



## Mid-Atlantic Fishery Management Council

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March 30, 2022

Rohan Currey, PhD  
Chief Science & Standards Officer  
Marine Stewardship Council  
London, UK

Dear Dr. Currey:

I am writing to you on behalf of the Mid-Atlantic Fishery Management Council (Council) in response to the Marine Stewardship Council's (MSC) request for comments on the proposed revised MSC Fisheries Standard (Proposed Standard). The Council is one of eight regional fishery management councils responsible for managing fisheries in the Exclusive Economic Zone of the United States in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Council has primary management responsibility for fourteen species of fish and shellfish – five of which have attained MSC certification. We are familiar with the MSC standards and have more than a decade of experience supporting the certification process for our managed fisheries. The purpose of this letter is to convey our concerns about the potential impacts of the Proposed Standard on the U.S. Atlantic spiny dogfish (*Squalus acanthias*) fishery.

The spiny dogfish fishery is viewed by many as a textbook success story for U.S. fisheries management. After experiencing a steep decline in the late 1980s and 1990s, the Council established management of the stock and implemented a strict rebuilding plan in 2000. The stock was declared rebuilt in 2010 and has been maintained at sustainable levels ever since. The fishery attained MSC certification in 2012 and was re-certified in 2018. The most recent stock assessment information indicates that the stock is neither overfished nor experiencing overfishing.

The Council is concerned that the Proposed Standard would inappropriately classify spiny dogfish as an Endangered, Threatened, or Protected (ETP) or Out of Scope (OOS) species and would thus result in the de-certification of the fishery. Section SA3.1.7 of the Proposed Standard states that any fish or invertebrate species listed on certain conservation lists would automatically be classified as ETP/OOS. Spiny dogfish are listed on Appendix 2 of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and would therefore, under the Proposed Standard, be considered ETP/OOS. Although this section provides a pathway for modification of certain ETP/OOS classifications based on life history, management status, and stock status, these provisions only apply to species listed under CITES Appendix 2, IUCN Red List of Endangered Species, or National ETP legislation. Furthermore, the proposed section SA3.1.7.1b specifically excludes shark species from reclassification. The rationale for these exclusions is unclear.

During the February 2022 webinar review of the Proposed Standard, Mr. Shaun McLennan, MSC Senior Fisheries Standard Manager, noted that the provisions for modifying ETP/OOS species lists were included “to ensure that sustainable, well-managed stocks are eligible for MSC certification and to allow assessors to make use of real-time data, because often we found that **some of these listings are**

**sometimes out of date by 10 or 20 years.”<sup>1</sup>** We agree and see no reason why shark fisheries should be subject to different standards from finfish and invertebrates or why CMS listed species are excluded from reclassification. To address our concerns, we recommend striking clause SA3.1.7.1b in its entirety and revising clause SA3.1.7.1 to allow for reclassification of CMS listed species. We believe these changes would result in more consistent application of MSC standards across fisheries, allow for the use of the best available science, and avoid creating arbitrary negative impacts for fishermen.

Also, conservation lists such as CMS, CITES, and IUCN may provide useful information which could indicate that additional investigation is warranted; however, we do not believe these lists should be used as the sole basis for automatic ETP/OOS classification. In the case of spiny dogfish, the Council believes the CMS Appendix 2 listing is inconsistent with the best available scientific information about the species’ stock structure. The Northeast and Northwest Atlantic spiny dogfish populations are distinctly separate, a point acknowledged in the original proposal for CMS listing which notes that the species’ distribution is “fragmented into distinct populations separated by deep ocean-tropical waters, or polar regions.”<sup>2</sup> Despite this fact, CMS Appendix 2 lists Northern hemisphere spiny dogfish as a single unit without distinguishing between the distinct populations.

The existing MSC certification documents provide ample evidence to demonstrate the sustainability of the U.S. spiny dogfish fishery and the safeguards in place to ensure the long-term health of the stock. These include:

1. Assessments of the spiny dogfish stock are routinely conducted by NOAA’s Northeast Fisheries Science Center through a scientific and peer reviewed process.
2. The Council’s risk policy accounts for scientific uncertainty inherent in stock assessments by increasing precaution to avoid overfishing if the stock is below optimum size.
3. The Council’s Scientific and Statistical Committee (SSC) makes binding, science-based catch limit recommendations based on stock status and evaluations of uncertainty to ensure overfishing remains unlikely.
4. The Council annually reviews recent stock status information, SSC recommendations, and fishery performance and adjusts management measures if needed.
5. The rebuilding requirements in U.S. law serve as a robust backstop if the stock happens to become overfished in the future.
6. U.S. law integrates conservation of habitat, bycatch, and protected species (e.g. marine mammals or other species listed as endangered).

