

Marine Stewardship Council

MSC Notice of Objection Form



Version 2.0, 8 October 2014

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Version Control

Amendments Issued		
Version No.	Date	Description Of Amendment
1.0	March 2009	Issued with TAB Directive-023 Revised Fisheries Certification Methodology Objections Procedure.
1.1	February 2010	Updated in line with release of TAB Directive-023 Objections Procedure v2
1.2	26 October 2012	Updated in line with release Certification Requirements v1.2
2.0	8 October 2014	Updated in line with release of Fisheries Certification Requirements v2.0

This document is to be cited as:

MSC Notice of Objection Form v2.0

Using the MSC Notice of Objection Form

This form should be completed in accordance with the MSC Objections Procedure, found in Annex PD of the MSC Fisheries Certification Requirements (FCR), v2.0. More information on the procedures can be found [here](#).

This form shall be completed, addressed to the independent adjudicator and sent to objections@msc.org, where it will be forwarded to the assigned independent adjudicator.

Objectors should note the following excerpt from the FCR in relation to how the independent adjudicator will assess the admissibility of an objection:

PD2.3.4 The notice of objection must set out clearly and precisely the basis upon which PD2.7.2 is said to apply. It must:

PD2.3.4.1 Identify the alleged errors in the final report and determination.

PD2.3.4.2 Explain in sufficient detail why it is claimed that the alleged errors were material to the determination or the fairness of the assessment.

PD2.3.4.3 Include a summary of the evidence to be relied on in support of the objection.

PD2.3.4.4 Include only information that existed in final (not draft) form in the public domain at the time the Public Comment Draft Report was published on the MSC website. Information that came into existence after that date cannot be used as a basis for objection (see FCR 7.15.6).

Objectors should further note that an objection will be dismissed if it is not judged to have a reasonable prospect of success:

PD2.4.2 For purposes of this Section, an objection has a “reasonable prospect of success” if, in the view of the independent adjudicator:

PD2.4.2.1 It is not spurious or vexatious;

PD2.4.2.2 Some evidence is presented on the basis of which the independent adjudicator could reasonably expect to determine that one or more of the conditions set forth in PD2.7.2 are satisfied.

Marine Stewardship Council Notice of Objection

1 Identification Details

Fishery assessment to which this objection applies	Omega Protein Corporation U.S. Atlantic menhaden purse seine fishery
Name of conformity assessment body (CAB)	SAI Global
Contact details for objecting party	
Organisation(s)	Theodore Roosevelt Conservation Partnership (joined by Coastal Conservation Association and American Sportfishing Association)
Contact person	Whit Fosburgh (TRCP) Mike Leonard (American Sportfishing Association) David Sikorski (Coastal Conservation Association, Maryland)
Address	TRCP 529 14th Street NW, Suite 500 Washington, D.C. 20045 CCA 6919 Portwest, Suite 100 Houston, Texas 77024 ASA 1001 N. Fairfax, Suite 501 Alexandria, VA 22314
Phone Number (including country code)	1 (202) 639-8727 1 (713) 626-4234 1 (703) 519-9691
Fax Number (including country code)	1 (202) 639-8728 1 (713) 626-5852 1 (703) 519-1872
Email address	wfosburgh@trcp.org mleonard@asafishing.org david sikorski@ccamd.org

The following objection is being lodged on behalf of the above named organisation(s). I am authorised to make this submission on the above named organisations' behalf.

