

Date: 13th May 2019Email: USAtlanticMenhadenobjection@msc.orgTo: Melanie Carter,
Independent Adjudicator**Re: Objections to the certification of Omega Protein Corporation US Atlantic menhaden purse seine**

Dear Ms. Carter,

In accordance with PD 2.5.1.1 of the MSC Objections Procedure (as outlined in MSC FCR v2.0), SAI Global has reconsidered the Final Report in light of the matters raised in the accepted Notices of Objection. In doing so SAI Global has also taken into account written representations submitted within the allowed for 15 working day period. AT this time SAI Global is pleased to provide the following written response.

The function of the Independent Adjudicator is to examine the claims made in one or more notices of objection and to make written findings as to whether the CAB made an error of the sort described in Section 2.7.2 of the Objections Procedure. SAI Global is fully confident that in this case no such error has occurred. Furthermore, it is important to point out that, in a number of areas, the objections are more related to technical considerations. Such technical considerations are not necessarily within the purview of the Independent Adjudicator and it is not the role of the Independent Adjudicator to substitute his or her judgment for that of SAI Global on such matters.

In essence, as long as there is no serious procedural irregularity and SAI Global has not made a mistake as to a material fact, ignored material information or acted arbitrarily or unreasonably in awarding scores or devising conditions, the Independent Adjudicator should not set aside SAI Global's conclusions.

Finally, given the highly emotive nature of the fishery, and based on the assessment process to date, SAI Global considered it highly likely that these objections will proceed to adjudication (i.e. there is very little realistic prospect of agreement on the majority of the issues raised). Therefore, given the fact that the issues raised are not new and have been discussed at length throughout the assessment process, SAI Global would appreciate if the issues might be considered on their individual merits prior to proceeding. This could result in the scope of any further proceedings being usefully confined to issues with a realistic prospect of success from the standpoint of the objecting parties.

If anything in the below is at all unclear, please feel free to revert back to ourselves and we will endeavour to clarify the issues as quickly as possible.

Kind regards,

**Sam Dignan**

Fisheries and Aquaculture Scheme Manager

SAI Global/Global Trust Certification

Introduction

Note the MSC Objections procedures applicable to this assessment are those outlined in Annex PD of MSC Fisheries Certification Requirements (FCR) v2.0.

The Marine Stewardship Council (MSC) received two Notices of Objection to the proposed certification of this fishery which were originally submitted on 27th March 2019:

1. The Nature Conservancy and the Chesapeake Bay Foundation (acting together); this Notice of Objection for was supplemented and amended on 10th April 2019 (Labelled as Objection 1).
2. The Theodore Roosevelt Conservation Partnership, the Coastal Conservation Association and the American Sportfishing Association (acting together) (Labelled as Objection 2).

Having met the threshold of having been submitted in the form required and having a “reasonable prospect of success” (as determined by the assigned Independent Adjudicator (Melanie Carter)), both Notices of Objection were accepted and published on the MSC website on the 15th April 2019.

As a consequence of their having been accepted, the fishery client and other stakeholder previously involved in the assessment process were invited to submit written representations on the matters raised in the Notices of Objection. Following this invitation, and within the period allowed for by the procedures governing the Objections process, three such submissions were made by the following:

1. Omega Protein Corporation (The Fishery Client).
2. National Audubon Society.
3. The Town of Wellfleet.

SAI Global was required to reconsider its Final Report and Determination in light of the matters raised in the Notices of Objection and provide a written response to the Notices of Objection taking into account any written representations.

SAI Global has considered the submission of the Fishery Client but as it effectively represents a standalone document and is supportive of SAI Global’s position it is not specifically referenced or responded to again here.

The below represents SAI Global’s written responses to the two accepted Notices of Objection as well as to the two remaining additional written submissions (i.e. aside from the Fishery Client’s). To facilitate responding to each particular point raised by the Objectors, SAI Global has included the Objections verbatim in the various tables on the following pages and has thereafter responded to each particular point in turn. The Table of Contents on the following page is intended to facilitate the easy navigation between relevant sections.

Note. According to error messages returned while attempting to access them, a number of the footnotes/news articles included as references by the various Objectors are not accessible from within the European Economic Area (EEA). According to those error messages this is due to legal reasons associated with the enforcement of the General Data Protection Regulation (GDPR) within the EEA.

Table of Contents

Introduction.....	2
Table of Contents	3
1 Objection 1 – TRCP, CCA and ASA	4
1.1 Objection Pursuant to PD2.7.2.2	4
1.1.1 Condition 1	4
1.1.2 Condition 2	6
1.2 Objection Pursuant to PD2.7.2.3	10
1.2.1 PI 1.1.1 Stock Status	10
1.2.2 PI 2.1.3 Primary species information.....	12
1.2.3 PI 2.5.2 Ecosystem management strategy	14
1.2.4 PI 3.1.1 Legal and/or customary framework	16
1.2.5 PI 3.2.3 Compliance and enforcement	19
1.3 Bibliography.....	21
2 Objection 2 – CBF and TNC.....	22
2.1 Objection Pursuant to PD2.7.2.2	22
2.1.1 Condition 1	22
2.1.2 Condition 2	25
2.2 Objection Pursuant to PD2.7.2.3	28
2.2.1 General comment.....	28
2.2.2 PI 1.1.1a Stock Status (Scoring Issue A)	29
2.2.3 PI 1.1.1a Stock Status (Scoring Issue B)	30
2.2.4 PI 2.5.2 Ecosystem management	33
2.3 Objection Pursuant to PD2.7.3	35
2.4 Supplementary Letter.....	39
3 National Audubon Society Letter	44
4 Town of Wellfleet Letter	47

1 Objection 1 – TRCP, CCA and ASA

1.1 Objection Pursuant to PD2.7.2.2

The setting of conditions by the 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 CAB could have reached such a decision on the evidence available to it.

1.1.1 Condition 1

	Notice of Objection	SAI Global Response
Performance Indicator	1.2.1 Harvest Strategy	
Condition	The Client Group must provide evidence of the implementation of a harvest strategy that is designed to take into consideration the ecological role of Atlantic menhaden and is responsive to the state of the stock with respect to its role in the U.S. Northwest Atlantic ecosystem.	
a) Reason	<p>The condition cannot be fundamentally fulfilled because it is reliant on mistaken material facts with regard to proposed ecological reference points (ERPs) and mistaken conclusions that rule of thumb ERPs are consistent with MSC standards.</p> <p>Moreover, this condition fails to establish definitive and quantifiable performance metrics that are necessary to demonstrate compliance with MSC's standards. Therefore, the condition cannot be justified.</p>	<p>The rule of thumb ERPs referenced here effectively are the MSC standard when it comes to key-LTL species—therefore, they are entirely consistent with MSC Standards.</p> <p>The Condition establishes interim milestones which if followed should ensure that by the end of the timeline the Condition is fulfilled. If they are not followed then the fishery's certificate will be suspended and/or withdrawn as per MSC requirements.</p>
b) Rationale	<p>Implementation of a harvest strategy that incorporates menhaden's critical ecological role in the Atlantic coastal ecosystem is highly unlikely because the appropriate ERPs that fully consider this ecological role are still under development by the Atlantic States Marine Fisheries Commission (ASMFC).</p> <p>The MSC assessment team explicitly acknowledged the ongoing development of menhaden-specific ERPs, and they conceded that ERPs are much better suited for the management of Atlantic menhaden. They also suggested that "rule of thumb" reference points were inappropriate. Thus, it is unacceptable that the MSC Final Report chose to provisionally recommend that the menhaden purse seine fishery be certified specifically based on ad hoc rule of thumb guidelines. This is disingenuous and contrary to rules of scientific objectivity.</p> <p>This contradictory reasoning is flawed, and further, highlights the consistent shortcomings found throughout the Final Report and the striking paucity of data</p>	<p>Yes, appropriate ERPs are still under development by the ASMFC. If these ERPs are successfully developed, the Team does not see why the subsequent development of an appropriate harvest strategy is highly unlikely.</p> <p>These <i>ad hoc</i> 'rule of thumb' guidelines are exactly that on which the MSC requirements for key-LTL species are based. Fishery assessments are not a scientific exercise, rather they simply involve measuring fisheries performance against relevant requirements. The Assessment Team therefore had no choice but to apply these <i>ad hoc</i> 'rule of thumb' guidelines as they are explicitly contained in the requirements against which the Team was measuring the fishery.</p> <p>The report is based on the best available data at the time (i.e. that was available prior to the publication of the PCDR). Furthermore, decisions</p>

	Notice of Objection	SAI Global Response
	<p>on which arbitrary decisions were rendered concerning sustainable management programming of the Atlantic menhaden resource.</p> <p>The condition set by the assessment team does not reflect the MSC standard that a target stock must be maintained at a sustainable level. A condition is supposed to be a mechanism to improve the performance of the fishery so that, at a minimum, it passes the unconditional pass mark. The condition applied to performance indicator 1.2.1 does not provide an avenue for the fishery to meet MSC's unconditional pass mark.</p> <p>Currently, the condition requires a "harvest strategy," that takes into consideration the menhaden's ecological role. However, the assessment team provides no measurable guidance that allows Omega to successfully implement this condition and meet MSC standards. Nor does the condition provide the MSC or other stakeholders with any guidance on how to measure Omega's progress.</p> <p>The lack of guidance and measurability allows Omega to design any kind of "harvest strategy" that, theoretically, could be found in compliance with this condition, regardless of its relevance to addressing MSC's principal concerns.</p> <p>While new data cannot be introduced at this time, it is our understanding that a new Atlantic menhaden benchmark assessment is scheduled for completion in late 2019. Additionally, the Ecological Reference Point (ERP) Working Group's Report of scientific findings will be published in 2020. Despite the anticipated release of these highly important reports to guiding the process of sustainability certification, the assessment team prematurely recommended a conditional certification that simply requires Omega to implement an unspecified harvest strategy.</p> <p>In order for the condition to comply with MSC guidelines, and consider the ecological role of the menhaden, it should be remanded to the assessment team for revision.</p>	<p>are not arbitrary but are extensively justified by accompanying rationale.</p> <p>The Condition as set is written to mirror the SG80 (i.e. unconditional pass mark) that the fishery failed to meet. As such it most certainly does provide an avenue for the fishery to meet MSC's unconditional pass mark.</p> <p>According to MSC requirements, the Team is precluded from providing guidance of any kind. If the Team were to provide such guidance they would then in effect be auditing their own work and this is a clear breach of impartiality rules. Therefore, the lack of specific guidance is very deliberate and as such SAI Global makes no apologies for it.</p> <p>The lack of specific guidance does also leave a number of avenues open to Omega by which they might fulfil the Condition and this again is quite deliberate. Note that at the end of the day, any "harvest strategy", regardless of how it is arrived at, or indeed regardless of the specifics of the strategy itself, will still have to comply with the relevant SG80 before the Condition could be considered fulfilled.</p> <p>The Team did indeed recommend conditional certification while also requiring Omega to implement an appropriate harvest strategy; however, under the MSC process, this recommendation is not premature and cannot be considered as such. While the specifics of the harvest strategy are not defined the overall aim is that it meet the relevant SG80 that is currently not met. Progress towards the development of menhaden-specific ERPs will be evaluated at future surveillance audits and the fishery re-scored as appropriate as new information comes to light.</p> <p>The Condition as currently written does comply with all applicable MSC requirements and as such SAI Global is adamant that it should not be remanded at this time.</p>

	Notice of Objection	SAI Global Response
	<p>Finally, the Report ensures compliance with these conditions through yearly “audits.” The assessment team, however, noted its intention to conduct the on-site audit during the fishery’s offseason where the auditors will essentially review paper documentation of Omega’s efforts, but will not interview the employees, fishermen, or observe practices on-board the fishing vessels during a day of catch, which is necessary to ensure true compliance with these conditions as well as verify whether the certification is still appropriate at all.</p> <p><i>Evidence relied on in this section comes from SAI Global’s Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>The end of the fishing year is the obvious time to conduct a surveillance audit as it means that the most up-to-date information is available to the Assessment Team for consideration. Such surveillance audits would invite participation from, for example, managers, scientists, fishers, enforcement agencies and stakeholders so would most certainly go beyond a review of paper documentation. The need to observe practices on-board the fishing vessels during a day of catch is not a requirement of the MSC process and is beyond the remit of an assessment team.</p> <p>Therefore, having considered the evidence presented herein by the Objector and for the reasons outlined above, SAI Global does not feel that any changes to either this Condition or its Final Report and Determination are appropriate at this time.</p>

1.1.2 Condition 2

	Notice of Objection	SAI Global Response
Performance Indicator	1.2.2 Harvest Control Rules and tools	
Condition	<p>The client must provide evidence of implementation of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden as key low trophic level in the U.S. Northwest Atlantic and that;</p> <ol style="list-style-type: none"> 1. ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2. are expected to keep the stock fluctuating around a target level consistent with ecosystem needs. 	
a) Reason	<p>The condition cannot fundamentally be fulfilled because it is reliant on mistaken material facts and therefore cannot be justified. Even if a condition was proven to be appropriate in these circumstances, it is unreasonable because it is not written concisely or definitively enough to ensure compliance with MSC’s standards, which mandate a precautionary approach (i.e., “highly likely that the stock is above the point where serious ecosystem impacts could occur”).</p>	<p>The Condition is written as concisely as it could be while also specifying all of the required elements. By mandating that such HCRs, once implemented, ensure that the exploitation rate be reduced as the point where serious ecosystem impacts could occur is approached, this would in turn lead to it being highly likely (in the long run) that the stock be maintained above the point where serious ecosystem impacts could occur.</p>
b) Rationale	<p>The latest menhaden stock assessment indicates that only 46% of the unfished total population biomass exists in the sea (n.b., this fraction is substantially less for the mature fraction of population biomass). This decision point presents a critical threat to sustainability of menhaden and the predators that depend on them.</p>	<p>This argument more correctly relates to the scoring of PI 1.1.1a stock status and is not particularly related to PI 1.2.2 SIa which is the specific area to which this Condition relates.</p>

