

Marine Stewardship Council

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## MSC Notice of Objection Form



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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](mailto: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

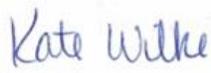
## 1 Identification Details

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
<b>Contact details for objecting party</b>	
Organisation(s)	The Nature Conservancy and Chesapeake Bay Foundation
Contact person	Kate Wilke Chris Moore
Address	The Nature Conservancy 530 E. Main St. Richmond, VA 23219  Chesapeake Bay Foundation 3663 Marlin Bay Dr. Virginia Beach VA 23455
Phone Number (including country code)	+1.434.942.7652 +1.757.644.4109
Fax Number (including country code)	+1.804.644.1685 +1.757.828.1424
Email address	<a href="mailto:Kate.wilke@tnc.org">Kate.wilke@tnc.org</a> <a href="mailto:cmoore@cbf.org">cmoore@cbf.org</a>

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: Kate Wilke  
Chris Moore

Position: Fisheries Scientist, Mid-Atlantic  
Senior Regional Ecosystem Scientist

Signed:  

Dated: 27 March 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 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 Nature Conservancy submitted comments on the Public Comment Draft Report on 14 Jan 19. Our comments are included in the Final Report on pages 493.</p> <p>The Chesapeake Bay Foundation submitted comments on 8 August 2017, 5 April 2018, and 14 January 2019.</p>
<p>Please state your interest in the fishery and its certification.</p>	<p>The Nature Conservancy's marine conservation work prioritizes sustainable seafood, strong coastal communities and a healthy ocean. We are committed to helping create and maintain the conditions necessary for healthy and resilient marine and estuarine food webs which benefit nature and people. On the Atlantic coast, long-term success in this effort requires ensuring that forage fishes, including Atlantic menhaden, remain abundant and available as forage, at all life stages, throughout their historic ranges. Thriving, sustainable fisheries must be managed on sound science and in cooperation with the fishing industry. We have been deeply invested in reforming menhaden fishery management for a decade and believe the MSC certification process can help to improve management of the fishery.</p> <p>The Chesapeake Bay Foundation is the largest</p>

	<p>conservation organization dedicated solely to saving the Chesapeake Bay watershed. Our motto, <b>Save the Bay</b>, defines the organization's mission and commitment to reducing pollution, improving fisheries, and protecting and restoring natural resources such as wetlands, forests, and underwater grasses. CBF has more than 200,000 members who support the wise management of the region's living resources.</p> <p>More conservative management of Atlantic menhaden (menhaden) in the Chesapeake Bay and along the entire Atlantic Coast has been an area of concern for CBF members and staff for more than 20 years. A restored menhaden population will benefit both ecological and economic interests in the Bay region and is an important component to restoring the overall productivity of the estuary. Increases in the menhaden population will help restore the species' vitally important role as forage for a variety of fish, marine mammals, and birds. In addition, a healthy menhaden population will preserve current and allow for future increased harvest opportunities for the various commercial fisheries that depend on menhaden.</p>
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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 <a href="#">4</a></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 <a href="#">5</a></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 <a href="#">6</a></p>
<p>Are you objecting on the basis that, in your opinion, additional information not forming part of the record<sup>1</sup> 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 checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Section <a href="#">7</a></p>

<sup>1</sup> 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>	PI 1.2.1 Harvest Strategy
<i>Condition</i>	<p>Condition 1</p> <p>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.</p> <p>Milestones:</p> <p><b>Year 1 (progress to be examined at Surveillance 1)</b> The Assessment Team shall be provided with documentary evidence that the Client group has worked actively, through ASMFC and NMFS, to promote the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered. <b>Score: 70.</b></p> <p><b>Year 2 (progress to be examined at Surveillance 2):</b> The Assessment Team shall be provided with documentary evidence that the Client group has actively contributed, through ASMFC and NMFS, to the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered. <b>Score: 70.</b></p> <p><b>Year 3 (progress to be examined at Surveillance 3):</b> The Assessment Team shall be provided with documentary evidence that the Client group has continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered. <b>Score: 70.</b></p> <p><b>Year 4 (progress to be examined at Surveillance 4):</b></p>