Name: Whit Fosburgh
Position: President & CEO
Signed: *Whit Fosburgh*
Dated: April 10, 2019

2 Objecting Party's Credentials

<p>Please outline your prior involvement with this assessment.</p>	<p>Subject fishery – PD2.3.1.1 <input type="checkbox"/></p> <p>Written submissions – PD2.3.1.2 <input checked="" type="checkbox"/></p> <p>Meetings attended – PD2.3.1.2 <input checked="" type="checkbox"/></p> <p>Participation prevented/impaired – PD2.3.1.3 <input type="checkbox"/></p>
<p>If you are objecting on the basis that you were a party to the assessment process that made written submissions to the CAB during the fishery assessment process or attended stakeholder meetings (as per PD2.3.1.2 of the objections procedure) or that the failure of the CAB to follow procedures prevented or substantially impaired your participation in the fishery assessment process (as per PD2.3.1.3 of the objections procedure), please provide evidence and/or outline details to support this classification.</p>	<p>The Theodore Roosevelt Conservation Partnership submitted comments on the PCDR in January 2019. Additionally, associated party Dr. Jerry Ault, University of Miami, spoke with the 3rd party reviewers and submitted comments to MSC earlier in the certification process, prior to release of public comment document, during which the importance of the menhaden as a key low trophic level species was discussed as a principal issue.</p>
<p>Please state your interest in the fishery and its certification.</p>	<p>The Theodore Roosevelt Conservation Partnership (TRCP) is the country's largest coalition of sportsmen, conservation groups, outdoor businesses, and individuals working to advance proactive conservation solutions in the federal policy arena. Among other things, TRCP's mission is to guarantee all Americans have quality places to fish by uniting the voices of anglers to support policies, programs, and funding opportunities that conserve fish and aquatic ecosystems.</p> <p>Coastal Conservation Association (CCA) joins this objection as the largest marine resource conservation group of its kind in the nation, with almost 130,000 members in 19 state chapters. CCA has been active in state, national and international fisheries management issues since 1977. The organization is committed to ensuring the health and conservation of our marine resources, and anglers' access to them.</p> <p>The American Sportfishing Association (ASA) also joins this objection as the nation's recreational fishing trade association and represents sportfishing manufacturers, retailers, wholesalers, and angler advocacy groups, as well as the interests of America's 49 million recreational</p>

	anglers. ASA also safeguards and promotes the social, economic, and conservation values of sportfishing in America, which result in a \$125 billion per year impact on the nation's economy.
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3 Categorisation of Objections

You must complete one or more of Sections 4 to 7 in accordance with your answers to the following questions.

<p>Are you objecting on the basis that, in your opinion, there was a serious procedural or other irregularity in the fishery assessment process that was material to the fairness of the assessment, as per PD2.7.2.1 of the objections procedure?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>If YES, complete Section 4</p>
<p>Are you objecting on the basis that, in your opinion, 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, as per PD2.7.2.2 of the objections procedure?</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Section 5</p>
<p>Are you objecting on the basis that, in your opinion, 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, as per PD2.7.2.3 of the objections procedure?</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Section 6</p>
<p>Are you objecting on the basis that, in your opinion, additional information not forming part of the record¹ that is relevant to the circumstances at the date of the determination has not been considered, as per PD2.7.3 of the objections procedure?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>If YES, complete Section 7</p>

¹ As defined in paragraph PD2.6.5.1 (a) of the objections procedure.

4 Objection Pursuant to PD2.7.2.1

4.1 Please identify:

- a) the procedure(s) that you or your organisation believes were omitted or incorrectly followed by the CAB in the conduct of this assessment and the relationship of these matters to the MSC's procedural rules, as set out in the version of the FCR that was in force at the time of the assessment:

and/or

- b) any other irregularity in the fishery assessment process that you or your organisation believes was material to the fairness of the assessment.

4.2 Please state why you or your organisation believes that the failure of the CAB to follow procedures has significantly affected the result of the determination such that the determination should be altered.

5 Objection Pursuant to PD2.7.2.2

5.1 Listing the conditions placed on the relevant performance indicator(s) and using the template below, please clearly:

- a) identify the reason(s) why you or your organisation believes that the condition assigned to the performance indicator within the Final Report cannot be justified because it fundamentally cannot be fulfilled, or
- b) identify the reason(s) why you or your organisation believes 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.