	Notice of Objection	SAI Global Response
	<p>The reviewers asserted that the menhaden fishery meets the 40%B₀ criterion with the current total biomass (46%B₀); and therefore, the fishery can be certified. However, the assessment team failed to provide any substantive support for this assertion as fully required by MSC. Moreover, the total population biomass that the assessment team focused on is inappropriate for assessing not only the menhaden fishery, but any fishery.</p> <p>The assessment team focused on the total biomass present, rather than focusing on spawning biomass, which would provide greater clarity, reflect the stock-recruitment process, and provide additional accuracy as to the health, sustainability and reproductive capability of the fishery. In relying on total biomass, the assessment team has effectively rounded down the reproductive unit. Specifically, the use of total biomass prevents the assessment team from understanding the actual number of juvenile menhaden and adult menhaden. As a result, the assessment team is getting a higher current biomass regardless of the level of exploitation.</p> <p>While fishery management is currently organized by single-species assessments, a single species assessment does not provide a complete picture of the menhaden fishery and its role in the surrounding ecosystem. Such an approach is on its face arbitrary and capricious. Specifically, single-species assessments do not rely on or pull data from outside of that particular fishery. In this case it means that the biomass relied on as “sustainable” is inflated. A sustainable approach, and the one required by MSC standards, requires the use of precautionary values for each of these measurements. To accurately assess the menhaden fishery, the assessment</p>	<p>The Team does not solely rely on the $B > 40\%B_0$ criterion in arriving at its conclusions. It is merely one aspect of an ensemble approach that the Team used to evaluate stock status. Furthermore, pages 52 — 54 of the Final Report clearly present substantive support for the assertion that the menhaden stock meets the $B > 40\%B_0$ criterion.</p> <p>The reasons the Team used total biomass have previously been explained in detail including that:</p> <ol style="list-style-type: none"> 1. The studies on which on which MSC’s key-LTL requirements (Smit et al., 2011¹ and Pitkitch et al., 2012²) are based, relate to total biomass not spawning stock biomass. 2. The best available information (i.e. calculations of ASMFC’s BERP committee) relate to total biomass not spawning stock biomass. 3. There is currently little evidence of a strong stock recruit relationship for Atlantic menhaden. 4. The ecosystem role of menhaden is likely served more by immature rather than mature individuals (based on evidence from diet studies). 5. MSC issued an interpretation clarifying the intent of their key-LTL requirements and permitting the use of total biomass. <p>With the above being said, the disadvantages of the total biomass approach are also considered and clearly outlined in the report.</p> <p>While the current single species assessment does provide a pretty complete picture of the menhaden stock the Team would agree that it does not provide the same for menhaden’s role in the surrounding ecosystem. It is also true that single-species assessments do not utilize data from outside of the particular stock they seek to assess. The Team is not particularly clear on what the Objector is asking of them in the remainder of this paragraph.</p>

¹ Smith, A.D.M., Brown, C.J., Bulman, C.M., et al. 2011. Impacts of fishing low-trophic level species on marine ecosystems. Science 333, 1147–1150.

² Pitkitch, E., Boersma, P.D., Boyd, I.L., Conover, D.O., Cury, P., Essington, T., Heppell, S.S., Houde, E.D., Mangel, M., Pauly, D., Plagányi, É., Sainsbury, K., and Steneck, R.S. 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp.

	Notice of Objection	SAI Global Response
	<p>team needed to also consider fishery resource data outside of the tunnel view of the menhaden stock.</p> <p>The assessment team correctly determined that menhaden are a KLTL species. However, the assessment team's determination that the stock is not overfished and that overfishing is not occurring is based on a single species assessment, which has many outstanding questions concerning assumptions about demographics (i.e., lifespan, maturity, natural mortality) and fishery selection. It was not based in any way on an ecosystem-level assessment.</p> <p>Additionally, implementing a "robust and precautionary" harvest control strategy for Atlantic menhaden, requires the full cooperation and enforcement of the new management measures by all jurisdictions. Historically, the Atlantic states have worked together to manage their shared fishery resources. Currently, all of the Atlantic states, except Virginia, have banned purse seine fishing in their inshore and nearshore waters. Omega Protein centers its operations in this one jurisdiction that has consistently failed to take a sustainable science-based approach to the management of the menhaden fishery.</p> <p>The condition set by the assessment team does not reflect the MSC standard that a target stock must be maintained at a sustainable level. A condition is supposed to be a mechanism to improve the performance of the fishery so that, at a minimum, it passes the unconditional pass mark. The condition applied to performance indicator 1.2.2 does not provide an avenue for the fishery to meet MSC's unconditional pass mark.</p> <p>To meet MSC standards, the condition should be structured and specific. For example, the condition could require that the implemented harvest control rules keep the stock at a size that mildly fluctuates around a defined target level consistent with supporting all components of the ecosystem that depend on Atlantic menhaden. A description of the types of evidence the auditors would</p>	<p>All assessments, be they single-species or ecosystem-level, rely on a wide range of assumptions and in reality represent a 'best guess' at the 'truth'. The Team's determination that the stock is not overfished is based on measuring the current best guess for the true state of the menhaden stock (i.e. the results of the single-species stock assessment) against a number of 'rule of thumb' reference points for key-LTL species as contained in the relevant MSC requirements; these 'rule of thumb' reference points by their nature incorporate a precautionary buffer over what is normally deemed sustainable for a non-key LTL stock.</p> <p>The Team agrees that implementing appropriate HCRs for menhaden will require cooperation by relevant jurisdictions. The Team is also aware that many Atlantic states have banned purse-seining (or purse-seining for the purposes of reduction). However, rather than suggesting that Omega Protein centers its operations in Virginia because purse-seining is not banned there it is equally likely that purse-seining inshore is not banned there because that is where Omega Protein centers its operations (i.e. it is easy to ban something that in reality is not even occurring in the first place).</p> <p>The Condition as set is written to mirror the SG80 (i.e. unconditional pass mark) that the fishery failed to meet. As such it most certainly does provide an avenue for the fishery to meet MSC's unconditional pass mark. If the harvest strategy is appropriate and applied it follows that, over the longer term, the target stock will be maintained at a sustainable level (the reason the Team species 'over the longer term' here is to account for that that fluctuations in the menhaden stock are also heavily influenced by factors external to the fishery).</p> <p>There is not MSC requirement that conditions be specific as described by the Objector. Conditions shall be drafted to follow the narrative or metric form of the Scoring Guidepost(s) the fishery failed to meet (ref. MSC FCR v2.0; 7.11.1.2) and, and this is important, should not be</p>

	Notice of Objection	SAI Global Response
	<p>need to see and review to ensure that the condition is met explicitly, and standards against which to compare the evidence are necessary to ensure compliance with this condition if the condition relies solely on evidence provided by Omega.</p> <p>Finally, the burden of monitoring the fishery to ensure compliance and implementation of the condition should fall squarely with Omega Protein, not the ASMFC, NMFS or the State of Virginia. None of these regulatory entities are seeking certification from the MSC. If Omega Protein is responsible for implementing these conditions, then it should also be responsible for monitoring the fishery and providing the MSC and other stakeholders with valid data to demonstrate compliance.</p> <p>History illustrates the miniscule likelihood that Omega Protein will comply with this condition and support any harvest control rule. The company has been given ample opportunity to support the same standards as those required by MSC for KLTL species, but the company opposed those standards during the ASMFC Amendment 3 process. Omega Protein has also opposed the modest catch limit for Chesapeake Bay. Moreover, with the start of a new Virginia legislative session, Omega Protein has already confirmed its opposition to any potential catch cap for the Chesapeake Bay. Given its past and present actions, it is unlikely that Omega Protein will support meaningful menhaden-specific ecological reference points and a harvest control rule. Without evidence that a fishery operation will comply with such a vague condition, the condition must be completely defined with clear benchmarks against which the fishery can be assessed. In short, the existence of a potential company “policy” years from now does not equate to the effective implementation of that policy.</p> <p>It is only under Principle 3 of MSC’s standards that scores should reflect the adequacy of and reliance upon any legal framework which exists and encompasses an applicant fishery. In accordance with MSC’s standards, the onus and burden of ensuring a sustainable fishery is primarily on the applicant—Omega Protein. The assessment team’s continual reliance upon a “legal” framework that lacks enforcement authority and any true mandate to adopt the most effective fishery management strategies is a fatal flaw throughout much of this Report.</p>	<p>prescriptive about the means of meeting conditions (Ref. MSC FCR v2.0; G7.11.2).</p> <p>The burden of providing evidence that fishery is complying with the conditions, as well as the associated milestones, does lie with the fishery client (i.e. Omega Protein).</p> <p>Without pre-empting anything the Client might do, if they do not comply with this condition and adhere to the associated milestones they will lose (be it suspended or withdrawn) their fishery certificate as per MSC requirements. As with any stakeholder, the Client is entitled to oppose any management measure they see fit, including any further revisions to the Bay Cap which it should be noted has been subject to a number of stepwise reductions since first introduced. See above regarding further defining this condition.</p> <p>Again, this argument is not related to Condition 2. In any case, the Team does not ‘rely’ on a legal framework, rather they assess the current legal framework as it exists against the relevant MSC requirements.</p>

	Notice of Objection	SAI Global Response
	<p>Therefore, the certification of the reduction fishery should not be granted and this condition should be remanded to more fully consider the effect Omega's purse seine fishing operations have on the menhaden spawning biomass.</p> <p><i>Evidence relied on in this section comes from SAI Global's Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>Finally, the Condition as currently written and the determination that the fishery be certified are appropriate and as such this condition should not be remanded. Furthermore, having considered the evidence presented herein by the Objector and for the reasons outlined above, SAI Global does not feel that any changes to either this Condition or its Final Report and Determination are appropriate at this time.</p>

1.2 Objection Pursuant to PD2.7.2.3

The score given by the CAB in relation to one or more 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.

1.2.1 PI 1.1.1 Stock Status

	Notice of Objection	SAI Global Response
Performance Indicator	1.1.1 Stock Status	
Reason	The assessment team made a mistake as to material fact.	There is no mistake as to the material fact.
Rationale	<p>Use of total stock biomass (immature and mature), rather than spawning (mature) stock biomass, is material to the CAB's determination because it does not accurately reflect menhaden stock status or dynamics, and further, artificially inflates the stock proportion remaining in the water after exploitation.</p> <p>The total population biomass that the assessment team focused on is inappropriate. The assessment team focused on the total biomass (immature and mature menhaden) present, rather than focusing on spawning biomass (i.e., the mature component of the stock), which would provide more clarity as to the health and reproductive capacity of the stock and sustainability of the fishery. In relying on total biomass, the assessment team has effectively obliterated the effect of rounding down the reproductive component of the stock and its impact on sustainability. Specifically, the use of total biomass prevents the assessment team from understanding the relationship between the number of juvenile menhaden and adult menhaden and how this reflects current stock status and future population recruitment. As a result, the assessment team assumed a higher relative population biomass than what is actually present, regardless of the level of exploitation.</p>	<p>Use of total stock biomass, rather than spawning stock biomass, is material to the CAB's determination; however, it should again be noted that it is one element of an ensemble approach and as such not 'the be-all and the end-all'.</p> <p>There are advantages and disadvantages to using either total or spawning stock biomass and these are clearly articulated in the report. In fact the disadvantages of using total biomass are specifically considered and clearly outlined. Far from making a mistake as to a material facts, the Team, having considered the arguments either way, deemed it appropriate to use total biomass in this instance; this decision was not arrived at lightly and the reasons for doing so are presented in full in the report.</p> <p>The reasons the Team used total biomass have previously been explained in detail including that:</p> <ol style="list-style-type: none"> 1. The studies on which on which MSC's key-LTL requirements are based (see footnotes 1 and 2), relate to total biomass not SSB. 2. The best available information (i.e. calculations of ASMFC's BERP committee) relate to total biomass not spawning stock biomass.

	Notice of Objection	SAI Global Response
	<p>Specifically, large scale taking of early juveniles, as well as the continued heavy exploitation of age-3+ menhaden has resulted in a diminished number age-3+ spawners, and a highly truncated population size/age structure. Older, mature and highly fecund menhaden are essential to a healthy spawning stock, and removing them has a negative effect on recruitment and stock sustainability. While the assessment team recognized that the fishery does not currently land substantial tonnage of age-0 fish (recruits in their first year of life), it incurs heavy exploitation pressure on older menhaden (ages 1s and 2s), but immature menhaden that have yet to contribute to the spawning stock. By utilizing total population biomass (immature and mature fish combined) instead of only mature fish to the computation of spawning stock biomass in the assessment, it artificially inflates the spawning potential ratio (i.e., %B₀), and thus fails to adequately assess the risks to health and sustainability of the fishery. Using the spawning stock biomass as the benchmark, the internationally recognized standard, would have allowed the assessment team to better assess the status of the stock. More concerning, however, is that the approach taken by the assessment team fails to meet the requirement to have legitimately considered the trophic position of the stock to “ensure precaution in relation to their ecological role, in particular for species low in the food chain.”</p> <p>The inappropriate reliance on total population biomass should have rendered a “fail” for this performance indicator. Specifically, the total biomass relied on by the CAB results in an inaccurate measurement of the fishery’s health and therefore, it is unreasonable to assume that it is highly likely that the stock is above the point where serious ecosystem impacts could occur. Only if the CAB utilized spawning stock biomass would it have been able to measurably understand the health of the fishery and determine the threshold for serious ecosystem impacts. Thus, a failing score should have been given because the data relied on by the CAB does not allow it to adequately measure whether serious ecosystem impacts could occur, and therefore SG 80 is not met.</p> <p><i>Evidence relied on in this section comes from SAI Global’s Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<ol style="list-style-type: none"> 3. There is currently little evidence of a stock recruit relationship for Atlantic menhaden. 4. The ecosystem role of menhaden is likely served more by immature rather than mature individuals (based on evidence from diet studies). 5. MSC issued an interpretation clarifying the intent of their key-LTL requirements and permitting the use of total biomass. <p>As explained previously is not in fact relied on. Furthermore, while there are some disadvantages, the Team do not agree that the use of this metric is inappropriate. Given the ‘package’ of available evidence as presented in the report it is not unreasonable to assume that it is highly likely that the stock is above the point where serious ecosystem impacts could occur; this ‘package’ of evidence includes the following::</p> <ol style="list-style-type: none"> 1. $B_{2017}/B_0 = 0.467$ (i.e. above the lowest biomass target potentially allowable under MSC for a key-LTL stock ($B = 40\%B_0$)). 2. F has been below $F = 0.5M$ for the last 12 years. 3. F has been below the level expected to result in $B = 40\%B_0$ for almost the entire time series and close to the level expected to result in $B = 75\%B_0$ for the last 9 years. <p>SAI Global disagrees that only by using spawning stock biomass would it have been able to measurably understand the health of the fishery and determine the threshold for serious ecosystem impacts. Therefore, and for the reasons outlined above, SAI Global does not feel that any changes to its Final Report and Determination in the light of the evidence presented herein by the Objector are appropriate.</p>

