

Objection to the certification of Northeastern Tropical Pacific Purse Seine Yellowfin and Skipjack Tuna fishery -

Further Directions

The Marine Stewardship Council has received a Notice of Objection dated 24 October 2016 from World Wildlife Foundation Smart Fishing Initiative seeking to object to the certification of the Northeastern Tropical Pacific Purse Seine Yellowfin and Skipjack Tuna fishery. I previously issued the Notice of Acceptance for this objection on 28 November 2016, with a date of publication of 30 November 2016. Further to a request for an extension this date was delayed to the 30 January 2017.

Further request for delay

All parties have, by agreement, sought a further extension to the deadlines for the responses of stakeholders, the fishery and the certification body. This request was received by way of email on 27 January 2017.

It is apparent that some progress has been made towards settlement and that the parties are hopeful that with more time this may lead to a successful resolution of this objection. The parties have asked that the date of publication be delayed until 15 March 2017.

Consideration

As the parties are aware, the previous extension was granted in the truly exceptional circumstances that had arisen (personal circumstances of a key person in a party involved in this objection, statutory holidays and chances of settlement of this objection). This time, the reason for the request is essentially that there is an ongoing chance of settlement.

The Objection Procedure is in fact clear on the lack of a power to extend the timelines other than essentially, in two circumstances: a) where there are statutory holidays and b) the so-called consultation phase has been reached (post receipt of the CAB's response). At this point, no response has been received by the CAB, such that the objection has not yet reached the consultation phase.

That this milestone needs to be reached before the flexibility on deadlines arises is, as I understand it, to limit delays to where in the view of the Independent Adjudicator (not just that of the parties) there is a real and imminent prospect of reaching a solution acceptable to all relevant parties (see CD 2.5.3.1). For me to assess whether that test applies, I need to be appraised of the strength of the objection, the differences between the parties and the scope for potential agreement. This is not possible without the CAB's response – hence the fact that the discretion does not arise until that point.

The rationale behind the limited grounds for extension on deadlines is a policy matter for the MSC and its formulation of the Objection Procedure. That said, I have understood the imperative to be that the Objection Procedure does not drift into considerable delay and thereby potential disrepute. It is meant to be a relatively expeditious procedure. Thus, the

ability for Independent Adjudicators to grant extensions has by design been limited essentially to the above two scenarios.

On the last occasion when the extension was sought, I applied the procedure in a flexible and I hoped compassionate manner given the exceptional circumstances faced by an individual working on these matters.

At this point, the same imperative does not arise which, in my view, justified my departing from the strict rules of the Objection Procedure as happened on the last occasion.

Decision

Thus, I have decided not to grant the extension requested. The Directions of 9 December 2016 set out the relevant dates that must be adhered to. In brief therefore:

Under CD 2.4.7, the subject fishery and any other stakeholder that participated in the fishery assessment process, may, by 5pm GMT 20 February 2017, submit written representations on the matters raised in the Notice of Objection (including the letter of clarification). The CAB is to reconsider its Final Report and Determination in light of the matters raised in the Notice of Objection and by 5pm GMT 27 February 2017, provide a written response to the Notice of Objection.

After receipt of the CAB's response I will consult with the objectors, the subject fishery and the CAB in order to determine whether there is a real and imminent possibility of a settlement. If not, then the matter will proceed to formal Adjudication.

The objectors should therefore notify the MSC as soon as possible after receiving and considering the further responses and submissions and in any event by 5pm 3 March 2017 whether they consider that the CAB's response provides any reasonable basis for exploring further an acceptable solution to the whole or any part of the objection.

If so, arrangements will be put in place for a further exchange of views, including if useful, by telephone conference. Please can all parties ensure that relevant individuals are available for any consultations on 6 or 9 March 2017. If there is no resolution of the issues, the objection will proceed to adjudication.

Melanie Carter

Independent Adjudicator

30 January 2017