	<p>The Assessment Team shall be provided with documentary evidence that an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered, has been adopted* by the ASFMC (or their designated bodies).  <b>Score: 80 (Condition closed).</b></p> <p>*“Adopted” in this instance is analogous to “in place”; therefore, there should not be a delay between adoption and implementation.</p> <p>Client Action Plan:</p> <p><b>Year 1 (progress to be examined at Surveillance 1)</b>  Omega Protein will provide documentary evidence that we worked actively, through ASMFC and NMFS, to promote the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered.</p> <p><b>Year 2 (progress to be examined at Surveillance 2):</b>  Omega Protein will provide documentary evidence that we actively contributed, through ASMFC and NMFS, to the development of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered.</p> <p><b>Year 3 (progress to be examined at Surveillance 3):</b>  Omega Protein will provide documentary evidence that we continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of an appropriate harvest strategy, where the ecological role of Atlantic menhaden as a key low trophic species is considered.</p> <p><b>Year 4 (progress to be examined at Surveillance 4):</b>  Omega Protein will provide documentary evidence that an appropriate harvest strategy, where the ecological role of Atlantic menhaden as key low trophic species is considered, has been adopted by the ASFMC (or their designated bodies).</p>
<p>a) Reason</p>	<p>The timeline for the conditions is much too long given the current pace of development of ecological reference points by ASMFC. ASMFC has indicated the ecological reference points should be available for peer review in late 2019.<sup>2</sup> Given this timeline the client should have a 2-year window in which to support the development of an ecosystem-based harvest strategy. In addition, the condition should specify adoption of the harvest strategy and associated regulations by the Commonwealth of Virginia in a timeframe specified by ASMFC. Without adoption by the Commonwealth, the</p>

<sup>2</sup> Proceedings of the Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board.  
<http://www.asmfc.org/uploads/file/5af07725AtlMenhadenBoardProceedingsNov2017.pdf>

	<p>harvest strategy and associated regulations would be rendered essentially meaningless since Virginia controls approximately 80% of the coastwide quota.</p> <p>In addition to conditions already stipulated. Additional stronger components to the Client Action Plan would be:</p> <ul style="list-style-type: none"> <li>• The Client works actively to promote implementation of current ASFMC regulations in Virginia law.</li> <li>• The Client works actively to promote implementation in Virginia law the ASFMC-adopted harvest strategy where the ecological role of menhaden is considered.</li> </ul>
<p><i>b) Rationale</i></p>	<p>The letter from ASMFC Executive Director, Robert Beal, included in the Final Report (p.258), highlights the need for states to implement ASMFC regulations:</p> <p><i>“The CAP state the ERPs will be “adopted by the ASMFC” as a final step for meeting Conditions 1 and 2. However, the Commission’s “adoption” does not ensure the ERPs are full implemented by all jurisdictions along the Atlantic coast. The final step in ensuring there is a robust and precautionary harvest strategy for lower trophic level species important to the ecosystem, such as Atlantic menhaden, requires the full implementation and enforcement of new management measures by all jurisdictions. As a primary harvester of the resource, the cooperation of the Client is an important step in achieving full implementation.”</i></p> <p>And the letter from the VA Governor’s office (p. 390 and attached here) states that Virginia is currently out of compliance.</p>
<p><i>Performance Indicator</i></p>	<p>PI 1.2.2. There are well defined and effective harvest control rules (HCRs) in place</p>
<p><i>Condition</i></p>	<p>Condition 2 – Harvest control rules and tools.</p> <p>The client must provide evidence of implementation of well-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:</p> <ol style="list-style-type: none"> <li>1. ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur is approached and;</li> <li>2. are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.</li> </ol> <p>Milestones:</p> <p><b>Year 1 (progress to be examined at Surveillance 1):</b> The Assessment team shall be provided with documentary evidence that the Client group has actively worked, through ASMFC and NMFS, to promote the</p>