1.2.2 PI 2.1.3 Primary species information

	Notice of Objection	SAI Global Response
Performance Indicator	2.1.3 Primary species information	
Reason	The assessment team has made a mistake as to material facts and its conclusions are unsupported by the data available in the record.	There is no mistake as to material facts and the Team's conclusions are substantiated by evidence presented in this report.
Rationale	<p>When scoring PI 2.1.3, the assessment team discusses the current status of bycatch studies. In its final report, the assessment team determined that there was sufficient information to find that SG 80 was met. As explained below, this score is more appropriately 60 or less.</p> <p>To meet SG 80, there needs to be a "partial strategy" in place. 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. The assessment team notes that there is no strategy in place, yet it still found that the SG 80 threshold was met. This, on its face, is arbitrary and unreasonable.</p> <p>In reviewing bycatch of primary species as part of the menhaden reduction fishery, the assessment team found that data on bycatch is collected on an ad hoc basis. The most recent study on bycatch with the menhaden fishery was conducted over 20 years ago (i.e., Kirkley 1995). And the more-recent data, collected by NOAA and relied on by the assessment team, was conducted in the Gulf of Mexico, which is only relevant in that it shows the high percentage of bycatch that Omega's reduction fishery processes have—ninety-three percent of the total weight of the retained bycatch was accounted for by only eight species according to Condrey's 1994 study: Atlantic croaker (25%), striped mullet (17%), gafftopsail catfish (12%), silver seatrout (10%), Spanish mackerel (9%), Atlantic bumper (8%), hardhead catfish (6%), and sand seatrout (6%). "The Gulf Menhaden Fishery of the Gulf of Mexico, A Regional Management Plan," Gulf States Marine Fisheries Commission (March 2015), available here [https://www.gsmfc.org/publications/GSMFC%20Number%20240.pdf].</p>	<p>The Team does not agree.</p> <p>Strategy is more correctly considered under PI 2.1.2 not PI 2.1.3 as done here. Nevertheless, the conclusion of the Team is that there is a 'partial strategy' in place but not a 'strategy'. This might seem confusing but in essence to get from the former to the latter the strategy has to be designed to manage impact on that component (i.e. non-target catches) specifically. The reasons the Team determined that SG80 was met are clearly outlined. Given the way that the two are defined, the statement that a 'strategy' is not in place does not precluded there being 'partial strategy' in place as is the case here; hence the SG80 score. For completeness, the reason SG100 is not met is that low level of non-target catches is a consequence of the way in which the menhaden fishery operates rather than by design.</p> <p>The Objectors are mistaken. The NOAA data presented in the report are not for the Gulf of Mexico fishery. The data are specific to the Atlantic fishery and are the result of NOAA observer program data collected between 2007 and 2012.</p>

	Notice of Objection	SAI Global Response
	<p>Moreover, as part of rationalizing this particular section's score, the assessment team stated that "adequate information will continue to be collected into the future to assess any changes to risk levels." Omega's low and sporadic observer coverage already led the assessment team to recommend that Omega engage in bycatch studies. However, recommendations are not requirements, thus Omega has no incentive to increase observer coverage. In fact the recommended certification and conditions as presented in the Report would serve as a disincentive. Importantly, in the few instances where Omega has reported bycatch, there have been dolphin (marine mammals) listed. If Omega actually engaged in regular systematic observer coverage, then the assessment team may have been able to conduct a meaningful evaluation, rather than relying on Omega's insufficient and undoubtedly faulty reporting system to conclude that there is no significant bycatch problem with the Atlantic menhaden purse seine fishery.</p> <p>Finally, to justify the SG 80 score, the assessment team consistently notes that the "low levels of bycatch" are a result of the way in which the fishery operates. However, the scope of Omega's operations and the effect of bycatch cannot be fully known when Omega does not consistently engage in collection of or systematically report bycatch. Therefore, this score is unsupported and should be rejected. At best, it merits a conditional requirement rather than a recommendation.</p> <p><i>Evidence relied on in this section comes from SAI Global's Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>Yes, low and sporadic observer coverage did lead the Team to recommend that Omega engage in bycatch studies and yes recommendations are not requirements. However, the reason a Condition was not appropriate in this case is that the fishery did not fail to meet an SG80 and as such a Condition was not appropriate; this has specifically been explained previously (see the Team's response to CBF's comments at the PCDR stage). Furthermore, and just to note, Omega vessels are required to carry observers on request. It is not the Clients 'fault' that management agencies elected not to assign observers to this particular fishery. With all this being said it would indeed be extremely useful if a more up-to-date publically accessible bycatch study was conducted; however, the Team cannot mandate this at this time.</p> <p>It is not likely that, even with the best bycatch reporting mechanism in the world, that the effects of bycatch will ever be fully known. However, the available data supports the conclusions and score arrived at by the Assessment Team. In addition, a conditional requirement is not appropriate at this time.</p> <p>In conclusion and for the reasons outlined above, SAI Global does not feel that any changes to its Final Report and Determination in the light of the evidence presented herein by the Objector are appropriate.</p>

1.2.3 PI 2.5.2 Ecosystem management strategy

	Notice of Objection	SAI Global Response
Performance Indicator	2.5.2 Ecosystem management strategy	
Reason	The assessment team has made a mistake as to a material fact.	There is no mistake as to material fact.
Rationale	<p>Omega does not have a partial strategy in place that would, if necessary, take into account available information and is expected to restrain impacts of the UoA on the ecosystem so as to achieve the Ecosystem Outcome 80 level of performance. Omega barely has measures in place that would, if necessary, take into account the potential impacts of the fishery on key components of the ecosystem.</p> <p>Peer Reviewer B explicitly admits that it was “uncertain” whether this standard was met, as NOAA’s policy of EBFM is single species-based and does not consider other species. Peer Reviewer B leaned towards a score of 60 but is “persuaded” by MSC’s assertion that the U.S. has a “broad range of regulatory measures in place which aim to limit adverse effects of fishing on the marine ecosystem.” This is factually incorrect, and as the U.S. fishery management has moved towards an ecosystem-based management model, Omega has consistently and vehemently pushed back against the incorporation thereof, at every stage of the process.</p> <p>The fishing mortality rate (F), according to the 2015 assessment, has been below the reference target since the early 2000s. However, the previous benchmark assessment stated that menhaden were overfished and that overfishing was occurring. Peer Reviewer B concludes, without any support, that “technical measures used to constrain fishing mortality are working” and that SG80 is warranted despite there being “no clear evidence available because there is no strategy in place to address the impacts of the menhaden fishery on the ecosystem.”</p> <p>Essentially, this recommended certification provides a passing grade for the menhaden purse seine fishery impact on the surrounding ecosystem, despite there being no evidence to support such a finding.</p> <p>In reality, the management strategy currently in place is severely flawed and fails to meet even MSC’s low standards. Certification relies only on a conclusory assumption that NOAA implements, enforces, and requires such a strategy. The certification states that the “partial strategy in place” has “relevant information regarding the stock status, fleet composition, catch composition” and that this</p>	<p>Firstly, this PI does not relate to Omega’s strategy. The Ecosystem component does not repeat the status assessment of the other components individually but rather considers the wider system structure and function; therefore, PI 2.3.2 deals more with broader ecosystem management strategies and is not a rehashing of issues already addressed under other PIs.</p> <p>These three paragraphs apparently relate to mistakes as to the material fact made by a MSC Peer Reviewer (Peer Reviewers are not part of the Team and are entirely external to SAI Global). Such an objection is not to SAI Global’s knowledge within the remit of SAI Global to answer and as such SAI Global has no particular comment here.</p> <p>Just to note that the U.S. does in fact have a broad range of regulatory measures in place which aim to limit adverse effects of fishing on the marine ecosystem some of which are outlined in supporting rationale for this PI.</p> <p>While the Objectors may have some issues with the management strategy currently in place it does meet MSC requirements. Whether or not those standards are ‘low’ is not for the Team to comment on.</p>

	Notice of Objection	SAI Global Response
	<p>data is available to “improve the knowledge about the role of menhaden” in the U.S. Atlantic and yet only one such study is cited.</p> <p>The certification qualifies and defends its SG 80 score for 2.5.2 by discussing the ASFMC’s plans to implement an ecosystem-based management program for the menhaden. However, Omega has consistently protested the implementation of such a program and has vigorously lobbied to prevent the program from being passed during several previous ASMFC voting sessions. See, e.g. Michael O’Connor, Political Persuasion, Virginia Business (March 1, 2019), available here [http://www.virginiabusiness.com/reports/article/political-persuasion]; Press Release: Omega Protein Employees and Supporters Call for Fisheries Managers to Protect Menhaden Jobs, Omega Protein (Nov. 7, 2017), available here [https://www.globenewswire.com/news-release/2017/11/08/1176901/0/en/Omega-Protein-Employees-and-Supporters-Call-for-Fisheries-Managers-To-Protect-Menhaden-Jobs.html].</p> <p>In its conclusion, the certification explicitly concedes that there is “no strategy in place to address the impacts of the menhaden fishery on the ecosystem” and, thus, there is neither testing nor high confidence that any such strategy would work. The approach taken by the assessment team falls far short of the requirement to follow a precautionary and sustainable approach to assessing ecosystem impacts. Therefore, this score is unsupported and should be rejected. At best, it merits a conditional requirement rather than a recommendation.</p> <p><i>Evidence relied on in this section comes from SAI Global’s Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>As discussed previously, the Client is entitled to lobby for or against relevant management measures/legislation as they see fit. Again it is important to note that this PI deals more with broader ecosystem management strategies. The ecosystem management strategy assessed under the ecosystem component is not the ecosystem-based management of menhaden discussed <i>ad nauseam</i> under Principle 1. Omega has issued two press releases that describe its official position on these matters. The IA is requested to consider them in her deliberations. The press releases are available at:</p> <ol style="list-style-type: none"> 1. https://omegaprotein.com/?s=menhaden 2. https://omegaprotein.com/omega-protein-statement-on-asmfc-vote-to-postpone-menhaden-non-compliance-finding/ <p>As with the Primary Species PI previously, this relates to the Objectors not understanding the difference between a ‘partial strategy’ and a ‘strategy’ as defined by MSC (See response to PI 2.1.3 above for further detail). It is SAI Global’s position that the score is both appropriate and supported. Despite the Objectors comment to the contrary, there is currently no recommendation relating to this PI and in any case a Condition is not appropriate.</p> <p>In conclusion and for the reasons outlined above, SAI Global does not feel that any changes to its Final Report and Determination in the light of the evidence presented herein by the Objector are appropriate at this time.</p>

1.2.4 PI 3.1.1 Legal and/or customary framework

	Notice of Objection	SAI Global Response
Performance Indicator	3.1.1 Legal and/or customary framework	
Reason	A score of SG100 is not met for this PI and the assessment team has made a mistake as to a material fact.	There is no mistake as to material fact. Furthermore a score of SG100 is appropriate.
Rationale	<p>The assessment team cites the existing laws and fisheries management groups that exist within the U.S. with no reference whatsoever to the fact that the regulations adopted by the ASMFC are not binding on affected states until and unless affected states ratify those regulations.</p> <p>Ignoring the dual federalism principles apparent throughout the U.S. legal system, the assessment team wholly ignores that when states do not adopt regulations supported by the ASMFC, there is no binding procedure in place for the ASMFC to require such states to adopt and implement measures adopted by the Commission to ensure a sustainable fishery.</p> <p>To receive a score of SG 100 there must be “binding procedures governing cooperation with other parties....” As mentioned above, there are no binding procedures currently in place. This failure to fully account for the serious limitations in existing legal frameworks requires that this performance indicator be reassessed in full and means that it is unreasonable for the CAB to find that the SG 100 benchmark is met.</p> <p>Importantly, a similar situation arose during the certification of the Faeroese Pelagic Organization North East Atlantic mackerel fishery. In that case, many coastal states worked to implement a catch limit for the fishery, but one state decided to declare its own unilateral quota. When reviewing the CAB’s decision and the condition it set, the independent adjudicator found the CAB’s decision unreasonable due to the lack of conformity between the states. This is the exact situation that exists here with respect to Atlantic menhaden.</p>	<p>The CAB understood from the outset of the assessment process that measures adopted by the ASMFC would require parallel legislative action at the State-level for fishing that was carried out in state-managed waters. Having undertaken other assessments and audits of U.S. fisheries, the CAB’s assessment team for this fishery was well acquainted with the dual federal-state governance regimes in existence in the U.S.</p> <p>The CAB disagrees with this characterization. The report clearly indicates that decisions made by the ASMFC or the Menhaden Management Board (for example) are binding on affected States who are then required to enact parallel legislation so that the Commission’s decisions are enforceable in waters managed by the state.</p> <p>The CAB disagrees. There are binding procedures in place as outlined in Amendment 3, and as specified in this report i.e. the ISFMP Charter and the scoring table for PI 3.1.1. Moreover, the ASMFC has clear administrative rules and regulations in place to assist in resolving disputes and in determining whether the actions of a state are non-compliant. If a non-compliance determination is rendered, the Commerce Secretary is authorized to take prescribed action. The assigned SG 100 score is justified and was concurred with by both independent peer reviewers.</p> <p>The CAB disagrees. The example provided differs in a significant way in that Virginia did not unilaterally established its own state quota. Rather, it opted not to enact a regulation that would reduce the ASMFC’s total harvest allocation for the Chesapeake Bay reduction fishery and make the allocation enforceable upon Omega’s fishing fleet.</p>

