

# **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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1. As all parties are aware, further directions were issued on 5 July 2018.
2. I note the parties are now agreed there should be a hearing on 9 August 2018 in London. The time estimate for this hearing remains one day. I note the various emails from the parties regarding their consultation and discussions to attempt to seek agreement on some or all areas. I am grateful to the parties for their efforts in this regard and look forward to being updated accordingly. The hearing on 9 August 2018 will take place at the offices of Bates Wells Braithwaite and will commence at 10 am. Parties who require to attend via telephone or video links should contact the Marine Stewardship Council to organise the same.
3. In advance of this hearing I anticipate receiving any necessary applications and/or submissions on 20 and 27 July 2018.
4. I note all parties more or less accept that if adjudication is required the hearing will take place on 1 October 2018 with a provisional time estimate of 5 days. These dates are now confirmed and if adjudication is required, there will be a hearing and it will take place on these dates. It is possible the time estimate can be reduced and this can be considered at the hearing on 9 August 2018.

5. The issue that remains in dispute, is the location of the hearing, to which I now turn.
6. I have read and carefully considered the parties' rival submissions on the issue of the potential location of a hearing if adjudication is required. I have read Mr Russell's email of 12 July 2018; the CAB's letter response of 13 July, written by Dr Combes; and Echebatar's original letter of 12 June 2018 and their short further response of 13 July, both written by Mr Jauregui.
7. After careful consideration, I have determined that if adjudication proceeds and a hearing is required, it will take place in the Seychelles. All parties should plan accordingly.
8. My reasons for so deciding are as follows.
9. The Objectors raise a number of objections to a proposed hearing taking place in the Seychelles. These are as follows: cost; carbon footprint; the location of the main offices of the parties or their legal representatives; the location of the 2015 hearing; and the lack of merit in the positive case put forward by Echebatar and Acoura for a hearing to take place in the Seychelles. I take each issue in turn.
10. First, the Objectors submit the marginal cost of a hearing in the Seychelles as opposed to London for the Objectors and the legal representatives is £ 35, 000. I do not view the costs of legal representatives of any party as having much weight on a decision of this nature. Legal representation is not necessary. This is not formal litigation. In any event no explanation is put forward as to this additional cost. I consider the CAB's analysis to be more accurate, when they observe the main additional cost is the flight. They quote the cost from Europe to the Seychelles as being around £ 550-650. I accept there is a small additional cost, but agree that hotel and subsistence costs are likely to be the same wherever the hearing takes place. The high cost of a hearing is driven by the number of grounds of objection. Therefore, I conclude that whilst cost is a matter to which regard should be had, it is on the facts here, far from being decisive.

11. Shark Project submit they are unable to attend a hearing on the basis of costs. The only additional cost that I can weigh up (in the absence of any breakdown or submission from them as to the difference in cost) is the difference between a flight from Germany to London as opposed to the Seychelles. I am not persuaded that a few hundred Euros either way should be determinative. The Project is staffed by volunteers and there is no difference between accommodation and subsistence costs between London and the Seychelles. I am left unable to understand why the Shark Project could not attend a hearing in the Seychelles. I note they are being represented by counsel at the hearing in London.
  
12. Secondly, some regard must be had to the carbon footprint of a hearing. I accept a hearing in the Seychelles will increase the carbon footprint. This issue takes on lesser significance however than fairness to the parties. The MSC is a global standard and operates all over the world. I agree with the CAB there is real merit in the MSC being on the ground making decisions where the fishery and people are most impacted by those decisions if possible.
  
13. WWF submit they will be unable to attend because of their policies in respect of their carbon footprint. It is stated by Mr Russell that: “The WWF representatives based in the UK would be unable to attend a hearing in the Seychelles as it would exhaust the carbon budget allocated to their respective departments.” First, it is not clear whether there are insufficient carbon miles to permit the UK representatives to travel or whether the travel would exhaust existing available miles for the department. The second interpretation appears closer to what has been submitted. How WWF allocate the important of carbon miles within a department or between departments is a matter for them. Further, it is not clear why several representatives are required. Nor has it been explained why other WWF representatives cannot attend. The Objection from WWF is made jointly in the names of WWF Spain, WWF DE and WWF UK. No explanation has been provided as to why WWF UK must attend. Nor is there any explanation as to why Western European offices are objecting when WWF has an office in the Indian Ocean. Lastly, I have not been provided with the WWF carbon footprint policy and how it applies or whether for example carbon miles can be bought or offset. In the light of this analysis, whilst I very much hope WWF can send the representatives they consider most appropriate and effective, I am not persuaded that holding a hearing in the Seychelles would result in any unfairness. They have not persuaded

me a hearing must be held in Western Europe for WWF to properly engage in a hearing nor that a representative from the UK office is the only person who can attend to set out their objection.

14. Thirdly, I place no weight on the location of the parties' legal representatives. Lawyers are not a necessary part of this process. The offices of the MSC and the parties to the objection are in various places, albeit Western Europe is home to most of them. Greater weight needs to be placed, however, on the global context of the MSC and the fact this decision concerns the Indian Ocean.
15. Fourthly the location of the 2015 objection hearing is irrelevant. I have not been addressed on why it was agreed or determined the hearing should take place there.
16. Fifthly, I disagree with the Objectors in that I find there is merit to the CAB's and Echebatar's arguments as to why a hearing in the Seychelles permits them to fully advance their case and is appropriate. I adopt the reasoning set out by the CAB at paragraphs 13 to 17 of their letter on this issue. I also provisionally accept the position put forward by Echebatar in the third last paragraph of their letter dated 12 June 2018.
17. The CAB has reviewed the Objector's detailed objections to a hearing in the Seychelles, but continue to "strongly" submit a hearing should take place, if necessary, in the Seychelles. For the reasons I have advanced above, I agree.
18. I make two final observations. The cost of any hearing can be dramatically reduced by the parties negotiating hard over the new next few weeks prior to 9 August 2018. The cost of any hearing can therefore be contained if the parties are flexible. Secondly, a hearing in the Seychelles, if needed, remains 2 and ½ months distant. I am confident Shark Project can raise any additional minimal necessary funds and WWF UK can resolve any carbon miles issues, in that time, to permit them to attend and participate in person.

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

**18 July 2018**