

# MARINE STEWARDSHIP COUNCIL

## INDEPENDENT ADJUDICATION

### IN THE MATTER OF

#### Echebatar Indian Ocean Skipjack Tuna Purse Seine Fishery

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### DECISION OF THE INDEPENDENT ADJUDICATOR

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#### Background

1. On 12 June 2018 the Fishery Client, Pesqueras Echebatar S.A., responded to the three notices of objection. I have read and considered the terms of their response.
2. On 20 June 2018 the CAB, Acoura. filed and served its response to the three notices of objection. I have read and considered the terms of their response.
3. By an email dated 25 June 2016 Mr Andrew Russell of the WWF wrote on behalf of all three objectors, making an application to extend the period for consultations. His application is asks me to exercise the discretion found in PD 2.5.3.1 and extend the ten day period.
4. On 25 June 2016, I invited responses from Acoura and the Fishery Client.
5. On 26 June 2018, Dr Jason Combes responded by email. Dr Combes made the point that equal time should be given to the CAB to respond, namely providing them with ten days from the date of the Objector's responses.

6. On 26 June 2018, Mr Jose Luis Jauregui, on behalf of the Fishery Client, confirmed he supported the CAB's position.
7. On 26 June 2018, Mr Russell on behalf of all three Objectors made further submissions in an email. In summary, he sought to limit the CAB's further response to a submission "in reply" to be filed and served by 20 August 2018. It was further submitted the Adjudicator should then permit a period of consultation until 3 September 2018.

### Discussion

8. FCR PD 2.5.3 to 2.5.5 state:

*PD2.5.3 Upon receipt of the response by the CAB, the independent adjudicator shall consult with the objector(s), the fishery client(s) and the CAB in order to determine whether the response of the CAB, including any proposed changes to the Final Report and Determination, adequately addresses the issues raised in the notice of objection.*

*PD2.5.3.1 The independent adjudicator shall strive to conclude such consultations within a period of 10 days but may if necessary, at his or her discretion after consultation with the parties, extend such period if it appears that there is a real and imminent prospect of reaching a solution that is acceptable to all relevant parties.*

*PD2.5.4 In the event that the issues raised in the notice of objection can be resolved through consultations, the CAB, in consultation with the independent adjudicator, shall make such changes and revisions to the Final Report and Determination as may be agreed and shall proceed to prepare a Public Certification Report in accordance with FCR 7.19.1. No further appeal or objection shall be permitted.*

*PD2.5.5 In the event that some or all of the issues raised in the notice of objection cannot be resolved through consultations, the independent adjudicator shall notify all parties that the adjudication phase will commence immediately in accordance with PD2.6.*

9. Pursuant to PD 2.5.3 and by review and receipt of the Fishery Client and CAB responses and the subsequent emails set out above, and through this decision, I am now consulting the

‘parties’ to consider whether the 153 page CAB response adequately addresses the issues in the Notices of Objection.

10. To exercise the jurisdiction to extend the 10 day period it must both be ‘necessary’ and secondly there must appear a real and imminent prospect of reaching a solution that is acceptable to all relevant parties. The ‘necessary’ element of the test is easily met given the number of objections and volume of materials. It is difficult to assess whether or not there “appears” to be a real and imminent prospect of reaching a solution. That being said the term “appears” implies a less stringent test. Secondly, PD 2.5.5 anticipates some issues being resolved and others continuing to adjudication, therefore, I need not assess the likelihood of reaching a solution to all objections. Thirdly all parties are content to have additional time to discuss matters. On balance I am prepared to accept there appears to be a real and imminent prospect some of the objections may reach a solution agreeable to all parties.
11. On that basis, the time can and should be extended beyond ten days. That leaves the issue of what should take place during the extended period of time. Mr Russell proposes a further round of submissions by the Objectors and the CAB limited to a reply. PD 2.5.4 speaks to issues being resolved “through consultations”. I am not clear that further formal submissions are helpful at this stage. I consider the parties should be consulting each other and discussing and liaising with the aim of resolving as much disagreement as possible. This could take the form of conference calls, or an advocates meeting. I do not wish to be prescriptive.
12. I am therefore not prepared to make directions for a further round of formal submissions. The 153 page document needs to form the basis of a negotiation between the Objectors and the CAB in consultation with the Fishery Client. All should be working to reduce the number of objections and limit the areas of dispute. I appreciate with distances and the complexity of the issues this will take some time. I extend the ten day period to 24 August 2018. However if no progress is being made, the parties are required to inform me in writing as soon as is practicable. The parties are also to file and serve an agreed document setting out the matters agreed and the outstanding issues which remain dispute.

13. Parties have already raised the issue of the location of an adjudication hearing. We have not reached PD 2.6 and therefore it would be premature to finalise the details of any hearing, that being said, I consider it prudent to begin some parallel planning, as if a hearing is required, issues such as the timing and location of the hearing can be resolved soon, therefore I will make the directions set out below.

Order.

14. Pursuant to PD 2.5.3.1 the period for consultation is extended to 24 August 2018.

15. The parties shall file and serve an agreed statement setting out the areas of agreement and any outstanding areas of disagreement, if any, by no later than 5 pm 31 August 2018.

16. The parties must liaise and agree dates and location for a possible adjudication hearing in the window of 21 October to 1 November 2018. The current time estimate is 3 or 4 days, and I leave it to the parties to agree which it should be. An agreed statement setting out the location and dates of the hearing shall be filed by no later than 5pm 12 July, 2018. Should the parties fail to agree the location and dates of the hearing, then all parties must file and serve written submissions on the outstanding issues in dispute by 20 July 2018.

**John McKendrick QC**  
**Independent Adjudicator**

**27 June 2018**