	<p>development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden 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> <p><b>Score: 75.</b></p> <p><b>Year 2 (progress to be examined at Surveillance 2):</b> The Assessment team shall be provided with documentary evidence that the Client group has actively contributed, through ASMFC and NMFS, to the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden 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> <p><b>Score: 75.</b></p> <p><b>Year 3 (progress to be examined at Surveillance 3):</b> The Assessment team shall be provided with documentary evidence that the Client group has continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden 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> <p><b>Score: 75.</b></p> <p><b>Year 4 (progress to be examined at Surveillance 4):</b> The Assessment team shall be provided with documentary evidence that well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden 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, have been adopted* by the ASFMC (or their designated bodies).</p> <p><b>Re-score: 80 (Condition closed).</b></p> <p>*“Adopted” in this instance is analogous to “in place”; therefore, there should not be a delay between adoption and implementation.</p>
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	<p>Client Action Plan:</p> <p><b>Year 1 (progress to be examined at Surveillance 1):</b> Omega Protein will provide documentary evidence that we have actively worked, through ASMFC and NMFS, to promote the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach 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> <p><b>Year 2 (progress to be examined at Surveillance 2):</b> Omega Protein will provide documentary evidence that the we have actively contributed, through ASMFC and NMFS, to the development of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach 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> <p><b>Year 3 (progress to be examined at Surveillance 3):</b> Omega Protein will provide documentary evidence that we have continued to actively contribute to the development of and worked, through ASMFC and NMFS, to promote the adoption of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach 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> <p><b>Year 4 (progress to be examined at Surveillance 4):</b> Omega Protein will provide documentary evidence that well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden and that; 1) ensure the exploitation rate does not reach 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, have been adopted* by the ASFMC (or their designated bodies).</p>
<p>a) Reason</p>	<p>The timeline for the conditions is much too long given the current pace of development of ecological reference points by ASMFC. ASMFC has indicated the ecological reference points should be</p>

	available for peer review in late 2019. <sup>3</sup> Given this timeline the client should have a 2-year window in which to support the development of the harvest control rules and associated tools. In addition, the condition should specify adoption of the control rule by the Commonwealth of Virginia in a timeframe specified by ASMFC. Without adoption by the Commonwealth, the harvest control rule would be rendered essentially meaningless since Virginia controls approximately 80% of the coastwide quota.
<i>b) Rationale</i>	

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

<sup>3</sup> Proceedings of the Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board.  
<http://www.asmfc.org/uploads/file/5af07725AtlMenhadenBoardProceedingsNov2017.pdf>

## 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.

We addressed a suite of issues in our comments on the PCDR which we still believe are relevant and have not adequately been addressed by the CAB. Appropriate management of this key low-trophic level species has generated a great deal of debate at the Atlantic States Marine Fisheries Commission and all along the Atlantic Coast. Much of this debate has centered on the importance of this fish to the broader ecosystem and the relatively narrow geographic area in which the vast majority of the fishery takes place. Two major issues affecting the management of the species are the lack of a regional population estimate that would ensure an appropriate management plan for all harvests within Chesapeake Bay and the lack of compliance by the Commonwealth of Virginia with the coast-wide fishery management plan for this species. The lack of compliance is a particularly acute issue because the state is home to approximately 80% of the total coastwide landings and this lack of compliance is based solely on actions by the client that is currently seeking certification. Due to these concerns, we believe certification of the fishery at this time is premature. For the purposes of this objection, we will highlight only the most glaring concerns.

While many stakeholders may not have the capacity or the financial resources to engage in the objections process, I would encourage the Adjudicator to review the thoughtful and insightful comments, particularly on the compliance issue, which have not been adequately addressed by the CAB.

<i>Performance Indicator</i>	PI 1.1.1 A issue (a) - The stock is at a level which has a low probability of serious ecosystem impacts Issue (a). Stock status relative to ecosystem impairment.
<i>Reason</i>	CAB issued a score of 80.  Based on the 2017 <u>single-species</u> stock assessment (without even including ecosystem needs), the spawning stock biomass (described as FEC - fecundity or number of eggs as a measure of reproductive potential) was 83,486 billion eggs. MSC FCR v2.0 guidance (p.120) states that <b><u>“the point where serious ecosystem impacts could occur shall be interpreted as being substantially higher than the point at which recruitment is impaired (PRI), as determined for the target species in a single species context.”</u></b> - The menhaden stock assessment sets a threshold to prevent