	Notice of Objection	SAI Global Response
	<p>The Independent Adjudicator found that there was no appropriate framework in place that would allow for the implementation of the condition. Specifically, the Independent Adjudicator noted that the score for this performance indicator depends in part on the presence or absence of an appropriate and effective legal and/or customary framework that is capable of delivering sustainable fisheries in accordance with MSC Principles 1 and 2. Ultimately, the Independent Adjudicator found it unreasonable that the CAB concluded there was an appropriate framework in place, despite the fact that the alleged framework did not have a TAC, nor did it include all of the Coastal States.</p> <p>This is substantially similar to the current legal and governmental framework in place on the Atlantic Coast. As stated throughout, there is no better illustration of this failed legal framework than the Virginia legislature's refusal to adopt ASMFC's standards and quotas with regard to the menhaden fishery. Every single Atlantic state, except Virginia has agreed to catch limits and has banned purse seine fishing in important menhaden waters. As such, there is no appropriate governmental framework in Virginia, where Omega conducts its operations, that will allow for the successful implementation of this condition.</p> <p>Moreover, the Assessment team fails to account for the fact that in Virginia, the only fishery not managed by the Virginia Marine Resources Commission, is the menhaden fishery, underscoring the political rather than science-based approach to the management of this fishery.</p> <p>In supporting its assertion that SG80 is met, the assessment body notes that the existence of the Interjurisdictional Fisheries Act and the Atlantic Coastal Fisheries Cooperative Management Act are sufficient. However, the assessment body ignores the fact that there needs to be an effective system in place.</p>	<p>With respect, this is irrelevant for the reason stated in the previous paragraph. The legal and/or customary framework under which the fishery operates is not rendered ineffective because a state government has decided not to enact a regulation that reflects the established quota for a particular year. The ASMFC has confirmed that the Omega fleet has respected its specific allocation in every year since 2012 including in 2018; peer reviewed stock assessments have determined that the fishery is not overfished and overfishing is not occurring.</p> <p>Virginia's decision relates to a quota and not to the ASMFC's standards as alleged. The decision did not lead to the state opting to unilaterally alter the existing resource sharing arrangement between states nor to set a quota that is different from (i.e. greater) than the one prescribed by the ASMFC</p> <p>The allegation here is that Virginia's decision was politicized. Whether it was or was not is of no relevance in the application of the MSC Standard. There is every indication that the ASMFC considered the science-based aspects of the fishery including the impacts on other species when it reduced the Bay allocation to 51,000 mt. It is not logical to conclude that Virginia actions, of not unilaterally setting a higher allocation and thereby ignoring the science behind the ASMFC's decision, has somehow given rise to a 'failed legal framework' as alleged.</p> <p>The CAB has not ignored the importance of an effective system. In assigning the SG 80 score, the CAB is satisfied that the current system has been demonstrated to be effective such as in relation to the compatibility of laws or standards, the existence of a dispute resolution mechanism, and the existence of entities that promote cooperation between the parties. The assigned score was confirmed to be justified by both independent peer reviewers. The fact that one Atlantic State among over 14 other states has opted to not legislate</p>

	Notice of Objection	SAI Global Response
	<p>As noted above, the current system is ineffective because Virginia refuses to adopt the recommended management standards. Thus, SG 80 is not met. A Report that not only relies functionally on the incorrect assurance that the Omega menhaden fishery will comply with any rules, including ERPs established by the ASMFC in the next year, is a fatal flaw to the scores set forth in this PI as well as the entire Report and should render a “fail” for the this Performance Indicator.</p> <p><i>Evidence relied on in this section comes from SAI Global’s Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>the ASMFC-approved menhaden allocation cap doesn’t give rise to an ineffective legal framework.</p> <p>This statement prejudices Omega’s future decisions and conduct. These can only be properly assessed at the annual surveillance audit stage where evidence (milestones) in support of the Client Action Plan’s conditions is considered and weighed. It is alleged that the report relies on the incorrect assurance that the Omega menhaden fishery will comply with any rules etc. is a fatal flaw to the report’s scoring. In response, the CAB suggests that the IA consider Omega’s official position as expressed in its 6th March 2019 press release (available at https://omegaprotein.com/?s=menhaden).</p>

1.2.5 PI 3.2.3 Compliance and enforcement

	Notice of Objection	SAI Global Response
Performance Indicator	3.2.3 Compliance and enforcement	
Reason	The assessment team has made a mistake as to a material fact and has also failed to engage directly with the state-level and national-level government entities, who are key stakeholders to and lynchpins of this Report.	There is no mistake as to material fact. Furthermore, the Team did interact with relevant government enforcement agencies.
Rationale	<p>Sanctions to deal with non-compliance barely exist and these sanctions are not consistently applied in a manner so as to provide effective deterrence.</p> <p>The enforcement mechanisms for fisheries in the U.S. depend on a comprehensive and complicated dual federalism approach whereby both the ASMFC, operating at a federal level, and the individual affected states adopt and enforce the same rules. The Virginia state legislature does not always, and has not, with respect to the menhaden fishery, adopted the same standards as mandated by the ASMFC. Similarly, the federal enforcement arm—the Department of Commerce—does not and has not brought any action requiring the Virginia state legislature to comply with the federal standards. See “Menhaden Fishery Managers Won’t Pursue Punishment for Virginia” (Feb. 11, 2019), available here [https://www.chesapeakebaymagazine.com/baybulletin/2019/2/7/menhaden-fishery-managers-wont-pursue-punishment-for-virginia] (“ASFMC won’t seek a moratorium from the Department of Commerce, announcing it has ‘indefinitely postponed’ action to find Virginia out of compliance” despite the Virginia legislature’s failure to adopt the reduced catch limits imposed by the ASMFC). Without Virginia’s adoption of the federal system, Virginia operators such as</p>	<p>The CAB pressed enforcement agencies at both levels for enforcement and monitoring data of relevance to the operations of the client group’s purse seine fleet, including whether sanctions were levied in non-compliant situations. We learned that these agencies either did not collect operational data specifically on a fishery-by-fishery or fleet-by-fleet basis, and that whatever data were collected are protected by confidentiality rules. That said, the absence of sanctions information does not by itself indicate the absence of enforcement checks either at sea or at dockside, any more than it is indicative of an ineffective monitoring program with minimal detection capacity. The CAB has included a recommendation in its report which calls upon the client to work collaboratively with federal and state enforcement agencies to develop a data collection, analysis and reporting program in support of their existing Monitoring, Control and Surveillance systems. The CAB intends to pay particular attention to this matter in annual surveillance audits of the fishery.</p> <p>All of the 15 Atlantic coastal states are assigned a percentage of the annual total allowable catch (TAC) — the majority at the default level of 0.5 % of the TAC while the others receive a top up based on the fleet’s catch history. Virginia has the highest allocation at just under 80%. It stands to reason that the set of state rules would be different and several have enacted regulations that have the effect of prohibiting the menhaden purse seine reduction fleet from operating in their waters.</p>

	Notice of Objection	SAI Global Response
	<p>Omega operate under a different management system and set of rules than fishery operators in other states. See 16 U.S.C. §§ 5103-5106.</p> <p>Generally, all available evidence supports a finding that Omega does not and has not complied with the ASMFC management system upon which this certification has relied so heavily. Specifically, Omega does not comply with the ASMFC mandated catch cap in Chesapeake Bay.</p> <p>Omega has a glaring history of advocating against ecological management of Atlantic menhaden. In advocating before both the ASMFC and the Virginia State legislature, Omega has repeatedly lobbied for the least number of restrictions on its fishery and tepid ineffectual management efforts that ignore protection of the Chesapeake Bay ecosystem, specifically and the Atlantic menhaden population, generally. Omega publicly announced that it did not support the ASMFC's recommended reduction of total allowable catch and has ensured the Virginia legislature has followed with support of this notion. Omega also has publicly announced it did not support the use and implementation of ecological reference points to assess the fishery.</p> <p>Supporting the SG80 score, the assessment body relies on the mere existence of a monitoring and control system and its subsequent sanctions. However, the CAB does not support this with any evidence that sanctions have been consistently applied to Omega Protein or the menhaden fishery, noting that it is "unable to determine whether the current MCS has...has been implemented specifically for the menhaden fishery." This is material to the determination that the current system has the ability to enforce necessary measures. Thus, this score is unsupported and should be rejected. At best, it merits a conditional requirement rather than a recommendation.</p> <p><i>Evidence relied on in this section comes from SAI Global's Final Assessment Report and the citations contained therein. Any additional sources relied on in this section are included in the bibliography at the end of this Notice of Objection.</i></p>	<p>This statement is made without evidence to support the allegation. The ASMFC has stated that the Omega fleet has fished within its assigned Bay allocation in every year since 2012, including in 2018.</p> <p>The Client Action Plan for this fishery contains specific conditions and milestones that require that the fishery transition from a single-species assessment and management model to one which incorporates ERP's within a prescribed certification period. Whatever Omega's public position has been to this point, it has accepted the Client Action Plan and will be held responsible for meeting the conditions during the annual surveillance audits. As before, the IA is requested to consider Omega's official position as expressed in its 6th March 2019 press release (available at https://omegaprotein.com/?s=menhaden).</p> <p>The CAB intends to pay particular attention to the outcome of its recommendation beginning at the first surveillance audit in 2020. If circumstances at that time change such that any SG80 is no longer met, consideration will be given to replacing the recommendation with a condition.</p>

1.3 Bibliography

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2 Objection 2 – CBF and TNC

2.1 Objection Pursuant to PD2.7.2.2

The setting of conditions by the 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 CAB could have reached such a decision on the evidence available to it.

2.1.1 Condition 1

	Notice of Objection	SAI Global Response
Performance Indicator	1.2.1 Harvest Strategy	
Condition	<p><u>Condition 1</u></p> <p>The Client Group must provide evidence of the implementation of a harvest strategy that is designed to take into consideration the ecological role of Atlantic menhaden and is responsive to the state of the stock with respect to its role in the U.S. Northwest Atlantic ecosystem.</p> <p><u>Milestones:</u></p> <p>Year 1 (progress to be examined at Surveillance 1)</p> <p>The Assessment Team shall be provided with documentary evidence that the Client group has worked actively, through ASMFC and NMFS, to promote the Development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered. Score: 70.</p> <p>Year 2 (progress to be examined at Surveillance 2):</p> <p>The Assessment Team shall be provided with documentary evidence that the Client group has actively contributed, through ASMFC and NMFS, to the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered. Score: 70.</p> <p>Year 3 (progress to be examined at Surveillance 3):</p> <p>The Assessment Team shall be provided with documentary evidence that the Client group has continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered. Score: 70.</p>	

	Notice of Objection	SAI Global Response
	<p>Year 4 (progress to be examined at Surveillance 4): The Assessment Team shall be provided with documentary evidence that an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered, has been adopted* by the ASMFC (or their designated bodies). Score: 80 (Condition closed). *“Adopted” in this instance is analogous to “in place”; therefore, there should not be a delay between adoption and implementation.</p> <p><u>Client Action Plan:</u></p> <p>Year 1 (progress to be examined at Surveillance 1) Omega Protein will provide documentary evidence that we worked actively, through ASMFC and NMFS, to promote the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered.</p> <p>Year 2 (progress to be examined at Surveillance 2): Omega Protein will provide documentary evidence that we actively contributed, through ASMFC and NMFS, to the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered.</p> <p>Year 3 (progress to be examined at Surveillance 3): Omega Protein will provide documentary evidence that we continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered.</p> <p>Year 4 (progress to be examined at Surveillance 4): Omega Protein will provide documentary evidence that an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered, has been adopted by the ASMFC (or their designated bodies).</p>	
a) Reason	<p>The timeline for the conditions is much too long given the current pace of development of ecological reference points by ASMFC. ASMFC has indicated the ecological reference points should be available for peer review in late 2019.³ Given this timeline the client should have a 2-year window in which to support</p>	<p>It is correct that the timelines for this Conditions do not match ASMFC’s timelines for the development of ERPs. However, condition timelines as outlined are based on the requirement that the Client close the conditions within the certification cycle. In addition the</p>

³ Proceedings of the Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board: <http://www.asmfc.org/uploads/file/5af07725AtlMenhadenBoardProceedingsNov2017.pdf>

	Notice of Objection	SAI Global Response
	<p>the development of an ecosystem-based harvest strategy. In addition, the condition should specify adoption of the harvest strategy and associated regulations by the Commonwealth of Virginia in a timeframe specified by ASMFC. Without adoption by the Commonwealth, the harvest strategy and associated regulations would be rendered essentially meaningless since Virginia controls approximately 80% of the coastwide quota.</p> <p>In addition to conditions already stipulated. Additional stronger components to the Client Action Plan would be:</p> <ul style="list-style-type: none"> ▪ The Client works actively to promote implementation of current ASFMC regulations in Virginia law. ▪ The Client works actively to promote implementation in Virginia law the ASFMC-adopted harvest strategy where the ecological role of menhaden is considered. 	<p>Condition speaks to the need for an appropriate harvest strategy of which implementing ERPs is just one element. If an appropriate harvest strategy is implemented sooner than required the conditions might be closed ahead of schedule. As is the Assessment Team does not deem it necessary to adjust the condition milestones at this time.</p> <p>MSC requirements dictate that Conditions be drafted to follow the narrative or metric form of the Scoring Guidepost(s) the fishery failed to meet (ref. MSC FCR v2.0; 7.11.1.2) and, and should not be prescriptive about the means of meeting conditions (Ref. MSC FCR v2.0; G7.11.2). Therefore, it would not be appropriate to require the additional components suggested by the Objectors.</p>
b) Rationale	<p>The letter from ASMFC Executive Director, Robert Beal, included in the Final Report (p.258), highlights the need for states to implement ASMFC regulations: <i>“The CAP state the ERPs will be “adopted by the ASMFC” as a final step for meeting Conditions 1 and 2. However, the Commission’s “adoption” does not ensure the ERPs are full implemented by all jurisdictions along the Atlantic coast. The final step in ensuring there is a robust and precautionary harvest strategy for lower tropic level species important to the ecosystem, such as Atlantic menhaden, requires the full implementation and enforcement of new management measures by all jurisdictions. As a primary harvester of the resource, the cooperation of the Client is an important step in achieving full implementation.”</i></p> <p>And the letter from the VA Governor’s office (p. 390 and attached here) states that Virginia is currently out of compliance.</p>	<p>The Team is aware of the need for states to implement ASMFC regulations and has understood from the outset that measures adopted by the ASMFC would require parallel legislative action at the State-level.</p> <p>The CAB maintains that, at the time of publication of the PCDR, and indeed to date, there has been no non-compliance finding against the Commonwealth of Virginia. The opinion of the VA Governor’s office that the state is currently out of compliance is irrelevant – only the ASMFC has the authority to issue a finding.</p> <p>SAI Global does not propose to make any changes to either this Condition or the Final Report and Determination in light of the evidence submitted herein by the Objectors.</p>

2.1.2 Condition 2

	Notice of Objection	SAI Global Response
Performance Indicator	PI 1.2.2. There are well defined and effective harvest control rules (HCRs) in place	
Condition	<p>Condition 2: The client must provide evidence of implementation of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden as key low trophic level in the U.S. Northwest Atlantic and that: 1) ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur is approached and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</p> <p><u>Milestones:</u></p> <p>Year 1 (progress to be examined at Surveillance 1): The Assessment team shall be provided with documentary evidence that the Client group has actively worked, through ASMFC and NMFS, to promote the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs. Score: 75.</p> <p>Year 2 (progress to be examined at Surveillance 2): The Assessment team shall be provided with documentary evidence that the Client group has actively contributed, through ASMFC and NMFS, to the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs. Score: 75.</p> <p>Year 3 (progress to be examined at Surveillance 3): The Assessment team shall be provided with documentary evidence that the Client group has continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs. Score: 75.</p>	