Thank you for this opportunity to provide comments. We hope you will consider our suggested modifications to SA3.1.7 in the proposed revised MSC Fisheries Standard. Please contact me with any questions.

Sincerely,



Christopher M. Moore, Executive Director  
Mid-Atlantic Fishery Management Council

Attachment: Proposed Revised MSC Fisheries Standard v3.0 Excerpt – Section SA3.1.7 (p. 22-23)

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<sup>1</sup> MSC Fisheries Standard Review Webinar: [https://www.youtube.com/watch?v=PT23bUcw5\\_c](https://www.youtube.com/watch?v=PT23bUcw5_c)

<sup>2</sup> [https://www.cms.int/sites/default/files/document/cms\\_cop9\\_app\\_II-1\\_rev3\\_Squalus\\_acanthias\\_spiny\\_dogfish\\_ECU\\_e.pdf](https://www.cms.int/sites/default/files/document/cms_cop9_app_II-1_rev3_Squalus_acanthias_spiny_dogfish_ECU_e.pdf)

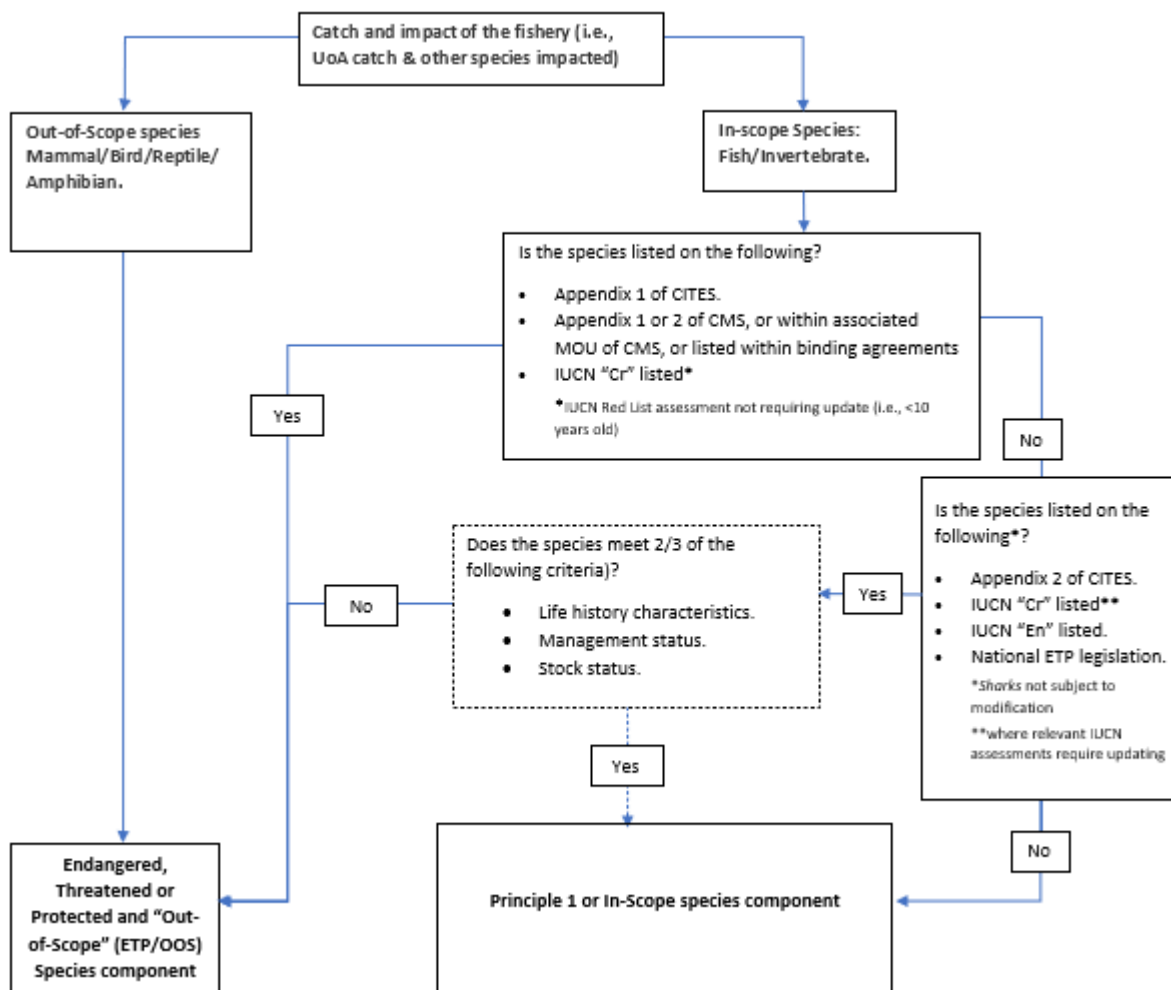


Figure SA3: Decision tree for ETP/OOS species

SA3.1.7 The team shall assign species as ETP/OOS in P2 as follows:

- a. Species impacted by the UoA that are classified as amphibians, reptiles, birds, or mammals.
- b. Species impacted by the UoA that are classified as fish or invertebrates and which are listed in any of the following, subject to modifications if relevant as per SA3.1.7.1-2:
  - i. Appendix 1 of the Convention on International Trade in Endangered Species (CITES).
  - ii. Appendix 2 of CITES.
  - iii. Appendix 1 or 2 (or listed within [CMS binding agreements] or associated 'Memoranda of Understanding') of the Convention on the Conservation of Migratory Species of Wild Animals Species (CMS).
  - iv. The International Union for Conservation of Nature (IUCN) Red list and classified as "Critically Endangered (Cr)".
  - v. The International Union for Conservation of Nature (IUCN) Red list and classified as "Endangered (En)".
  - vi. National ETP legislation.

SA3.1.7.1 The team shall make and document modifications as per SA3.1.7.3. to the species list generated through application of SA3.1.7.b (ii) and (v-vi) for the purposes of component reclassification (e.g. In scope or Principle 1).

- a. The team shall only make modifications to species listed on CITES Appendix 2 in cases where the species concerned are permitted to be exported and traded by relevant management authority(ies) concerned.
  - b. [The team shall not make modifications as per SA3.1.7.1 if the species is a “shark” as defined in SA2.4.3].
  - c. [The team shall only apply the modifications once per certification cycle at the beginning of each assessment (e.g., initial assessment; reassessment; transition assessment; scope extension assessment)]