	<p>the stock from reaching a point where productivity may become compromised (read: recruitment impaired)<sup>4</sup>. The threshold reference point for menhaden was <i>SSB 21%</i> = 57,295 billion eggs. The stock is well above this level.</p> <ul style="list-style-type: none"> <li>- BUT, MSC guidance states that the point where serious impacts could occur shall be substantially higher—and the menhaden stock assessment provides this target. The target reference point was <i>SSB 36%</i> = 99,467 billion eggs. <b><u>The stock is below this level. SG60 is not warranted for PI 1.1.1A issue (a).</u></b></li> <li>- The current <i>SSB</i> of 83,486 billion eggs would be <i>SSB 30%</i>.</li> </ul>
<i>Rationale</i>	<p>The CAB did not respond to our comment on issue (a) in the Final Report. They alluded to it in their response to issue (b), but they confounded issues (a) and (b) and in doing so, missed our concern. <b>The criteria for SG60, “It is likely that the stock is above the point where serious ecosystem impacts could occur”, is not met for PI 1.1.1A issue (a).</b></p>

<i>Performance Indicator</i>	<p>PI 1.1.1 A - The stock is at a level which has a low probability of serious ecosystem impacts Issue (b). Stock status in relation to ecosystem needs.</p>
<i>Reason</i>	<p>MSC FCR v2.0 guidance for issue b (p.120) states:</p> <p><i>When scoring PI 1.1.1A scoring issue (b), the expectations for key LTL species shall be as given below: ■</i></p> <p><i>a. The default biomass target level consistent with ecosystem needs shall be 75% of the spawning stock level that would be expected in the absence of fishing.</i></p> <p><i>b. A higher or lower target level, down to a minimum allowed 40% of the spawning stock level that would be expected in the absence of fishing, may still achieve an 80 level score if it can be demonstrated, through the use of credible ecosystem models or robust empirical data for the UoA/ecosystem being assessed, that the level adopted: ■</i></p> <p><i>i. Does not impact the abundance levels of more than 15% of the other species and trophic groups by more than 40% (compared to their state in the absence of fishing on the target LTL species); and</i></p> <p><i>ii. Does not reduce the abundance level of any other</i></p>

<sup>4</sup> ASMFC. 2008. Development and Use of Reference Points.  
<http://www.asmfcr.org/uploads/file/developmentAndUseOfReferencePoints.pdf>

	<p style="text-align: center;"><i>species or trophic group by more than 70%.</i></p> <p>The stock is only estimated to be at 46.7% of unfished total biomass. Therefore, <i>criteria (a) biomass target of 75%</i>, is not met.</p> <p>The CAB awarded a score of 80 based on <i>criteria (b) a lower target level down to a minimum of 40% total biomass</i>. Evidence is presented from the Buchheister et al. 2017 paper to show that abundance levels of other species would not be affected beyond defined levels. However, if fishing down to a target of 40% results in almost total loss of spawning adults (only 4% of SSB!), an alarming scenario for the sustainability of the menhaden stock, then clearly a 40% minimum is too low and a score of 80 is not justified.</p>
<p><i>Rationale</i></p>	<p>For reasons stated in our previous comments (p. 493 of Final Report), we strongly disagree with the decision to use total biomass rather than spawning stock biomass to calculate the reference points for key-LTL species because of the dire consequences for mature fish at very low levels of stock biomass. However, even if Total biomass is used, the current stock is only estimated to be at 46.7% of unfished biomass, so <i>criteria (a) biomass target of 75%</i>, is not met.</p> <p>The CAB provides a long explanation of the process that led them to use Total biomass over Spawning Stock Biomass (p. 50-51 of the Final Report), but it is unclear why the MSC issued the clarification that either Total Biomass or SSB is acceptable, as if they are interchangeable, when in fact they are two very different concepts that have very different biological/ecological implications. And this clarification contradicts their own guidance for Key-LTL species.</p> <p>Free to make the decision between Total and SSB, the CAB decided to use Total Biomass. And yet in the following paragraphs (p 51) they go on to say that the BERP (and ultimately the ASMFC at their Nov 2017 meeting) did not feel these rule-of-thumb reference points in Smith et al. and Pikitch 2012 were suitable for menhaden:</p> <p style="text-align: center;"><i>However, there are also disadvantages surrounding the use of reference points that preserve a certain proportion of total biomass instead of spawning stock biomass or fecundity. A concern in this regard has previously been expressed by the ASMFC's BERP committee due to the fact such reference points may result in a level of spawning potential well below the current single species fecundity limit. This concern results from the fact that Age 0 and 1 menhaden represent a significant proportion of total menhaden biomass, but do not contribute to the spawning population (they are also not targeted by the fishery) with most Atlantic menhaden</i></p>

