

MARINE STEWARDSHIP COUNCIL

INDEPENDENT ADJUDICATION

IN THE MATTER OF

Echebatar Indian Ocean Skipjack Tuna Purse Seine Fishery

DECISION OF THE INDEPENDENT ADJUDICATOR

1. I issued a decision dealing with various procedural matters on 27 June 2018.
2. On 29 June 2018, Mr Jauregui, on behalf of the Fishery Client, filed and served written submissions seeking to amend the directions made on 27 June 2016.
3. I therefore directed the other parties to file and serve observations in response to Echebatar's application by close of play on Wednesday 4 July 2018.
4. Dr Combes, on behalf of Acoura, and Mr Russell, on behalf of all three Objectors, filed and served written responses.
5. As a result the parties' positions are now as follows.
6. Echebatar submit the consultation period should not be extended to 24 August 2018. They state, in effect, they have changed their minds and withdraw their previous support to Acoura's suggestion that time be extended to 20 August 2018 for the CAB to consult with the Objectors by way of a response to their submissions. Echebatar seeks an oral hearing in August and ask me to conclude the adjudication phase should formally commence now.

7. The Objectors note the adjudication is concerned with the CAB's report and not the fishery itself and therefore urge me to stand by the directions made. Mr Russell submits: "*The PD prescribes a period of consultation and gives the LA an inherent power to extend time. In our view, the consultation period serves a useful purpose. The CAB agrees. It is the CAB's report and the Notices of Objection which are material to this process, not Echebastar's views of IPNLF's objection.*"
8. Dr Combes on behalf of the CAB, Acoura takes a mid-way position. He notes that the CAB is prepared to continue to consult individually with each Objector to try to narrow the issues in dispute. The CAB continues to take the view that it may be possible to reduce the number of issues in dispute. The CAB further notes that 3 or 4 days may be insufficient for the hearing. The CAB argues the hearing should take place by the end of August or alternatively if August is not possible by the end of September.
9. On 4 July 2018 Mr Russell also sought disclosure of the MSC interpretation Log.
10. I admit to being somewhat dismayed that the objection process is becoming unduly adversarial. The parties are reminded they are not engaged in formal litigation. The objection process is a proportionate and swift review of the CAB decision making. I find it unhelpful and contrary to the spirit of the scheme that the parties are rapidly reaching entrenched and critical positions.
11. That being said, this objection remains complex both because of the technical scientific issues and because of the number of objections. My first duty is to ensure fairness to all parties and to ensure all parties have a reasonable and proportionate amount of time to present their cases to ensure a fair and swift decision can be reached without undue expense.
12. I have decided therefore to revise the directions made in my last decision, as follows, and make the following directions:
 - a. pursuant to PD 2.5.3.1 the extended period for consultation is altered from to 24 August 2018 to 10 August 2018;

- b. a one day hearing will take place in London, UK during the week of Monday 6 August 2018, to assess the success or otherwise of the consultation; to narrow the issues in dispute; and to deal with any ancillary matters, including whether adjudication should then be confirmed and case management directions to a hearing issued (parties may join by telephone or video link subject to the MSC's ability to organise this);
- c. the parties are to agree a date during that week forthwith and inform me and the MSC;
- d. if adjudication is required it will commence on Monday 1 October 2018 with a preliminary time estimate of 5 days, which may be reduced. This date will only be altered if parties file and serve written submissions setting out an exceptional factor as to why the dates should be altered by 5pm 11 July 2018;
- e. the Objectors shall file and serve written submissions explaining why the hearing should not take place in the Seychelles by 5pm 11 July 2018;
- f. the parties are to file and serve written submissions on the issue of the disclosure of the MSC Interpretation Log by 5pm 20 July 2018 and the issue can be the subject of further submissions, if necessary, at the hearing in early August 2018;
- g. given the likelihood of a hearing and adjudication, any other ancillary issues should be raised by way of a written application supported by written submissions by 20 July 2018, and any party who opposes such an application, shall file and serve submissions in response by 27 July 2018, and the issues (if any) shall be considered at the hearing in early August 2018.

13. My reasons for altering the directions are as follows:

- a. On the basis of the CAB's submissions, I remain satisfied there is a real and imminent prospect the issues in dispute can be narrowed, to ensure this take place, I believe a hearing and more direct involvement from me will assist. A hearing can naturally form part of my consultation role although I have not yet decided to proceed to adjudication.

- b. I agree with the Objectors that whilst Echebatar seek an immediate direction for adjudication, the focus of the objection is on the CAB report and the CAB continues to see merit in consultation.
- c. Whilst time is of the essence, the issues in the objection are complex and lengthy. I have already determined the notices of objection are valid and are not vexatious. The objections require to be considered in a fair manner. A hearing in August, which is peak vacation time, is unrealistic.
- d. I am aware of the cost and expense to Echebatar of the objection procedure. Therefore, I have brought the hearing forward by one month, almost to the window deemed acceptable to the CAB. All parties now have almost three months notice of the proposed hearing dates and have ample time to organise representatives or witnesses. I will not amend this date unless there are exceptional circumstances. I accept a later date is prejudicial and unfair to Echebatar.
- e. Whilst Echebatar seek a hearing in August, this would eliminate any proper consultation and negotiation, as parties would now require to prepare their submissions and cases for the hearing rather than negotiate. If I am to adjudicate upon all 89 objections, the hearing will take up more time and expense and the time required for me to reach and write a decision will also be significantly longer. I believe it is likely that a decision following a hearing in late August involving all 89 grounds of objection would require 2-3 months for decision writing (my last decision took 6 weeks and involved 24 grounds of objections). A hearing in early October with less grounds of objection will require less time and consequently, and importantly, for Echebatar, there will be little difference as to when they receive my final decision. Therefore, there continues to be value in consultation continuing at this stage.
- f. I am provisionally minded to agree with Echebatar and the CAB that a hearing in the Seychelles is appropriate for the various reasons they give. However, it is important I provide the Objectors with the opportunity to make full submissions on the issue.

John McKendrick QC
Independent Adjudicator

5 July 2018