should be interpreted to mean the exclusion of the individual fishing operator that undertook intentional harassment or killing of a marine mammal, a serious crime or a shark finning offence while undertaking fishing operations.

Two-year timeframe

The 'last 2 years' should be calculated from the date the CAB announces the fishery assessment on the MSC website.

Location of the activity

(...)

If a vessel has been implicated in the intentional harassment or killing of marine mammals within the areas and jurisdictions described in the UoA the vessel should not be included on a certificate.

GS1.1.5.1, GS1.1.6.1 and GS1.1.7.1 Excluding vessels for 2 years

The 2-year exclusion timeframe is calculated from the date the vessel was excluded. The date of exclusion is the date that the updated certification documents were published on the MSC website.

If the vessel was excluded at the point of the initial certification, the date of its exclusion is the date the CAB announces the fishery assessment on the MSC website.

GS1.1.5.1.b, GS1.1.5.1.b and GS1.1.7.1.b Relevant information

An example of relevant information is an updated vessel list.

GS1.1.5 Intentional harassment and intentional killing of marine mammals ▲

Examples of intentionally harassing or killing a marine mammal whilst undertaking fishing operations (e.g., setting, deploying or hauling fishing gear) within the UoA,³ include the intentional pursuit and encirclement of marine mammals with fishing gear (e.g., purse seine nets) and vessels. Efforts to catch, encircle with fishing gears, kill, injure, poison, tranquillize, herd, disturb, or possess a marine mammal would not be considered incidental.

The intent of this requirement is that it should apply regardless of any allowances or permits granted to entities included in the client or client group.

It is not the MSC's intent that the following practices are considered as forms of "intentional harassment or intentional killing":


- The use of non-lethal deterrent devices aimed at marine mammals from damaging the catch, or gear, or otherwise deployed to reducing entanglement risk, unless it's demonstrated that their continued deployment/use causes injury to marine mammals. These devices should not include firearms.
- The unwanted catch of marine mammals as this outcome is normally considered to be unanticipated. These impacts are to be assessed against the relevant performance indicators (e.g. Principle 2) within the Fisheries Standard.

Option 2 – New P2 requirement and guidance

New P2 requirement (SA3.8.3)

SA3.8 ETP and Out-of-Scope (ETP/OOS) species outcome PI (PI 2.2.1)

Table SA3.8: PI 2.2.1 ETP/OOS species outcome PISGs

Component	PI	Scoring issues	SG60	SG80	SG100
ETP/OOS species	<p>Outcome status</p> <p>2.2.1</p> <p>The direct effects of the UoA do not hinder recovery of the ETP/OOS unit to favourable conservation status.</p>	(a) Direct effects 	The direct effects of the UoA are unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status.	The direct effects of the UoA are highly unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status.	There is a high degree of certainty that the direct effects of the UoA do not hinder recovery of ETP/OOS unit to favourable conservation status.

SA3.8.1 ...

SA3.8.2 ...

SA3.8.3 At the SG80 level for scoring issue (a), if the ETP/OOS unit is a marine mammal and intentional harassment or intentional killing of that ETP/OOS unit is an integral part of the fishing operation the team shall verify that it is estimated with a high degree of certainty to be at or above favourable conservation status.

- SA3.8.3.1 The team shall verify the status of the ETP/OOS unit using a quantitative estimate of the population size within the last 5 years that has been:
- produced by an independent research organisation or has been independently verified, and
 - made publicly available.

- SA3.8.3.2 “Intentional” shall mean any action which is not deemed to be “incidental” to fishing operations.
- a. The term “incidental” describes consequences or results which were neither intended nor anticipated.
- SA3.8.3.3 “Harassment” shall mean any act of pursuit, torment, or annoyance that has the potential to:
- a. injure a marine mammal, or
 - b. disturb a marine mammal by causing disruption of behavioural patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
- SA3.8.3.4 “Integral part” shall mean a tactical or necessary part of the fishing operation.
- a. The term “tactical” describes actions instituted by the UoA whilst undertaking fishing operations (e.g., deploying or hauling fishing gear) that either make use of, or target (e.g., pursue or encircle), marine mammals.
- SA3.8.3.5 If SA3.8.3 is achieved the team shall not award a higher score for the ETP/OOS unit.
- SA3.8.3.6 The team shall apply this requirement regardless of any marine mammal harassment/killing allowances or permits granted to entities included in the client or client group.