	<p><i>reaching maturity around late age 2. Therefore, the level of fishing pressure that reduces total biomass to 40%B0 is higher than almost anything seen in the history of the fishery.</i></p> <p>But the CAB left out the end of the BERP’s sentence and most important point... “Therefore, the level of fishing pressure that reduces total biomass to 40%B0 is higher than almost anything seen in the history of the fishery <b>and results in almost total loss of spawning adults.</b>”<sup>5</sup></p> <p>The CAB goes on to say (p. 51):</p> <p><i>Ultimately the current ‘rule of thumb’ reference points would seem to be ill-suited to menhaden and this is why the ASMFC set up the BERP committee to consider and develop alternatives that are better suited to the menhaden stock.</i></p> <p>The MSC FCR guidance is written broadly to allow for assessment of any fishery. It is disingenuous to knowingly apply the Standard in such a way that, data demonstrates, does not make sense for a particular species in the real world. In making this statement on p.54 of the Final Report, “Based on this evaluation, the Assessment Team is merely pointing out that the fishery might still achieve SG80 with a biomass target somewhat below 75%B0 and potentially as low as 40%B0. It is important to note that this statement pertains specifically to the fishery’s conformance to MSC requirements and is not a comment on whether such a target would be realistic/desirable in the real world” they CAB is knowingly applying the standard in such a way that doesn’t make sense for this species.</p>
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<i>Performance Indicator</i>	2.5.2 – There area measures in place (a management strategy) to ensure UoA does not cause serious harm to ecosystem structure and function.
<i>Reason</i>	Given the current reliance on single-species reference points, the management strategy does not even meet SG60 for key-LTL. A score of SG60 or higher would require “measures in place, if necessary which take into account the potential impacts of the fishery on key elements of the ecosystem”.
<i>Rationale</i>	For menhaden, key elements of the ecosystem are the predator-prey relationships and the role of menhaden as prey. The current management isn’t designed to consider impacts to the ecosystem— which is exactly the reasoning the CAB gave an SG80 score instead of 100). CAB justification states: “Due to the continuing use of single-species references points, it cannot be said that there is a strategy that consists of a plan in place that is designed specifically to address

<sup>5</sup> BERP Workgroup July 14, 2017 memo.  
[https://asmfc.org/uploads/file/598dd1b9AtlanticMenhadenDraftAmendment3\\_PublicComment.pdf](https://asmfc.org/uploads/file/598dd1b9AtlanticMenhadenDraftAmendment3_PublicComment.pdf)

	<p>all main impacts of the UoA on the ecosystem; therefore, SG100 is not met.”</p> <p>The rationale provided by the CAB is that NOAA has an EBFM policy, and that a broad range of management measures are in place (e.g. total annual catch, etc.). These measures are “expected to restrain impacts of the UoA on the Ecosystem” – actually, the management system is a single-species-based system and isn’t designed to consider impacts to the ecosystem (which is the exact reasoning the CAB gave an SG80 score). The Commission is currently working to make the switch to ecosystem-based management.</p> <p>Also, the management strategy evaluation (b) and management strategy implementation (c) are both single-species focused.</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.

TNC and CBF believe that errors were made by the CAB is scoring P.I. 1.1.1A and P.I. 2.5.2. primarily due to the incorrect treatment of this key LTL species. Our organizations have provided additional information and a rationale for including this information that should be reviewed by MSC staff in order to correct this scoring deficiency.

The Atlantic menhaden fishery is currently lacking an ecosystem-based assessment for this key LTL species to determine the likelihood of the stock being at a level which may seriously impact the ecosystem. Therefore, scientists and managers must rely on the science and data that is currently available and use this suite of indicators to determine stock status relevant to ecosystem impairment and ecosystem needs. The evidence we present above does not provide a high degree of certainty that serious ecosystem impacts are not occurring.