<i>Performance Indicator</i>	1.2.1 Harvest Strategy
<i>Condition</i>	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.
<i>a) Reason</i>	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. 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.
<i>b) Rationale</i>	<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 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</p>

	<p>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. 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>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 off-season 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>
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<i>Performance Indicator</i>	1.2.2 Harvest Control Rules and tools
<i>Condition</i>	The client must provide evidence of implementation of well-

	<p>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 and; 2. are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</p>
<i>a) Reason</i>	<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>
<i>b) Rationale</i>	<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>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</p>

	<p>precautionary values for each of these measurements. To accurately assess the menhaden fishery, the assessment 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 near-shore 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 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</p>
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	<p>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>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>
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<i>Performance Indicator</i>	
<i>Condition</i>	
<i>a) Reason</i>	
<i>b) Rationale</i>	

(Note: Please repeat table as needed for each performance indicator and condition to be included in the objection)

6 Objection Pursuant to PD2.7.2.3

- 6.1 Listing the relevant performance indicator(s) and using the template below, please clearly identify the reason(s) you or your organisation believes that the score(s) presented within the Final Report cannot be justified, ensuring you link those reasons with the applicable requirements in PD2.7.2.3 (a)-(d) of the objections procedure. Please provide your rationale and/or evidence in support of a different conclusion, making particular reference to the specific scoring guideposts associated with the particular performance indicator(s) in question.

<i>Performance Indicator</i>	1.1.1 Stock Status
<i>Reason</i>	The assessment team made a mistake as to material fact.
<i>Rationale</i>	<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>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</p>

	<p>(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>
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<i>Performance Indicator</i>	2.1.3 Primary species information
<i>Reason</i>	The assessment team has made a mistake as to material facts and its conclusions are unsupported by the data available in the record.
<i>Rationale</i>	<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</p>

	<p>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.</p> <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>
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<i>Performance Indicator</i>	2.5.2 Ecosystem management strategy
<i>Reason</i>	The assessment team has made a mistake as to a material

	fact.
<i>Rationale</i>	<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 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</p>

	<p>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; Press Release: Omega Protein Employees and Supporters Call for Fisheries Managers to Protect Menhaden Jobs, Omega Protein (Nov. 7, 2017), available here. 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>
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<i>Performance Indicator</i>	3.1.1 Legal and/or customary framework
<i>Reason</i>	A score of SG100 is not met for this PI and the assessment team has made a mistake as to a material fact.
<i>Rationale</i>	<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. 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. 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</p>

conformity between the states. This is the exact situation that exists here with respect to Atlantic menhaden.

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.

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. 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.

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. 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.

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

	<i>the bibliography at the end of this Notice of Objection.</i>
<i>Performance Indicator</i>	3.2.3 Compliance and enforcement
<i>Reason</i>	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.
<i>Rationale</i>	<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. 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 (“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 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. 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</p>

	<p>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>
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6.2 For each issue identified in question 6.1, please state why you or your organisation believes 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.

TRCP has addressed in Section 6.1 the reasons why the effect of the score in relation to the particular performance indicators was material to the determination, such that the determination should be altered.

7 Objection Pursuant to PD2.7.3

- 7.1 Using the template below, please list all additional information not forming part of the record² that is relevant to the circumstances at the date of the determination that you feel has not been considered, as per PD2.7.3 of the objections procedure. Be sure to provide the reasons why you or your organisation believes that the particular information in question (as per PD2.6.5.2):
- was known or should reasonably have been known to any party to the assessment process, and
 - should reasonably have been made available to the CAB, and
 - if considered, could have been material to the determination or the fairness of the assessment.

<i>Information</i>	
<i>Reason why information was known or should reasonably have been known.</i>	
<i>Reason why information should reasonably have been made available.</i>	
<i>Reason why information could have been material to the determination or the fairness of the assessment.</i>	

² As defined in paragraph PD2.6.5.1 (a) of the objections procedure.

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6. Faroese Pelagic Organisation North East Atlantic mackerel. (2011). Public Certification Report. <https://fisheries.msc.org/en/fisheries/faroese-pelagic-organisation-north-east-atlantic-mackerel/@@assessments>.