New P2 guidance

GSA3.8.3 Intentional harassment or intentional killing of marine mammals

The targeted exploitation of marine mammals is not within scope of the MSC Fisheries Standard however it is understood that some fisheries intentionally kill or harass marine mammals whilst targeting species in the scope of the MSC Fisheries Standard. The intent of SA3.8.3 is to ensure that for any UoAs in which intentional harassment or intentional killing of marine mammals is an integral part of the fishing operation (activity or practice), such activity has not hindered recovery to favourable conservation status.

MSC recognises that there are challenges in clearly demonstrating that a UoA has not hindered recovery when considering all potential sources of impact associated with intentional harassment or intentional killing of marine mammals (including observed mortality, unobserved/cryptic mortality, sub-lethal population-level impacts, or any other impact that may affect population status).

Consequently, this requirement focuses on evaluating outcome status in a more precautionary manner by requiring a high degree of certainty that recovery is not necessary or has already occurred.

The team should interpret “high degree of certainty” as a probability level that is equal to or greater than the 95th percentile, consistent with the SG100 level in Table SA8.

GSA 3.8.3.2–3.8.3.4

An example of the intentional harassment or intentional killing of marine mammals as an integral part of the fishing operation is the intentional pursuit and encirclement of marine mammals with fishing gear (e.g., purse seine nets) or vessels.

The team should not consider the following examples of intentional harassment or intentional killing of marine mammals as being an integral part of the fishing operation:

- The use of non-lethal deterrent devices or actions aimed at deterring marine mammals from damaging catch or gear, or otherwise deployed to reduce entanglement risk, unless it is demonstrated that their continued deployment/use causes serious injury or directly compromises marine mammal survival. This should not include the use of firearms as these are lethal devices.
- The unwanted catch of marine mammals, as this outcome is normally considered to be unintentional.

Example: Application of SA3.8.3 for 2.2.1 scoring issue (a)

Fishery A is a purse seine fishery that targets a species of tuna. The fishery comprises 18 vessels, with 2 UoAs. UoA1 targets free school (unassociated) sets, and UoA2 targets FAD sets. The fishery interacts with 10 ETP/OOS units, 2 of which are marine mammals (a species of baleen whale and a species of dolphin).

The team considered whether there is evidence that the fisheries interactions with the 2 marine mammal ETP/OOS units involved the intentional harassment or intentional killing of that unit as an integral part of the fishing operation, as per the definitions set out in SA3.8.3.2–SA3.8.3.4.

The team found that the dolphin interactions were incidental bycatch recorded in unassociated sets. Therefore, the team did not trigger the application of SA3.8.3 to score the direct effects of the dolphin ETP/OOS unit.

The baleen whale interactions had occurred where the fishery had set on (encircled) the whale. Available observer data highlighted that these whale sets were an intended part of the fishery's operations, comprising 3% of sets in UoA2. This part of the fishery operation was determined to be a form of intentional harassment and determined to be an integral part of the fishing operation. As such, the team triggered the application of SA3.8.3 for UoA2 to score the impacted baleen whale ETP/OOS unit at the SG80 level.

The team assessed the available information about the proportion of whales released alive, the scale and intensity of the fishery and findings from several studies on the post-capture survival rates of the species. In combination with studies on the status of the species, the team used this information to determine that UoA2 is unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status. The fishery therefore met SG60 for scoring issue a. However, there was insufficient information available to enable the team to determine the population status of the baleen whale ETP/OOS unit to a high degree of certainty to favourable conservation status as required by SA3.8.3 to meet SG80 for this unit. Therefore, for UoA2, the baleen whale ETP/OOS unit did not meet SG80 for scoring issue a.

The team assessed the other 9 ETP/OOS units that did not trigger SA3.8.3. These all met SG60 and met or exceeded SG80 for the direct effects scoring issue (PI 2.2.1 (a)). In the scoring rationale, the team included explanations for each unit.