## 7 Objection Pursuant to PD2.7.3

- 7.1 Using the template below, please list all additional information not forming part of the record<sup>6</sup> 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>	<p>Relating to Principle 3 – Effective Management</p> <p>3.1.1 3.2.1 3.1.2 3.2.2 3.1.3 3.2.3 3.2.4</p> <p>Virginia, the largest quota holder in the fishery, and home to the Omega Protein reduction fishery, is not in compliance with the ASFMC Atlantic Menhaden Fishery Management Plan.</p>
<i>Reason why information was known or should reasonably have been known.</i>	<p>While working on behalf of the client, the CAB only reviewed the actions of the Atlantic States Marine Fisheries Commission. The CAB failed to review the actions by the client within the state of Virginia that have led to the state not being in compliance with the fishery management plan. These actions indicate a strong unwillingness to comply with MSC Principle 3: <i>Effective Management</i>. By not appropriately reviewing these actions the CAB has put MSC at risk of certifying a fishery that fails to respond appropriately to the very management actions that it included in the draft Conditions for certification.</p>
<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>	<p>We do not dispute that the Atlantic menhaden fishery has a management system in place that meets the MSC standard. However, the commonwealth of Virginia, the largest quota holder in the fishery and the state in which the Client operates, is not in compliance with the management plan. Furthermore, the Client has actively opposed legislation which would bring Virginia into compliance with the ASFMC's Menhaden Management Plan. For this reason, this Omega Protein Atlantic Menhaden Reduction Fishery does not meet the MSC standard for Principle 3: <i>Effective Management</i>.</p> <p>The relevant section from the VA code demonstrates Virginia's inconsistency with the requirements of the Menhaden Fishery Management Plan (we have inserted red highlight): From: <a href="https://law.lis.virginia.gov/vacode/28.2-1000.2/">https://law.lis.virginia.gov/vacode/28.2-1000.2/</a></p>

<sup>6</sup> As defined in paragraph PD2.6.5.1 (a) of the objections procedure.

§ 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

“C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be **87,216 metric tons**, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed **87,216 metric tons** in any year to which the harvest cap applies, **then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest** and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.”

Here is a link to Amendment 3 of the Menhaden Fishery Management Plan, indicating what the Virginia code would need to say to achieve compliance.

[http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3\\_Nov2017.pdf](http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3_Nov2017.pdf)

pg 45.

“4.3.7 Chesapeake Bay Reduction Fishery Cap

The **annual total allowable harvest from the Chesapeake Bay by the reduction fishery is limited to no more than 51,000 mt.** The intent of the Cap is to prevent all of the reduction fishery harvest from occurring in the Chesapeake Bay, a critical nursery area for Atlantic menhaden. Harvest for reduction purposes shall be prohibited within the Chesapeake Bay when 100% of the cap is harvested from Chesapeake Bay, which is defined as areas shoreward of the Chesapeake Bay Bridge Tunnel. Harvest above the Cap in any given year will be deducted from the next year’s allowable harvest. Furthermore, unused quota from a region or state cannot be transferred to the Cap to reduce an overage. **Any amount of unlanded fish under the Cap cannot be rolled over into the subsequent year. As a result, the Cap in a given year cannot exceed 51,000 mt.”**

Our concerns have not been adequately addressed by the CAB. The CAB’s response to our comment letters focused on management by the Virginia General Assembly (p. 509 of final report PI 3.1.1), not on the fact that Virginia is not in compliance with the FMP.

Section 5.0 of Amendment 3 to the Interstate Fishery Management Plan (FMP)<sup>7</sup> clearly states that, “The full implementation of the provisions included in this amendment is necessary for the management program to be equitable, efficient, and effective.” At this time full implementation of the plan by the Commonwealth of Virginia has not been accomplished solely to due lobbying efforts by Omega Protein.

The Governor’s Office of Virginia verified that the Commonwealth is not in compliance with ASMFC regulation (p. 390 of the Final Report), and that “Omega Protein has fought to prevent Virginia from adopting the measures...” (p. 391). Letter from the Governor’s Office is

<sup>7</sup> Atlantic States Marine Fisheries Commission.