- SA3.1.7.2 [The team shall make modifications to ETP listed as IUCN “Cr” (SA3.1.7.b.iv) as per SA3.1.7.3 in cases where the IUCN assessment is determined to be “needing update” as defined by the IUCN].
- a. [The team shall only implement modifications as per SA3.1.7.1. when the information supporting the modification criteria is more recent than the IUCN assessment].
- SA3.1.7.3 The team shall only make modifications as per SA3.1.7.1. when at least two of the following modification criteria are met:
- a. Life history characteristics: the species is inherently resilient to exploitation as demonstrated by high productivity attributes.
    - i. The team shall determine this criterion is met if the stock/species achieves an overall average productivity score of less than 2, using Table A8 (PSA productivity attributes and scores – MSC Fisheries Standard Toolbox).
  - b. Management status: the stock is subject to measures or management tools, reflected in either limit or target reference points (or equivalent), intended to achieve stock management objectives in response to directed exploitation.
  - c. Stock status: The stock is at a level which maintains high productivity.
    - i. The team shall determine this criterion is met if the stock is at or fluctuating around a level consistent with Maximum Sustainable Yield [consistent with achieving SG80 for PI 1.1.1, scoring issue (b)].
    - ii. The team shall make determinations as per SA3.1.7.3.c.i using information from stock assessment(s) which have been subject to peer review, consistent with achieving SG80 for PI 1.2.4, scoring issue (e).
- SA3.1.7.4 The team shall assign any invertebrate identified in SA3.1.7.b, and which is a benthic habitat-forming species (e.g. coral species), to the habitats scoring component.
- SA3.1.8 When assessing the impact of the UoA on all components within P2, including unwanted catch, the team shall assess mortality that is observed and mortality that is unobserved, including that from ghost fishing.
- SA3.1.8.1 The assessment of observed and unobserved mortality shall be documented in scoring rationales. ■
- SA3.1.9 The CAB shall take into account any impacts of fishing overcapacity and other issues resulting from subsidies, when considering the effectiveness of a management strategy and its ability to meet P2 outcomes.
- SA3.1.9.1 If overcapacity exists as a result of subsidies, the management system should be robust enough to deal with this issue and still deliver a sustainable fishery as per Principle 2.