The team applied the scoring element approach set out in FCP v3.0 7.15. As only one of 10 scoring elements failed to achieve SG80, the score for 2.2.1 (a) was 75.

The team set a condition against PI 2.2.1 for the fishery to verify the status of the ETP/OOS unit using a quantitative estimate of the population size. Within the Client Action Plan, the client set out that they will contract a university to undertake a study of the population of the baleen whale ETP/OOS unit with results to be made publicly available.

ANNEX 2 – APPROVED OPTION WITH CHANGES

SA3.8 ETP and Out-of-Scope (ETP/OOS) species outcome PI (PI 2.2.1) ▣

Table SA3.8: PI 2.2.1 ETP/OOS species outcome PISGs

Component	PI	Scoring issues	SG60	SG80	SG100
ETP/OOS species	<p>Outcome status</p> <p>2.2.1</p> <p>The direct effects of the UoA do not hinder recovery of the ETP/OOS unit to favourable conservation status.</p>	(a) Direct effects ▣	The direct effects of the UoA are unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status.	The direct effects of the UoA are highly unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status.	There is a high degree of certainty that the direct effects of the UoA do not hinder recovery of ETP/OOS unit to favourable conservation status.

SA3.8.1 ...

SA3.8.2 ...

SA3.8.3 At the SG80 level for scoring issue (a), if the ETP/OOS unit is a marine mammal and intentional harassment or intentional killing of that ETP/OOS unit is an integral part of the fishing operation the team shall verify that it is estimated to be at or above favourable conservation status with a high degree of certainty (as per Table SA8). ~~to be at or above favourable conservation status.~~

SA3.8.3.1 The team shall verify the status of the ETP/OOS unit using a quantitative estimate of the population size within the last 5 years that has been:

- produced by an independent research organisation or has been independently verified, and
- made publicly available.

SA3.8.3.2 “Intentional” shall mean any action which is not deemed to be “incidental” to fishing operations.

- The term “incidental” describes consequences or results which were neither intended nor anticipated.

SA3.8.3.3 “Harassment” shall mean any act of pursuit, torment, or annoyance that has the potential to:

- injure a marine mammal, or
- disturb a marine mammal by causing disruption of behavioural patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

SA3.8.3.4 “Integral part” shall mean a tactical or necessary part of the fishing operation.

- The term “tactical” describes actions instituted by the UoA whilst undertaking fishing operations (e.g., deploying or hauling fishing gear) that either make use of (e.g. used to help facilitate capture of target species), or target (e.g., pursue or encircle), marine mammals.
- The term “necessary” describes actions required, or expected, to maximise catch or its efficiency

SA3.8.3.5 ~~If SA3.8.3 is achieved the team shall not award a higher score for the ETP/OOS unit.~~ Where the team trigger SA3.8.3 for an ETP/OOS unit, the maximum score the team shall award for that unit is 80.

~~SA3.8.3.6 The team shall apply this requirement regardless of any marine mammal harassment/killing allowances or permits granted to entities included in the client or client group.~~

SA3.8.3.6 The team shall apply SA3.8.3 irrespective of:

- a. Whether the UoA impact on the ETP/OOS unit is determined to be negligible as per SA3.8.2.5.
- b. Whether the RBF is triggered for the relevant ETP/OOS unit.
- c. Whether any allowances or permits granted to entities included in the client or client group permitting intentional killing/harassment of marine mammals.

New P2 guidance

GSA3.8.3 Intentional harassment or intentional killing of marine mammals

The targeted exploitation of marine mammals is not within scope of the MSC Fisheries Standard however it is understood that some fisheries intentionally kill or harass marine mammals whilst targeting species in the scope of the MSC Fisheries Standard. The intent of SA3.8.3 is to ensure that for any UoAs in which intentional harassment or intentional killing of marine mammals is an integral part of the fishing operation (activity or practice), such activity has not hindered recovery to favourable conservation status.

MSC recognises that there are challenges in clearly demonstrating that a UoA has not hindered recovery when considering all potential sources of impact associated with intentional harassment or intentional killing of marine mammals (including observed mortality, unobserved/cryptic mortality, sub-lethal population-level impacts, or any other impact that may affect population status).

