

MARINE STEWARDSHIP COUNCIL

INDEPENDENT ADJUDICATION

IN THE MATTER OF

Echebatar Indian Ocean Skipjack Tuna Purse Seine Fishery

DECISION OF THE INDEPENDENT ADJUDICATOR

1. A hearing took place on 9 August 2018 at which the issue of the disclosure of the MSC Interpretation Log was discussed. The Objectors wish sight of the Interpretation Log, whilst the others parties were essentially neutral in respect of their request.
2. To assist with the process, I wrote to Ms Hannah Norbury at the MSC in the following terms on 10 August 2018:

Your request below and this response will need to be shared with all parties to the Echebatar Objection. (Tzara - please forward to all parties).

As you know from your partial attendance at the hearing yesterday, the Objectors seek disclosure of the entire Interpretation Log (although not those parts which deal with the Chain of Custody). They submit to me that without the entire Log, they will be denied a fair hearing and a fair adjudication process. You will have seen their application and their submissions as part of the objection process. You and the MSC team can read their case.

I have formed no view on whether or not their submissions on this point have force.

The CAB and the Fishery Client are neutral.

The MSC is not a party to the Objection.

From the terms of the FCR, you will note the CAB shall include in the Record (PD [2.6.5.1](#)) the “FCR current at the time of the assessment in question, together with.....any related interpretations to those documents whether or not of mandatory effect....”

It is my understanding that if the MSC do not agree to provide the Objectors with access to the Log, an application may be made to me to require it to be included as a document in the Record or otherwise disclosed.

My understanding of the Objectors’ position is that the potential target date of 31 August provides them with insufficient time to prepare their case for the hearing. The first draft index to the bundle/Record is to be made available by 6 September 2018, there is then a tight schedule of directions up to the hearing on 1 October 2018.

The parties agreed yesterday that if the MSC do not decide today to provide a mechanism for the Log to be made accessible to the parties to the Objection, then directions will be needed to deal with this matter and I will then need to make a ruling.

Therefore, it is not the case that I wish the MSC to provide the full Log to the parties, but rather I will, in all likelihood, be asked to determine the issue, should the MSC not voluntarily provide it.

3. Ms Hannah Norbury responded to this request on behalf of the MSC in an email of the same date as follows:

We have considered the details you outline below, and as previously stated, we will be providing access to the interpretation log for all stakeholders on August 31st 2018.

It is our understanding that the Objectors have been provided with all the interpretations relevant to the assessment, as is recent practice.

In a wider context, it is also important to note that an early release of the interpretation log to selected stakeholders may be prejudicial to other stakeholders engaged in ongoing MSC fishery assessments that are currently at the public comment stage, some of which close prior to August 31st.

4. On 15 August 2018, Mr Maple on behalf of some or all of the Objectors requested directions in order for a determination and ruling to be made in respect of disclosure of the Interpretation Log.

5. I issued a brief direction as follows on 16 August 2018:

I am on vacation this week, so will not issue a formal decision, however, I would be grateful to receive the objectors' written submissions by close of play tomorrow and any responses from the others parties and the MSC by close of play Wednesday 22 August 2018.

6. The Objectors filed and served submissions on 17 August 2018. The nub of their submissions is as follows:

Unless the interpretations log, as it existed at the time of the assessment, is made available to all parties, no adjudication can take place, as PD 2.6.5.4 cannot be fulfilled. Unless the interpretations log, as it existed at the relevant time, it provided, the adjudication simply cannot progress. It must be suspended, with inevitable consequences for the timing of any final hearing. That is not what the Objectors want. They had expected the MSC to allow access. However, if they refuse to do so, and the CAB refuses or considers itself unable to produce the material, notwithstanding that this is supposed to be an adjudication independent of MSC, then delay is inevitable.

7. The CAB, Acoura, filed and served submissions in response on 22 August 2018. Relevantly, they submit that:

We wish to be neutral at this time in relation to the application that the whole of the

Interpretations Log is part of the Record under PD 2.6.5.4.

If the LA determines the whole of the Interpretations Log is part of the Record, the MSC should be directed to provide the Interpretations Log, whether by electronic log-in or such means as they wish, to assuage the doubts of the Objectors in how the process has been undertaken.

8. No response was received from the Fishery Client and no response was received from the MSC, despite their inclusion in my email of 16 August 2018.
9. I apologise for the slight delay in determining this application caused by urgent professional matters.
10. I note the MSC has today provided the parties, and the public, with a version of the Interpretation Log.
11. The Objectors seek access to the Interpretation Log in force at the time of the CAB's assessment. I do not know if that is a different version from the one issued to the public today.
12. I covered the reasons why access to the Interpretation Log is important for reasons of transparency in the *PNA Tuna* decision. I need not repeat what is set out there.
13. I am satisfied the Objectors are correct to wish to have the copy of the Log in force at the time of the CAB's assessment. No party to the Objection objects to this and the MSC have provided me with no reasons as to why the Log in force at the time should not be disclosed.
14. I have no power to require the MSC, a non-party, to disclose the Log. I am satisfied, however, that the CAB must include the Interpretation Log relevant to their assessment (which may or may not be the same as the Log published today) in the record pursuant to PD 2.6.5.4 (emphasis added):

The FCR *current at the time of the assessment* in question, together with GFCR and amendments thereof made by the MSC Technical Advisory Board and the Board of

Trustees, *any related interpretations* to these documents whether or not of mandatory effect with regard to CAB conformity made by the MSC and MSC's accreditation body.

15. It appears relatively clear the Log in force at the time is a "related interpretation" to the FCR current at the time of the assessment. The CAB should therefore include it when preparing for the hearing.
16. The Objectors wider submissions in respect of fairness and seeking a suspension of the Adjudication have no merit although they are welcome to re-argue any such matters.
17. I am not prepared to adjourn the hearing listed for 1 October 2018 (absent exceptional reasons), so all parties and the MSC are urged to resolve any outstanding issues to ensure fairness to all and a fair hearing.

John McKendrick QC
Independent Adjudicator
31 August 2018