	Notice of Objection	SAI Global Response
	<p>Year 4 (progress to be examined at Surveillance 4): The Assessment team shall be provided with documentary evidence that well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs, have been adopted* by the ASFMC (or their designated bodies). Re-score: 80 (Condition closed). *“Adopted” in this instance is analogous to “in place”; therefore, there should not be a delay between adoption and implementation.</p> <p><u>Client Action Plan:</u></p> <p>Year 1 (progress to be examined at Surveillance 1): Omega Protein will provide documentary evidence that we have actively worked, through ASMFC and NMFS, to promote the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</p> <p>Year 2 (progress to be examined at Surveillance 2): Omega Protein will provide documentary evidence that the we have actively contributed, through ASMFC and NMFS, to the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</p> <p>Year 3 (progress to be examined at Surveillance 3): Omega Protein will provide documentary evidence that we have continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</p>	

	Notice of Objection	SAI Global Response
	<p>Year 4 (progress to be examined at Surveillance 4): Omega Protein will provide documentary evidence that well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach the point where serious ecosystem impacts could occur and; 2) are expected to keep the stock fluctuating around a target level consistent with ecosystem needs, have been adopted* by the ASFMC (or their designated bodies).</p>	
a) Reason	<p>The timeline for the conditions is much too long given the current pace of development of ecological reference points by ASMFC. ASMFC has indicated the ecological reference points should be available for peer review in late 2019.3 Given this timeline the client should have a 2-year window in which to support the development of the harvest control rules and associated tools. In addition, the condition should specify adoption of the control rule by the Commonwealth of Virginia in a timeframe specified by ASMFC. Without adoption by the Commonwealth, the harvest control rule would be rendered essentially meaningless since Virginia controls approximately 80% of the coastwide quota.</p>	<p>It is correct that the timelines for this Conditions do not match ASMFC's timelines for the development of ERPs. However, condition timelines as outlined are based on the requirement that the Client close the conditions within the certification cycle. In addition the Condition speaks to the need for appropriate HCRs of which implementing ERPs is just one element. If appropriate HCRs are implemented more quickly than required the conditions might be closed ahead of schedule. As is the Assessment Team does not deem it necessary to adjust the condition milestones at this time.</p> <p>The Year 4 milestone for this Condition specifically states that appropriate HCRs have been adopted* by the ASFMC (or their designated bodies).It is also explicitly stated that "adopted" is analogous to "in place".</p> <p>As discussed previously, MSC requirements dictate that Conditions be drafted to follow the narrative of the relevant Scoring Guidepost(s) (ref. MSC FCR v2.0; 7.11.1.2) and, and should not be prescriptive about the means of meeting conditions (Ref. MSC FCR v2.0; G7.11.2). Therefore, it would not be appropriate to require the additional components suggested by the Objectors.</p>
b) Rationale		<p>No rationale provided. SAI Global does not propose to make any changes to either this Condition or the Final Report and Determination in light of the evidence submitted herein by the Objectors.</p>

2.2 Objection Pursuant to PD2.7.2.3

The score given by the CAB in relation to one or more 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.

2.2.1 General comment

Notice of Objection	SAI Global Response
<p>We addressed a suite of issues in our comments on the PCDR which we still believe are relevant and have not adequately been addressed by the CAB. Appropriate management of this key low-trophic level species has generated a great deal of debate at the Atlantic States Marine Fisheries Commission and all along the Atlantic Coast. Much of this debate has centered on the importance of this fish to the broader ecosystem and the relatively narrow geographic area in which the vast majority of the fishery takes place. Two major issues affecting the management of the species are the lack of a regional population estimate that would ensure an appropriate management plan for all harvests within Chesapeake Bay and the lack of compliance by the Commonwealth of Virginia with the coast-wide fishery management plan for this species. The lack of compliance is a particularly acute issue because the state is home to approximately 80% of the total coastwide landings and this lack of compliance is based solely on actions by the client that is currently seeking certification. Due to these concerns, we believe certification of the fishery at this time is premature. For the purposes of this objection, we will highlight only the most glaring concerns.</p> <p>While many stakeholders may not have the capacity or the financial resources to engage in the objections process, I would encourage the Adjudicator to review the thoughtful and insightful comments, particularly on the compliance issue, which have not been adequately addressed by the CAB.</p>	<p>SAI Global strongly feels that all 'within scope' substantive elements of all stakeholder comments submitted to date have been extensively addressed as required by the MSC requirements.</p>

2.2.2 PI 1.1.1a Stock Status (Scoring Issue A)

	Notice of Objection	SAI Global Response
Performance Indicator	PI 1.1.1a S1a The stock is at a level which has a low probability of serious ecosystem impacts. – Scoring Issue (a). Stock status relative to ecosystem impairment.	
Reason	<p>CAB issued a score of 80.</p> <p>Based on the 2017 single-species stock assessment (without even including ecosystem needs), the spawning stock biomass (described as FEC - fecundity or number of eggs as a measure of reproductive potential) was 83,486 billion eggs. MSC FCR v2.0 guidance (p.120) states that <u>“the point where serious ecosystem impacts could occur shall be interpreted as being substantially higher than the point at which recruitment is impaired (PRI), as determined for the target species in a single species context.”</u></p> <ul style="list-style-type: none"> – The menhaden stock assessment sets a threshold to prevent the stock from reaching a point where productivity may become compromised (read: recruitment impaired)⁴. The threshold reference point for menhaden was SSB 21% = 57,295 billion eggs. The stock is well above this level. – BUT, MSC guidance states that the point where serious impacts could occur shall be substantially higher—and the menhaden stock assessment provides this target. The target reference point was SSB 36% = 99,467 billion eggs. <u>The stock is below this level. SG60 is not warranted for PI 1.1.1A issue (a).</u> – The current SSB of 83,486 billion eggs would be SSB 30%. 	<p>Yes, MSC guidance states that the point where serious impacts could occur shall be substantially higher than the point of recruitment impairment (PRI) as determined in a single-species context. It is however not true to say that the menhaden stock assessment provides this target. The single-species target (i.e. SSB_{36%}) is not a commentary on the position of the stock with respect to ecosystem needs and such it is not appropriate to concluded that SG60 is not met simply because SSB_{Current} (Single-species) < SSB_{Target} (Single-species).</p> <p>The score of 80 for this PI is not based on the metrics described by the Objectors here. Full rationale for the metrics have been presented in the scoring table for this PI as well as in relevant background sections. The assigned score was found to be appropriate by both independent peer reviewers.</p>
Rationale	The CAB did not respond to our comment on issue (a) in the Final Report. They alluded to it in their response to issue (b), but they confounded issues (a) and (b) and in doing so, missed our concern. The criteria for SG60, “It is likely that the stock is above the point where serious ecosystem impacts could occur”, is not met for PI 1.1.1A issue (a).	<p>The Team would like to acknowledge that they did in fact inadvertently miss that section of the stakeholder comment referenced by the Objectors and would like to apologize for doing so. Additional rationale has been added to the report in response that specific aspect of the TNCs comment as follows:</p> <p><i>The Team does not disagree with any of the metrics presented (i.e. SSB_{Threshold} = SSB_{21%} = 57,295 billion eggs; SSB_{Target} = SSB_{36%} = 99,467 billion eggs and SSB_{Current} = 57,295 billion eggs which equates to SSB_{30%}. Additionally the stakeholder is correct in that MSC guidance states that the point where serious impacts could occur shall be substantially higher than the point of recruitment impairment (PRI)</i></p>

⁴ ASMFC. 2008. Development and Use of Reference Points: <http://www.asmf.org/uploads/file/developmentAndUseOfReferencePoints.pdf>

	Notice of Objection	SAI Global Response
		<p><i>as determined in a single-species context. It is however not true to say that the menhaden stock assessment provides this target. The single-species target (i.e. $SSB_{36\%}$) is not a commentary on the position of the stock with respect to ecosystem needs.</i></p> <p>See above for an additional specific response regarding the assertion that SG60 is not met.</p> <p>Beyond the additional rationale outlined above, SAI Global does not propose to make any changes to either the score for this PI or the Final Report and Determination in light of the evidence submitted by the Objectors.</p>

2.2.3 PI 1.1.1a Stock Status (Scoring Issue B)

	Notice of Objection	SAI Global Response
Performance Indicator	<p>PI 1.1.1a SIb The stock is at a level which has a low probability of serious ecosystem impacts.</p> <p>– Scoring Issue (b). Stock status in relation to ecosystem needs.</p>	
Reason	<p>MSC FCR v2.0 guidance for issue b (p.120) states: <i>When scoring PI 1.1.1A scoring issue (b), the expectations for key LTL species shall be as given below:</i></p> <ol style="list-style-type: none"> <i>The default biomass target level consistent with ecosystem needs shall be 75% of the spawning stock level that would be expected in the absence of fishing.</i> <i>A higher or lower target level, down to a minimum allowed 40% of the spawning stock level that would be expected in the absence of fishing, may still achieve an 80 level score if it can be demonstrated, through the use of credible ecosystem models or robust empirical data for the UoA/ecosystem being assessed, that the level adopted:</i> <ol style="list-style-type: none"> <i>Does not impact the abundance levels of more than 15% of the other species and trophic groups by more than 40% (compared to their state in the absence of fishing on the target LTL species); and</i> <i>Does not reduce the abundance level of any other species or trophic group by more than 70%.</i> <p>The stock is only estimated to be at 46.7% of unfished total biomass. Therefore, <i>criteria (a) biomass target of 75%</i>, is not met.</p>	<p>Yes this is all correct and this exact passage of the MSC requirements has been included numerous times in full in the report.</p> <p>Yes, and this fact is specifically acknowledged in the report on numerous occasions.</p>

	Notice of Objection	SAI Global Response
	<p>The CAB awarded a score of 80 based on <i>criteria (b) a lower target level down to a minimum of 40% total biomass</i>. Evidence is presented from the Buchheister et al. 2017 paper to show that abundance levels of other species would not be affected beyond defined levels. However, if fishing down to a target of 40% results in almost total loss of spawning adults (only 4% of SSB!), an alarming scenario for the sustainability of the menhaden stock, then clearly a 40% minimum is too low and a score of 80 is not justified.</p>	<p>The Team did not award a score of 80 based on criteria (b) as suggested by the Objectors. The Team in fact scored this SI using an ensemble approach of which this criterion was just one element; this ensemble approach included the following::</p> <ol style="list-style-type: none"> 1. $B_{2017}/B_0 = 0.467$ (i.e. above the lowest biomass target potentially allowable under MSC for a key-LTL stock ($B = 40\%B_0$)). 2. F has been below $F = 0.5M$ for the last 12 years. 3. F has been below the level expected to result in $B = 40\%B_0$ for almost the entire time series and close to the level expected to result in $B = 75\%B_0$ for the last 9 years. <p>The Team also repeatedly points out the statement that the fishery might still achieve SG80 with a biomass target somewhat below $75\%B_0$ and potentially as low as $40\%B_0$ pertains specifically to the fishery's conformance to MSC requirements and is not a comment on whether such a target would be realistic/desirable in the real world.</p>
Rationale	<p>For reasons stated in our previous comments (p. 493 of Final Report), we strongly disagree with the decision to use total biomass rather than spawning stock biomass to calculate the reference points for key-LTL species because of the dire consequences for mature fish at very low levels of stock biomass. However, even if Total biomass is used, the current stock is only estimated to be at 46.7% of unfished biomass, so criteria (a) biomass target of 75%, is not met.</p> <p>The CAB provides a long explanation of the process that led them to use Total biomass over Spawning Stock Biomass (p. 50-51 of the Final Report), but it is unclear why the MSC issued the clarification that either Total Biomass or SSB is acceptable, as if they are interchangeable, when in fact they are two very different concepts that have very different biological/ecological implications. And this clarification contradicts their own guidance for Key-LTL species.</p> <p>Free to make the decision between Total and SSB, the CAB decided to use Total Biomass. And yet in the following paragraphs (p 51) they go on to say that the BERP (and ultimately the ASMFC at their Nov 2017 meeting) did not feel these rule-of-thumb reference points in Smith et al. and Pikitch 2012 were suitable for menhaden:</p>	<p>The Objectors disagreement with the use of total biomass has been noted and responded to previously. The fact that current stock is only estimated to be at 46.7% of unfished biomass is specifically acknowledged in the report on numerous occasions including that criteria (a) [of MSC FCR v2.0; SA2.2.13] biomass target of 75%, is not met.</p> <p>As pointed out, the Team clearly explain the process that led them to use total biomass over SSB. It is not for the Team, or SAI Global, to comment on why MSC issued the interpretation they did.</p> <p>So as to be as transparent as possible, the Team tried to present all of the arguments both for and against the route they ultimately deemed to be the most appropriate by which to assess the fishery.</p>

	Notice of Objection	SAI Global Response
	<p><i>However, there are also disadvantages surrounding the use of reference points that preserve a certain proportion of total biomass instead of spawning stock biomass or fecundity. A concern in this regard has previously been expressed by the ASMFC's BERP committee due to the fact such reference points may result in a level of spawning potential well below the current single species fecundity limit. This concern results from the fact that Age 0 and 1 menhaden represent a significant proportion of total menhaden biomass, but do not contribute to the spawning population (they are also not targeted by the fishery) with most Atlantic menhaden reaching maturity around late age 2. Therefore, the level of fishing pressure that reduces total biomass to 40%B0 is higher than almost anything seen in the history of the fishery.</i></p> <p>But the CAB left out the end of the BERP's sentence and most important point... "Therefore, the level of fishing pressure that reduces total biomass to 40%B0 is higher than almost anything seen in the history of the fishery and results in almost total loss of spawning adults."⁵</p> <p>The CAB goes on to say (p. 51):</p> <p><i>Ultimately the current 'rule of thumb' reference points would seem to be ill-suited to menhaden and this is why the ASMFC set up the BERP committee to consider and develop alternatives that are better suited to the menhaden stock.</i></p> <p>The MSC FCR guidance is written broadly to allow for assessment of any fishery. It is disingenuous to knowingly apply the Standard in such a way that, data demonstrates, does not make sense for a particular species in the real world. In making this statement on p.54 of the Final Report, "Based on this evaluation, the Assessment Team is merely pointing out that the fishery might still achieve SG80 with a biomass target somewhat below 75%B0 and potentially as low as 40%B0. It is important to note that this statement pertains specifically to the fishery's conformance to MSC requirements and is not a comment on whether such a target would be realistic/desirable in the real world" they CAB is knowingly applying the standard in such a way that doesn't make sense for this species.</p>	<p>The passage quoted is not a direct quote from ASMFC and such the passage is not 'left out'. In any case and as previously discussed the Team is at no point advocating for or indeed against the use of 40%B0 as a reference point for Atlantic menhaden; the Team is simply laying out the 'facts' as they relate to the fishery's conformance with relevant MSC requirements.</p> <p>Again the Team is simply laying out the facts as they found them. While the MSC FCR might be intended to allow for assessment of any fishery it is not 'guidance' but requirements. Therefore, far from being disingenuous or knowingly applying the standard in such a way that doesn't make sense for menhaden, the Team applied the relevant MSC requirements for key-LTL species in the manner prescribed by the defined processes—that is the role of an Assessment Team.</p>