Consequently, this requirement focuses on evaluating outcome status in a more precautionary manner by requiring a high degree of certainty that recovery is not necessary or has already occurred.

The team should interpret “high degree of certainty” as a probability level that is equal to or greater than the 95th percentile, consistent with the SG100 level in Table SA8.

GSA 3.8.3.2 – 3.8.3.4

An example of the intentional harassment or intentional killing of marine mammals as an integral part of the fishing operation is the intentional pursuit and encirclement of marine mammals with fishing gear (e.g., purse seine nets) or vessels.

The team should not consider the following examples of intentional harassment or intentional killing of marine mammals as being an integral part of the fishing operation:

- ~~• The use of non-lethal deterrent devices or actions aimed at deterring marine mammals from damaging catch or gear, or otherwise deployed to reduce entanglement risk, unless it is demonstrated that their continued deployment/use causes serious injury or directly compromises marine mammal survival. This should not include the use of firearms as these are lethal devices.~~
- ~~• The unwanted catch of marine mammals, as this outcome is normally considered to be unintentional.~~
- The use of non-lethal deterrent devices or actions aimed at deterring marine mammals from damaging catch or gear, or otherwise deployed to reduce entanglement risk, except where:
 - It is demonstrated that their continued deployment/use causes serious injury or directly compromises marine mammal survival.
 - Firearms are used to deter or kill marine mammals. These are lethal devices and if used as an integral part of the UoA fishing operation, should trigger the application SA3.8.3.
- The unwanted catch of marine mammals, as this outcome is normally considered to be unintentional.

Example: Application of SA3.8.3 for 2.2.1 scoring issue (a)

Fishery A is a purse seine fishery that targets a species of tuna. The fishery comprises of 18 vessels, with two UoAs. UoA1 targets free school (unassociated) sets, and UoA2 targets Fish Aggregating Devices

(FAD) sets. The fishery interacts with 10 ETP/OOS units, 2 of which are marine mammals (a species of baleen whale and a species of dolphin).

The team considered whether there is evidence that the fisheries interactions with the two marine mammal ETP/OOS units involved the intentional harassment or intentional killing of that unit as an integral part of the fishing operation as per the definitions set out in SA3.8.3.2-SA3.8.3.4.

The dolphin interactions were found to be incidental bycatch recorded in unassociated sets. Therefore, the team did not trigger the application of SA3.8.3 to score the direct effects of the dolphin ETP/OOS unit.

The baleen whale interactions had occurred where the fishery had set on (encircled) the whale. Available observer data highlighted that these whale sets were an intended part of the fishery's operations, composing 3% of sets in UoA2. This part of the fishery operation was determined to be a form of intentional harassment and determined to be an integral part of the fishing operation. As such, the team trigger the application of SA3.8.3 to score the impacted baleen whale ETP/OOS unit at the SG80 level.

The team assess the available information about the proportion of whales released alive, the scale and intensity of the fishery and findings from several studies on the post-capture survival rates of the species. In combination with studies on the status of the species, the team use this information to determine that the UoA is unlikely to hinder recovery of the ETP/OOS unit to favourable conservation status. The fishery therefore meets SG60 for scoring issue a. There is however insufficient information available to determine the population status of the baleen whale ETP/OOS unit to a high degree of certainty relative to favourable conservation status as required by SA3.8.3. Therefore, the baleen whale ETP/OOS unit does not meet SG80 for scoring issue a.

The other 9 ETP/OOS units that did not trigger SA3.8.3 are assessed by the team. These all meet SG60 and meet or exceed SG80 for the direct effects scoring issue, with explanations for each unit provided in the scoring rationale.

The team apply the scoring element approach set out in FCP 7.15. As only one of 10 scoring elements fails to achieve SG80, the score for 2.2.1 (a) is 75.

A condition is set against 2.2.1 for the fishery to verify the status of the ETP/OOS unit using a quantitative estimate of the population size. Within the Client Action Plan, the client sets out that they will contract a university to undertake a study of the population of the baleen whale ETP/OOS unit with results to be made publicly available.