⁵ BERP Workgroup July 14, 2017 memo: https://asmfc.org/uploads/file/598dd1b9AtlanticMenhadenDraftAmendment3_PublicComment.pdf

2.2.4 PI 2.5.2 Ecosystem management

	Notice of Objection	SAI Global Response
Performance Indicator	PI 2.5.2. There are measures in place (a management strategy) to ensure UoA does not cause serious harm to ecosystem structure and function.	
Reason	Given the current reliance on single-species reference points, the management strategy does not even meet SG60 for key-LTL. A score of SG60 or higher would require “measures in place, if necessary which take into account the potential impacts of the fishery on key elements of the ecosystem”.	The Ecosystem component deals more with broader ecosystem management strategies and is not a rehashing of issues relating to the lack of ecosystem-based management of menhaden which all specifically addressed under Principle 1.
Rationale	<p>For menhaden, key elements of the ecosystem are the predator-prey relationships and the role of menhaden as prey. The current management isn’t designed to consider impacts to the ecosystem—which is exactly the reasoning the CAB gave an SG80 score instead of 100). CAB justification states: “Due to the continuing use of single-species references points, it cannot be said that there is a strategy that consists of a plan in place that is designed specifically to address all main impacts of the UoA on the ecosystem; therefore, SG100 is not met.”</p> <p>The rationale provided by the CAB is that NOAA has an EBFM policy, and that a broad range of management measures are in place (e.g. total annual catch, etc.). These measures are “expected to restrain impacts of the UoA on the Ecosystem”— actually, the management system is a single-species-based system and isn’t designed to consider impacts to the ecosystem (which is the exact reasoning the CAB gave an SG80 score). The Commission is currently working to make the switch to ecosystem-based management.</p> <p>Also, the management strategy evaluation (b) and management strategy implementation (c) are both single-species focused.</p>	<p>The Ecosystem component does not repeat the status assessment of the other components individually but rather considers the wider system structure and function. What the Objectors deem to be key elements of the ecosystem (i.e. predator-prey relationships and the ecosystem role of menhaden) have been assessed extensively under Principle 1 PIs and as such are not re-visited in detail again under PI 2.5.2.</p> <p>As the specifics of ecosystem-based management of menhaden, or the lack thereof, have been addressed in detail in P1. PIs 2.5.1 – 2.5.3 relate more to the broader mid-Atlantic ecosystem and other more ‘high level’ ecosystem management.</p>

Why you believe that the effect of the score in relation to one or more of the particular performance indicators in question was material to the determination such that the determination should be altered.

Notice of Objection	SAI Global Response
<p>TNC and CBF believe that errors were made by the CAB is scoring PI 1.1.1A and PI 2.5.2 primarily due to the incorrect treatment of this key LTL species. Our organizations have provided additional information and a rationale for including this information that should be reviewed by MSC staff in order to correct this scoring deficiency.</p> <p>The Atlantic menhaden fishery is currently lacking an ecosystem-based assessment for this key LTL species to determine the likelihood of the stock being at a level which may seriously impact the ecosystem. Therefore, scientists and managers must rely on the science and data that is currently available and use this suite of indicators to determine stock status relevant to ecosystem impairment and ecosystem needs. The evidence we present above does not provide a high degree of certainty that serious ecosystem impacts are not occurring.</p>	<p>SAI Global does not believe that errors were made in the scoring of PI 1.1.1A and PI 2.5.2 and is confident that Atlantic menhaden, as key LTL stock, has been treated appropriately. It is not clear if the ‘additional information and a rationale’ referred to is that contained within the Notice of Objection but in any case it is not the role of MSC staff to correct what the Objectors perceive to be a scoring deficiency.</p> <p>Yes, there is a current lack of an ecosystem-based assessment for menhaden. Therefore, the Assessment Team have relied on best available science and data and a suite of indicators defined by the MSC requirements for key-LTL species to determine stock status relevant to ecosystem impairment and ecosystem needs. The Team is quite clear that the level of uncertainty involved precludes a higher score than that already given.</p>

2.3 Objection Pursuant to PD2.7.3

Additional information not forming part of the record that is relevant to the circumstances at the date of the determination has not been considered.

	Notice of Objection	SAI Global Response
Information	<p>Relating to Principle 3 — Effective Management (Pls 3.1.1, 3.2.1, 3.1.2, 3.2.2, 3.1.3, 3.2.3 and 3.2.4)</p> <p>Virginia, the largest quota holder in the fishery, and home to the Omega Protein reduction fishery, is not in compliance with the ASFMC Atlantic Menhaden Fishery Management Plan.</p>	
Reason why information was known or should reasonably have been known.	<p>While working on behalf of the client, the CAB only reviewed the actions of the Atlantic States Marine Fisheries Commission. The CAB failed to review the actions by the client within the state of Virginia that have led to the state not being in compliance with the fishery management plan.</p> <p>These actions indicate a strong unwillingness to comply with MSC Principle 3: <i>Effective Management</i>.</p> <p>By not appropriately reviewing these actions the CAB has put MSC at risk of certifying a fishery that fails to respond appropriately to the very management actions that it included in the draft Conditions for certification.</p>	<p>SAI Global first became formally aware of the ASMFC's concerns in respect of Virginia's position on Amendment 3 when the ASMFC issued a press release in May 2018 (available at: http://www.asmfmc.org/uploads/file/5aea1338pr14Menhaden_VACo_mpliance.pdf). The press release indicated that the Menhaden Management Board had postponed submitting a <u>potential</u> non-compliance action to the Commission's ISFMP until the Commission's August 2018 meeting.</p> <p>As with any allocation holder and stakeholder, the client was well within its rights to voice its concerns with any provision of the FMP's Amendment 3. There is no clause in the MSC Standard that requires Omega to notify SAI Global of its engagement with a third party. Moreover, in the absence of a requirement, the Standard does not equate an engagement of the kind taken by Omega as indicative of it being unwilling to comply with Principle 3.</p> <p>This is highly unlikely given the independent peer review process during the assessment stages, and technical scrutiny by the MSC that precedes a certification determination. In any event, the client has accepted responsibility for meeting the annual milestones that make up the conditions of the Client Action Plan, and SAI Global intends to closely monitor developments during the annual surveillance audits.</p>
Reason why information should reasonably have been made available.		

	Notice of Objection	SAI Global Response
Reason why information could have been material to the determination or the fairness of the assessment.	<p>We do not dispute that the Atlantic menhaden fishery has a management system in place that meets the MSC standard. However, the commonwealth of Virginia, the largest quota holder in the fishery and the state in which the Client operates, is not in compliance with the management plan. Furthermore, the Client has actively opposed legislation which would bring Virginia into compliance with the ASMFC's Menhaden Management Plan. For this reason, this Omega Protein Atlantic Menhaden Reduction Fishery does not meet the MSC standard for Principle 3: <i>Effective Management</i>.</p> <p>The relevant section from the VA code demonstrates Virginia's inconsistency with the requirements of the Menhaden Fishery Management Plan (we have inserted red highlight):</p> <p>From: https://law.lis.virginia.gov/vacode/28.2-1000.2/ § 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.</p> <p>"C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year.</p> <p>D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest."</p> <p>Here is a link to Amendment 3 of the Menhaden Fishery Management Plan, indicating what the Virginia code would need to say to achieve compliance. http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3_Nov2017.pdf</p>	<p>Again, the client is entitled to raise any concerns over the provisions of a FMP or Amendment and to engage regulators to make its concerns known. The MSC Standard does not require that the client group inform a CAB of its engagement with a regulatory body nor does it require that the nature and scope of the discussions be divulged to SAI Global.</p> <p>SAI Global is aware of this provision of Virginia's code. SAI Global is also aware of the requirements of Section 7 of the ISFMP Charter as to the grounds for determining when a state is out-of-compliance with provisions of a FMP. Equally, SAI Global has reported on the ASMFC's rules and regulations as well as its administrative policies in place for responding to a possible out-of-compliance situation. That said, SAI Global has neither the authority nor the obligation under the MSC Standard to render a determination as to whether a State is/is not in an out-of-compliance situation for failing to enact legislation relating to changes in a FMP or Amendment. The change in question pertains to the annual total allowable harvest (CAP) for the Chesapeake Bay reduction fishery, and Virginia's decision to not initiate a regulation at that time to formally endorse the ASMFC's allocation for Chesapeake Bay.</p> <p>SAI Global maintains that Virginia's decision did not have the effect of rendering the fishery's management system ineffective under Principle 3. The decision was not accompanied by an action to unilaterally raise the Bay cap to a level above what the ASMFC had established as a precautionary measure.</p>

	Notice of Objection	SAI Global Response
	<p>pg 45. “4.3.7 Chesapeake Bay Reduction Fishery Cap The annual total allowable harvest from the Chesapeake Bay by the reduction fishery is limited to no more than 51,000 mt. The intent of the Cap is to prevent all of the reduction fishery harvest from occurring in the Chesapeake Bay, a critical nursery area for Atlantic menhaden. Harvest for reduction purposes shall be prohibited within the Chesapeake Bay when 100% of the cap is harvested from Chesapeake Bay, which is defined as areas shoreward of the Chesapeake Bay Bridge Tunnel. Harvest above the Cap in any given year will be deducted from the next year’s allowable harvest. Furthermore, unused quota from a region or state cannot be transferred to the Cap to reduce an overage. Any amount of unlanded fish under the Cap cannot be rolled over into the subsequent year. As a result, the Cap in a given year cannot exceed 51,000 mt.”</p> <p>Our concerns have not been adequately addressed by the CAB. The CAB’s response to our comment letters focused on management by the Virginia General Assembly (p. 509 of final report PI 3.1.1), not on the fact that Virginia is not in compliance with the FMP. Section 5.0 of Amendment 3 to the Interstate Fishery Management Plan (FMP)⁶ clearly states that, “The full implementation of the provisions included in this amendment is necessary for the management program to be equitable, efficient, and effective.” At this time full implementation of the plan by the Commonwealth of Virginia has not been accomplished solely to due lobbying efforts by Omega Protein.</p> <p>The Governor’s Office of Virginia verified that the Commonwealth is not in compliance with ASMFC regulation (p. 390 of the Final Report), and that “Omega Protein has fought to prevent Virginia from adopting the measures...” (p. 391). Letter from the Governor’s Office is also attached here.</p> <p>Virginia’s General Assembly has completed two legislative sessions during which they could have adopted necessary legislation in order to bring Virginia into compliance with the FMP. During both sessions legislation that would have done so was not adopted based upon</p>	<p>The objecting parties have relied upon a letter issued by the VA Governor’s office to the effect that the state is in a non-compliant situation, and, therefore, SAI Global should have responded to the parties’ previous letters. As previously argued, SAI Global is of the view that the VA Governor is not empowered to render a decision on whether a state is compliant or not. That authority resides solely with the ASMFC which has not issued such a finding.</p> <p>The verification alluded to here would only be germane if in fact the ASMFC had issued a finding of non-compliance.</p> <p>SAI Global agrees that the VGA has not passed legislation as described. As previously stated, SAI Global has no authority under the MSC Standard to make a determination as to whether VA is or is not in compliance with the ASMFC’s FMP. SAI Global does not agree that</p>

⁶ Atlantic States Marine Fisheries Commission: http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3_Nov2017.pdf

	Notice of Objection	SAI Global Response
	<p>lobbying efforts by Omega Protein^{7,8}. These efforts prove that Omega Protein is not sufficiently invested in managing this resource through a cooperative coastwide approach as should be the case for this vitally important forage species.</p> <p>If the Conditions of Certification do not require the Client to adhere to the ASMFC management process, through implementation in all of the states, it is possible that future rule-making by the ASMFC will not be implemented in Virginia, as is the current situation. In his letter to the CAB (p. 258 of the Final Report), Robert Beal, Executive Director of the ASMFC, highlighted that an important part of the cooperative, interstate management process is “full implementation and enforcement of new management measure by all jurisdictions” not just adoption by ASMFC.</p> <p>We would encourage the Adjudicator to review the thoughtful and insightful comments related to compliance from multiple stakeholders (see MA DMF and CCA MD, among others) submitted during review of the PCDR.</p> <p>The CAB also states that all stakeholders have the right to lobby. We do not disagree with that statement. However, the time to appropriately lobby is during the various ASMFC processes such as the public scoping period, public comment periods, and the ASMFC meetings that take place prior to the final votes on regulations. Once ASMFC has passed a regulation, then the states must implement it or work through the appropriate processes such as the appeal process. This is one of the backbones of cooperative coastwide fisheries management. In this case, Omega Protein worked to undermine the ASMFC process by lobbying the legislature to not implement modest updates to the fishery management plan that were adopted overwhelmingly during a special meeting of the ASMFC. Omega Protein’s efforts therefore fail to protect the resource and undermine the cooperative ASMFC management process and most importantly does not meet the intentions of MSC Principle 3.</p>	<p>Omega’s intervention is proof that it is not sufficiently invested in managing this resource. This allegation ignores Omega’s continuing involvement in a number of initiatives that support the underlying tenets of the fishery’s management system including scientific research and monitoring.</p> <p>SAI Global agrees with Mr. Beal’s position given the inter-jurisdictional imperatives associated with the fishery. State compliance is always preferred to state non-compliance. However, when state non-compliance is alleged or arises, it is important to note that there are rules and regulations in place to allow the parties to air their differences and endeavor to resolve them.</p> <p>The MSC Standard does not prescribe a norm as to a client group’s expected behavior when it disagrees with a FMP provision. Accordingly, a client group is free to engage legislators at any time before, during and after the consultation and decision-making requirements of Principle 3. SAI Global has no knowledge of any representations made by Omega at the 6th August 2018 meeting of the ASMFC’s Menhaden Management Board meeting. SAI Global is aware of Omega’s position as expressed in a 7th August 2018 press release (available at: https://omegaprotein.com/omega-protein-statement-on-asmfc-vote-to-postpone-menhaden-non-compliance-finding/). The official minutes of the Board’s August 2018 meeting are available at: (http://www.asmfc.org/files/Meetings/2018SummerMeeting/2018SummerMeetingSummary.pdf).</p>

⁷ Richmond Times Dispatch. https://www.richmond.com/news/virginia/government-politics/generalassembly/house-kills-fish-bill-does-virginia-risk-falling-out-of/article_b0a7f75f-f95f-582a-8556-7b2f4bd30806.html

⁸ WVTF. <https://www.wvtf.org/post/tiny-fish-causes-big-controversy-richmond#stream/0>

2.4 Supplementary Letter

The Supplementary Letter of April 10th, 2019 has been broken into paragraphs for ease of response; the entire letter including footnotes is included below.

Notice of Objection	SAI Global Response
<p>April 10, 2019</p> <p>Melanie Carter Independent Adjudicator</p> <p>Dear Ms. Carter,</p> <p>Thank you for your letter requesting clarification to sections of the objection submitted on behalf of The Nature Conservancy and the Chesapeake Bay Foundation. In order to respond to your request, we have provided the additional information as below.</p>	<p>No response.</p> <p>Note. SAI Global did request a copy of the referenced letter from the IA to the Objectors requesting clarification to sections of the original Notice of Objection but this was not provided.</p>
<p>Regarding Part 5 and the objection to conditions, Condition 1 calls on the Client Group to provide “evidence of the implementation of a harvest strategy” that does several things. Exactly such a harvest strategy is under development by the Atlantic States Marine Fisheries Commission (ASMFC). The condition is arbitrary in failing to acknowledge the existence of the ASMFC process and failing to require conformance to requirements that may arise from that process. The condition is also unreasonable given that the Client Group has actively opposed Virginia’s enactment of the ASMFC Atlantic Menhaden Fishery Management Plan⁹. Looking at the Table of Conditions on page 250 of the Final Report¹⁰, it appears as if the Milestones and Client Action Plan are part of the Condition, describing the progress of how the Client will meet the Condition. If indeed “the Client Action Plan is outside the jurisdiction of this ground of objection” as stipulated in your letter, then the Condition itself must be strengthened to ensure full implementation of a harvest strategy appropriate for Key-LTL species in the timeframe that has already been established by the management body (the ASMFC). We suggest the following changes (highlighted in red) to Condition 1:</p> <p><i>The Client Group must provide evidence of the complete implementation of any management changes by the Commonwealth of Virginia, as required by the Interstate Fisheries Management Program Charter¹¹ of Atlantic States Marine Fisheries Commission, of a harvest strategy that is designed to take into consideration the ecological role of Atlantic menhaden and is responsive to the state of the stock with respect to its role in the U.S. Northwest Atlantic ecosystem, at such time the harvest strategy is established by the ASFMC.</i></p>	<p>For the reasons previously outlined in relation to this Condition in the associated Notice of Objection much of what is suggested here is not appropriate and/or not possible and is based on the Objectors fundamentally misunderstanding the MSC requirements around Conditions and/or the CAB’s specific obligations to provide proper and fair interpretation of the requirements.</p> <p>Just to point out that while the milestones are part of the Condition the Client Action Plan is not. The CAP has been developed and submitted by the Fishery Client (i.e. Omega Protein) and represents their plan for ensuring that the various condition milestones are met.</p>

⁹ <https://www.delmarvanow.com/story/news/local/virginia/2018/03/11/menhaden-fishery-harvest-limits-chesapeake/414082002/>.


¹⁰ Final Report and Determination - Omega Protein Corporation U.S. Atlantic menhaden purse seine: <https://fisheries.msc.org/en/fisheries/omega-protein-corporation-u.s.-atlantic-menhaden-purse-seine/@assessments>.

¹¹ Interstate Fisheries Management Program (ISFMP) Charter, Nov 2017, ASMFC: http://www.asafc.org/files/pub/ISFMPCharter_Nov2017.pdf.

Notice of Objection	SAI Global Response
<p>Condition 2 calls on the Client Group to provide “evidence of implementation of well-defined harvest control rules.” Harvest control rules are adopted by ASMFC, and the states that comprise ASMFC are obligated to enact those rules (per ISFMP Charter referenced above). The condition is arbitrary in failing to acknowledge and require compliance with ASMFC rules AND state rules that Virginia is obligated to enact. The condition is also unreasonable given that the Client Group has actively opposed Virginia’s enactment of these rules (see Delmarva Now article cited on previous page).</p>	<p>See previous response in relation to this Condition in the associated Notice of Objection.</p>
<p>The rationale for Condition 2 for PI 1.2.2 is that given the fact that Virginia has not codified Amendment 3 regulations into VA law, as required by the ISFMP Charter of the ASMFC, there is no reason to think that the Commonwealth would implement future harvest control rules and tools. The letter from ASMFC Executive Director, Robert Beal, included in the Final Report (p.258), highlights the need for states to implement ASMFC regulations:</p> <p><i>“The CAP state the ERPs will be “adopted by the ASMFC” as a final step for meeting Conditions 1 and 2. However, the Commission’s “adoption” does not ensure the ERPs are full implemented by all jurisdictions along the Atlantic coast. The final step in ensuring there is a robust and precautionary harvest strategy for lower tropic level species important to the ecosystem, such as Atlantic menhaden, requires the full implementation and enforcement of new management measures by all jurisdictions. As a primary harvester of the resource, the cooperation of the Client is an important step in achieving full implementation.”</i></p> <p>Also, the letter from the VA Governor’s office (p. 390 of the Final Report) states that Virginia is currently out of compliance.</p>	<p>See previous response in relation to this Condition in the associated Notice of Objection.</p>
<p>Regarding the new information in section 7 of the objection form. In order to clarify our comments, we agree to submit these concerns under the scoring section in Part 6, Objection Pursuant to PD 2.7.2.3. The concerns are specific to the scoring on PI 3.1.3 for which the CAB incorrectly scored as meeting SG 100. During its review, the CAB only referenced actions by the ASMFC and incorrectly stated that, “... the menhaden fisheries operating in State water are managed in accordance with the same long-term objectives...” In doing this, the CAB made two significant errors: first, it referenced Amendment 2 to the Interstate Fishery Management Plan instead of Amendment 3 which is the most current update, and second, it failed to recognize Virginia’s lack of compliance by with the Chesapeake Harvest Cap contained in Amendment 3.</p>	<p>Any reference to Amendment 2 is a reflection of the CAB’s earlier compilation of information during the July 2017 site visits when the Amendment was in force. The CAB took notice that Amendment 3 was adopted by the ASMFC in November 2017. The CAB further noted that the long-term objectives for the menhaden fishery remained substantially unchanged from Amendment 2 to Amendment 3 and continued to support the ongoing endorsement of a precautionary approach to the fishery’s management regime. As previously mentioned, the CAB has no authority to make a determination as to whether Virginia is or is not in an out-of-compliance situation; that determination resides at the outset with the ASMFC. In May 2018, the ASMFC initiated a potential non-compliance finding in response to Virginia’s failure to fully implement the mandatory provisions of Amendment 3 to the IFMP. The objection alleges that the CAB</p>

Notice of Objection	SAI Global Response
	incorrectly scored PI 3.1.3 at the SG 100 level. Accordingly, the CAB is satisfied that its SG 100 score is appropriate; both independent peer reviewers concurred that the score for this Performance Indicator was justified.
This error was compounded by the fact that the CAB did not uncover Omega Protein’s efforts to keep Virginia from adopting necessary updates to its fishery management plan to comply with Amendment 3 the Interstate Fishery Management Plan for Atlantic Management as adopted by the Atlantic States Marine Fisheries Commission in November 2017.	There was no error. The CAB properly presented information that was publicly available at the time the report was peer reviewed. At no time did the CAB knowingly withhold publicly available information that was deemed to be pertinent to the assessment of the fishery.
As detailed in our submission, Omega Protein, who holds approximately 80-percent of the coastwide quota, was strategically working to keep the Commonwealth from adopting the management plan that was adopted by ASMFC. It is important to note that the ASMFC process to develop and adopt Amendment 3 to the Interstate Fishery Management Plan included broad public engagement and comment process along the Atlantic Coast, during which the company had the opportunity to participate—and they did participate by providing public and written testimony. The CAB incorrectly classified Omega Protein’s actions in the Virginia General Assembly as participating in the management process, but at time, the Management Plan had already been finalized and needed to be codified into Virginia law. These actions are inconsistent with the MSC fisheries standard and more importantly the precautionary approach which is highlight in this scoring section.	As previously stated, the CAB was not aware of the client group’s specific representations. Even if the nature and scope of the representations were known to the CAB, the MSC Standard does not restrict engagement by any stakeholder or client group with respect to the standard’s treatment of the fishery’s formal consultation process. Accordingly, in scoring Principle 3 indicators, the CAB had no basis to assess whether the client’s intervention in this matter was appropriate or not.
We find it completely unreasonable that the CAB could have in any way considered Omega Protein’s actions were consistent with MSC fisheries standard and especially the precautionary approach as the specific management measure that Omega Protein has objected to was developed specifically as a precautionary cap to protect the ecology of the Chesapeake Bay that serves as a primary nursery ground for menhaden and important predators of menhaden such as striped bass. ¹²	While the specific management measure that Omega Protein has objected to was developed specifically as a precautionary cap to protect the ecology of the Chesapeake Bay it is not ‘science-based’ but based on average landings over a defined time period. It has also been subject to a number of stepwise reductions since first implemented (again based on average landings rather than any supporting science).This practice of revising the Cap in relation to a reference period which is in turn subject to decreasing Cap levels is only ever going to result in reductions in the Cap (i.e. the Cap can never increase because landings cannot increase). It is therefore, not as unreasonable as the Objectors might suggest for the Clients to object to this practice, as is their right.

¹² ASMFC. Addendum III to the Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden. 2006.

Notice of Objection	SAI Global Response
<p>The two articles that were attached to the original submission, and referenced^{13,14} here as well, indicate how over two legislative sessions Omega Protein worked to undermine adoption of an effective precautionary fishery management effort with the long-term objective to protect both the forage base and predator species in Chesapeake Bay. This specific long-term fishery management objective had been in place for over 10 years and had the wide support of member states and federal agencies of the Atlantic States Marine Fisheries Commission.</p>	<p>Omega is entitled to make representations to any entity it deems important to engage with. As noted, there are no procedural restrictions within the MSC Standard that prevents Omega from making representations associated with the FMP or Amendment-making process. That said, the sponsors of this objection argue that the client's discussions with members of the VGA have had the effect of undermining the fishery's established long-term objectives and precautionary approach to the management system. The CAB disagrees. The fishery's management system and its foundational tenets have not been put at risk by the client group's interventions. The ASMFC's February 7th press release noted that Omega's commercial reduction fishery landings in Virginia waters since 2012, including enhanced monitoring of landings in 2018, were below the company's assigned quotas.</p>
<p>Whether ASMFC is currently acting to find Virginia out of compliance or not is irrelevant to the fact that the client who is currently seeking to have its fishery certified by the Marine Stewardship Council (MSC) has fought all efforts to bring the state in which its lands its quota into compliance with the most precautionary aspects of Amendment 3 to Interstate Fishery Management Plan for this species.</p>	<p>Again, Omega has every right to engage with parties at the federal, state or local level where/when it deems necessary.</p>
<p>This problem is even more acute given the fact that two of the conditions proposed by the CAB require management action by ASMFC and then adoption of those management actions by the Commonwealth of Virginia. If MSC were to continue to look the other way as the CAB has done in the assessment case, not only the proposed conditions, but the entire Marine Stewardship Council certification of this fishery would be rendered meaningless.</p> <p>Please feel to contact either of us if you need additional clarification.</p> <p>Sincerely,</p>  <p>Kate Wilke</p>	<p>The CAB has not looked the other way as alleged. The CAB, along with the endorsement of both independent peer reviewers, is satisfied that the conditions listed in the Client Action Plan are both essential to bringing the shortcomings into conformity with the performance requirements of the MSC Standard, and can be effectively implemented during the certification period. In agreeing to the Client Action Plan, the client group understands that it is responsible for complying with the conditions' annual milestones, or risk having its certificate withdrawn in accordance with the MSC's rules.</p>

¹³ Richmond Times Dispatch:


https://www.richmond.com/news/virginia/government-politics/general-assembly/house-kills-fish-bill-does-virginia-risk-falling-out-of/article_b0a7f75f-f95f-582a-8556-7b2f4bd30806.html.

¹⁴ WVTF. <https://www.wvtf.org/post/tiny-fish-causes-big-controversy-richmond#stream/0>.

Notice of Objection	SAI Global Response
<p data-bbox="203 193 432 268"><i>Chris Moore</i></p> <p data-bbox="203 280 472 309">The Nature Conservancy</p> <p data-bbox="203 379 512 437">Chris Moore Chesapeake Bay Foundation</p>	

3 National Audubon Society Letter

The National Audubon Society's (hereafter Audubon) Letter submitted to the Independent Adjudicator on May 06th, 2019 and received by SAI Global on May 09th, 2019 has been broken into paragraphs for ease of response; the entire letter including footnotes is included below.

Notice of Objection	SAI Global Response
 <p>National Audubon Society 225 Varick Street, 7th Floor New York, NY 10014 212.979.3196 www.audubon.org</p> <p>Dear Marine Stewardship Council,</p>	
<p>On behalf of Audubon's one million plus members, we urge you to reject Omega Protein's Atlantic menhaden fishery certification at this time. Throughout the Atlantic coast, menhaden are an important prey source for marine predators, including seabirds, whales, and larger fish.</p>	<p>Audubon's objections is noted. No response required.</p>
<p>Currently, the Atlantic menhaden fishery is managed in a single-species context that does not take into account wider predator needs, even though menhaden is a keystone forage species that marine and coastal birds and other marine wildlife depend on. Within the menhaden fishery, Omega Protein's operation accounts for 80 percent of Atlantic menhaden catch, and should not be considered for certification at this time.</p>	<p>SAI Global is well aware that the fishery is currently managed in a single-species context and this has resulted in two conditions in this area—however, this does not preclude the fishery from being certified.</p>
<p>Science has shown that when forage fish are fished at sustainable levels that keep their populations stable, seabirds thrive. One study showed specifically that when forage fish biomass fell below one third of the historical levels, 14 seabird populations produced fewer chicks.¹⁵</p>	<p>The points made here are to be expected and are not in dispute. Note the publication cited is not open access.</p>
<p>Omega Protein's industrial fishing practices and the new ecological management system do not take into account the needs of seabirds and other wildlife and harms populations of birds of conservation concern that depend on Atlantic menhaden for food:</p> <ul style="list-style-type: none"> • Bald Eagle: In the Chesapeake Bay area, Atlantic menhaden are one of the four most important fish species during the non-breeding season. Additionally, changes in Atlantic menhaden levels influence Bald Eagle distribution and abundance.¹⁶ • Brown Pelican: Along Atlantic and Gulf coasts, Atlantic menhaden are the predominant prey of Brown Pelicans.^{17,18} 	<p>It is correct that the current management system does not explicitly account for ecosystem needs (including birds)—this has resulted in two conditions in this area.</p>

¹⁵ <http://science.sciencemag.org/content/334/6063/1703>

¹⁶ Mersmann, Timothy James. "Foraging ecology of Bald Eagles on the northern Chesapeake Bay with an examination of techniques used in the study of Bald Eagle food habits." (1989).

¹⁷ Brinkley, Edward S., and Brian Patteson. "Seabirds of the southern Gulf Stream." *Birding World* 11 (1998): 421-419.

¹⁸ Palmer, R. S. 1962a. *Handbook of North American Birds*, Vol. 1: Loons through Flamingos. New Haven: Yale University Press.

Notice of Objection	SAI Global Response
<ul style="list-style-type: none"> Royal Tern: From Virginia to North Carolina, Atlantic menhaden is predominately found in Royal Tern chick diets.^{19,20,21} Common Loon: Common Loon migration from Lake Ontario to Chesapeake Bay coincides with the influx of Atlantic menhaden, their favored prey.²² Osprey: Along the Atlantic coast, Osprey's primary food source (75-82%) is Atlantic menhaden. During June and July, Osprey diets are 95-100% Atlantic menhaden.^{23,24,25,26} Herring Gull: Atlantic menhaden are an important prey for this species, especially during nesting season.²⁷ Other Birds: Least Tern,^{28,29} Manx Shearwater,³⁰ Great Black-backed Gulls,³¹ Great Egret,³² Roseate Tern,^{33,34} Snowy Egret,³⁵ & Sandwich Tern.³⁶ 	
<p>Ensuring enough forage fish is left in the ocean for marine predators means commercial, recreational and ecotourism industries that rely on larger fish and marine wildlife can thrive. Along the Atlantic coast, commercial fisheries bring in over \$46 billion and 340,000 jobs³⁷ while the 14 million anglers involved in recreational fishing account for \$16 billion in expenditures and 167,086 jobs.³⁸ The ecotourism industry relies on healthy wildlife that depend on menhaden, including</p>	<p>As has been pointed out previously in response to submissions from other stakeholders (see responses to VSSA, PEW, Riverkeeper and The Safina Center at the PCDR stage), SAI Global cannot consider the economic/cultural impacts of the menhaden fishery as these requirements in these areas are not included in the MSC FCR v2.0 and as such outside the scope of this assessment.</p>

¹⁹ Blus, L. J., R. M. Prouty and Jr. Neely, B. S. 1979c. Relation of environmental factors to breeding status of Royal and Sandwich terns in South Carolina, USA. Biol. Conserv. no. 16:301-320.

²⁰ Buckley, F. G. and P. A. Buckley. 1972a. The breeding ecology of Royal Terns *Sterna (Thalasseus) maxima maxima*. Ibis no. 114:344-359.

²¹ McGinnis, T. W. and S. D. Emslie. 2001. The foraging ecology of Royal and Sandwich Terns in North Carolina, USA. Waterbirds no. 24 (3):361-370.

²² Spitzer, P. R. 1993. "Processes that shape the distribution, abundance, and mortality of Common Loons during migration and winter with examples drawn from the mid-Atlantic coast region (New Jersey to South Carolina)." In The loon and its ecosystem: status, management, and environmental concerns. 1992 American Loon Conference Proceedings., edited by L. Morse, S. Stockwell and M. Pokras, 171. Concord, NH: U.S. Fish Wildl. Serv.

²³ Decandido, R. 1991. Ecology of Ospreys foraging in migration. Hawk Migr. Assoc. N. Am. Hawk Migr. Stud. no. 16:5-8.

²⁴ McClean, P. K. and M. A. Byrd. 1991b. The diet of Chesapeake Bay Ospreys and their impact on the local fishery. Journal of Raptor Research 25: 109-112.

²⁵ Poole, A. F. 1984. Reproductive limitations in coastal Ospreys: an ecological and evolutionary perspective. Unpubl. Ph.D. diss., Boston Univ., Boston, MA.

²⁶ Semmes, Anne. "Lessons from the Osprey Garden." Living Bird – Cornell Lab of Ornithology Spring 2007. 36-2. Print.

²⁷ Pew Charitable Trusts and Audubon Florida. Fins and Feathers: Why Little Fish are a Big Deal to Florida's Coastal Waterbirds. Florida, 2013.

²⁸ Carreker, R. G. 1985. Habitat suitability index models: Least Tern. Washington, D.C: U.S. Fish Wildl. Serv.

²⁹ Pew Charitable Trusts and Audubon Florida. Fins and Feathers: Why Little Fish are a Big Deal to Florida's Coastal Waterbirds. Florida, 2013.

³⁰ Haney, J. C. 1986a. Seabird patchiness in tropical oceanic waters: The influence of Sargassum "reefs." Auk 103: 141-151.

³¹ Washburn, Brian E., et al. "Foraging Ecology of Four Gull Species at a Coastal-Urban Interface: Ecología de Forrajeo de Cuatro Especies de Gaviota en una Interface Costera-Urbana." The Condor 115.1 (2013): 67-76.

³² Post, William. "Food Exploitation Patterns in an Assembly of Estuarine Herons." Waterbirds 31.2 (2008): 179-192.

³³ Nisbet, Ian C., Michael Gochfeld and Joanna Burger. (2014). Roseate Tern (*Sterna dougallii*), The Birds of North America (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna.org/Species-Account/bna/species/roster>

³⁴ Safina, Carl, et al. "Prey Delivered to Roseate and Common Tern Chicks; Composition and Temporal Variability (Entrega de Alimento a Polluelos de *Sterna dougallii* y *S. hirundo*: Composición y Variabilidad Temporal)." Journal of Field Ornithology (1990): 331-338.

³⁵ Post, William. "Food Exploitation Patterns in an Assembly of Estuarine Herons." Waterbirds 31.2 (2008): 179-192.

³⁶ Blus, L. J., R. M. Prouty and Jr. Neely, B. S. 1979c. Relation of environmental factors to breeding status of Royal and Sandwich terns in South Carolina, USA. Biol. Conserv. no. 16:301-320.

³⁷ National Marine Fisheries Service. 2017. Fisheries Economics of the United States, 2015. U.S. Dept. of Commerce, NOAA Tech. Memo. NMFS-F/SPO-170, 247p


³⁸ Sabrina J. Lovell, James Hilger, Scott Steinback, and Clifford Hutt. 2016. The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States, 2014. U.S. Dep. Commerce, NOAA Tech. Memo. NMFS-F/SPO-165, 72 p.

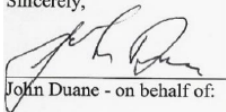
Notice of Objection	SAI Global Response
<p>marine mammals and seabirds. Ecotourism is robust throughout the Atlantic coast, with almost 29 million wildlife watchers contributing to \$17 billion in expenditures.³⁹</p>	
<p>The published assessment for certification is conditional, which means that Omega Protein needs to reach certain milestones over the next four years. Given this conditional status, the company should not be certified, especially in light of its opposition to legislation to bring the Commonwealth of Virginia into compliance with the ASMFC's Menhaden Management Plan.</p>	<p>As has previously been discussed at length, the MSC process allows for Certification with Conditions. Therefore, SAI Global's determination that certification be awarded at this time, which is turn based on the outcome of the assessment, is appropriate.</p>
<p>Before certifying Omega Protein's Atlantic menhaden fishery as sustainable, MSC should give the ASMFC the opportunity to develop a management model that considers menhaden's role in the ecosystem and the impact that industrial harvest is having on other species. Fortunately, the ASMFC is working on ecological reference points to move the fishery from single-species management to ecosystem management. Until these updates are complete, it is too soon to make a ruling on the sustainability of commercial menhaden harvest.</p>	<p>It is not necessary, given the MSC process, to wait for ERPs to be implemented prior to certification being awarded. Furthermore, it is the role of the CAB not the MSC to determine whether or not certification is awarded.</p>
<p>Taking birds and other wildlife into consideration when managing fish is critical to the health of the marine food web and coastal economies; we urge you not to certify Omega Protein at this time.</p> <p>Sincerely,</p> <p>Karen Hyun, Ph.D. VP, Coastal Conservation National Audubon Society</p>	<p>See above.</p>

³⁹. U.S. Fish and Wildlife Service. United States Census Bureau. (2011) National Survey of Fishing, Hunting & Wildlife-Associated Recreation (FHWAR).

4 Town of Wellfleet Letter

The Town of Wellfleet's Letter submitted to the Independent Adjudicator on May 06th, 2019 and received by SAI Global on May 10th, 2019 has been broken into paragraphs for ease of response; the entire letter including footnotes is included below.

Notice of Objection	SAI Global Response
 <p style="text-align: center;">TOWN OF WELLFLEET 300 MAIN STREET WELLFLEET MASSACHUSETTS 02667 Tel (508) 349-0300 Fax (508) 349-0305 www.wellfleet-ma.gov</p> <p>To: Marine Stewardship Council Cc: Daniel Hoort – Town Administrator. Wellfleet Board of Selectmen (BOS), Massachusetts ASMFC representatives</p> <p>From: The Wellfleet Natural Resources Advisory Board (NRAB) & Shellfish Advisory Board (SAB)</p> <p>Re: Comments regarding formal objections to MSC certification by stakeholders on SAI GLOBAL final report</p> <p>Dear Marine Stewardship Council:</p> <p style="text-align: right;">May 6, 2019</p>	
<p>Our boards would like to support those NGO's including The Theodore Roosevelt Conservation Partnership, American Sportfishing Association, Coastal Conservation Association The Nature Conservancy, and Chesapeake Bay Foundation that have formally objected to SAI Global's determination that the Atlantic Menhaden purse seine reduction fishery meets MSC criteria for certification as a sustainable fishery.</p>	<p>The Boards support of the other Objectors is noted.</p>
<p>As stated in a previous letter from our boards dated January 13, 2019, The Wellfleet NRAB and SAB reiterate our position that until Atlantic menhaden become managed using Ecological Reference Points (ERP's) that consider menhadens critical role in the ecosystem as forage for the many predators that depend on them, any sustainability certification is inappropriate, and should be denied at this time.</p>	<p>This particular issue has already been discussed and responded to <i>ad nauseum</i> throughout the report but to re-iterate, it is not a requirement of the MSC process that Atlantic menhaden be managed using ERPs prior to certification. As such this is not sufficient reason to deny certification at this time.</p>
<p>The decline of forage fish in our waters, including Atlantic menhaden has had a profound negative impact on Striped Bass which supports a premier sport and commercial fishery here on Cape Cod. The Striped Bass, which has experienced a steep decline in abundance as detailed in the Atlantic States Marine Fisheries Commission (ASMFC) 2018 Atlantic Striped Bass stock assessment which</p>	<p>The outcome of the recent Striped Bass stock assessment is known to the Assessment Team and has been considered. While the decline in striped bass might have some link to the menhaden it is also likely that the striped bass stock is being adversely impacted by unsustainable</p>

Notice of Objection	SAI Global Response
<p>reports the stock as being overfished, with overfishing occurring. Until there is an increase in menhadens abundance approaching somewhere near historic levels, our belief is that Striped Bass and other fish, birds, and whales will remain underfed, and lacking in a prime source of their diet – the oily, nourishing menhaden.</p>	<p>levels of direct removals. The stakeholder does not provide any indication of what they consider to be the historic levels of menhaden abundance which the stock needs to approach in order to fulfill its role as forage for fish, birds and whales.</p>
<p>The ASMFC implemented the first menhaden catch cap in 2013 to 170,800mt. Then, as stocks slowly rebounded, states to our south enjoyed a resurgence of menhaden in their waters, The ASMFC, under pressure from industry began increasing the TAC, to 187,880mt for 2015 & 2016, 200,000mt for 2017, and again to 216,000mt for 2018 & 2019. These increases were premature, and not received well by many stakeholders in our area. Our end of Cape Cod is near the outer range to fully realize a robust rebound in menhaden abundance, and we firmly believe that no increases to the initial TAC of 170,800mt were warranted, and are jeopardizing the rebuilding process. Until appropriate menhaden specific, peer reviewed, ERP's are approved and implemented by all ASMFC member states to correctly identify overfishing/overfished levels, our conclusion is that removing 216,000mt of menhaden each year from the water is unsustainable.</p>	<p>Wellfleet's stated position is that, until such time as menhaden specific, peer reviewed, ERP's are approved and implemented by all ASMFC member states, MSC Certification for Atlantic menhaden is inappropriate, and should be denied. However, this is not a requirement of the MSC process which allows for the setting of conditions which are intended to improve performance against the MSC's Principles. In this case two conditions have been raised in this area.</p>
<p>The New England Fishery Management Council (NEFMC) recently approved an Acceptable Biological Catch (ABC) control rule for Atlantic herring, considering Atlantic herrings' role in the ecosystem when setting catch limits. The same type of system should be developed for the menhaden fishery to end the outdated and ineffective single species management in use today. The ASMFC in fact weighed moving to ERP's in 2017, yet despite receiving over 158,000 public comments urging an immediate move to interim 'rule of thumb' ERP's, the ASMFC failed to act, kicking the can down the road again. This failure to acknowledge menhadens role in the ecosystem makes any accurate assessment of the current health of the Atlantic menhaden stock suspect. The reduction industry will keep pushing the current limits until the rules change. Please deny MSC certification until ERP's are implemented to give full consideration to the needs of the predators that feed on them.</p>	<p>As discussed in SAI Global's earlier response to this stakeholder at the PCDR stage, a HCR similar to the one for Atlantic herring cited here is precisely what is mandated by conditions 1 and 2. In addition the fact that ASMFC declined to implement interim 'rule of thumb' ERP's as part of the Amendment 3 process has been considered as part of this assessment. Finally, the implementation of ERPs prior to certification is not required with the MSC process allowing for the setting of conditions as has been done in this instance.</p>
<p>Sincerely,</p>  <p>John Duane - on behalf of:</p> <p><u>The Wellfleet Natural Resources Advisory Board</u> John Riehl (Chair), John Duane, Thomas Flynn Laura Hewitt, Thomas Slack, Sylvia Smith</p> <p><u>The Wellfleet Shellfish Advisory Board</u> Barbara Austin (Chair), Zack Dixon, John Duane, Brett Morse James O'Connell, Jake Puffer, Dave Settler, Thomas Siggia, Rebecca Taylor</p>	