[http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3\\_Nov2017.pdf](http://www.asmfc.org/uploads/file//5a4c02e1AtlanticMenhadenAmendment3_Nov2017.pdf)

also attached here.

Virginia's General Assembly has completed two legislative sessions during which they could have adopted necessary legislation in order to bring Virginia into compliance with the FMP. During both sessions legislation that would have done so was not adopted based upon lobbying efforts by Omega Protein<sup>89</sup>. These efforts prove that Omega Protein is not sufficiently invested in managing this resource through a cooperative coastwide approach as should be the case for this vitally important forage species.

If the Conditions of Certification do not require the Client to adhere to the ASMFC management process, through implementation in all of the states, it is possible that future rule-making by the ASMFC will not be implemented in Virginia, as is the current situation. In his letter to the CAB (p. 258 of the Final Report), Robert Beal, Executive Director of the ASMFC, highlighted that an important part of the cooperative, interstate management process is "full implementation and enforcement of new management measure by all jurisdictions" not just adoption by ASMFC.

We would encourage the Adjudicator to review the thoughtful and insightful comments related to compliance from multiple stakeholders (see MA DMF and CCA MD, among others) submitted during review of the PCDR.

The CAB also states that all stakeholders have the right to lobby. We do not disagree with that statement. However, the time to appropriately lobby is during the various ASMFC processes such as the public scoping period, public comment periods, and the ASMFC meetings that take place prior to the final votes on regulations. Once ASMFC has passed a regulation, then the states must implement it or work through the appropriate processes such as the appeal process. This is one of the backbones of cooperative coastwide fisheries management. In this case, Omega Protein worked to undermine the ASMFC process by lobbying the legislature to not implement modest updates to the fishery management plan that were adopted overwhelmingly during a special meeting of the ASMFC. Omega Protein's efforts therefore fail to protect the resource and undermine the cooperative ASMFC management process and most importantly does not meet the intentions of MSC Principle 3.

<sup>8</sup> Richmond Times Dispatch. [https://www.richmond.com/news/virginia/government-politics/general-assembly/house-kills-fish-bill-does-virginia-risk-falling-out-of/article\\_b0a7f75f-f95f-582a-8556-7b2f4bd30806.html](https://www.richmond.com/news/virginia/government-politics/general-assembly/house-kills-fish-bill-does-virginia-risk-falling-out-of/article_b0a7f75f-f95f-582a-8556-7b2f4bd30806.html)

<sup>9</sup> WVTF. <https://www.wvtf.org/post/tiny-fish-causes-big-controversy-richmond#stream/0>

Commonwealth of Virginia (Office of the Governor)



COMMONWEALTH of VIRGINIA

Office of the Governor

Matthew J. Strickler  
Secretary of Natural Resources

January 14, 2019

Mr. Samuel Dignan  
Fisheries Scheme Manager  
SAI Global/Global Trust  
Block 3, Quayside Business Park, Mill Street  
Dundalk, County Louth, Ireland

Dear Mr. Dignan,

The Commonwealth of Virginia understands the need for healthy and vibrant fisheries. Well-managed fisheries are an important economic engine for our state and it is critical that we continue our progress toward management that ensures abundant fish stocks for both current and future generations. At this time, Virginia has concerns about the long-term sustainability of Atlantic menhaden and does not support certification of Omega Protein's menhaden purse seine fishery by the Marine Stewardship Council (MSC).

Our concerns stem from the fact that Virginia is currently out of compliance with management measures for menhaden approved by the Atlantic States Marine Fisheries Commission (ASMFC), the interstate fisheries management body that regulates shared coastal fish stocks on the eastern seaboard of the United States. These management measures are based on sound science and are appropriately precautionary given the fact that there is still much we do not know about menhaden, a critical forage fish species that underpins much of the Northwestern Atlantic Ocean ecosystem. MSC has acknowledged this critical lack of understanding in its draft Client Action Plan (CAP) for the fishery:

*" Evidence is lacking that the current harvest strategy design takes into consideration the ecological role of Atlantic Menhaden as key low trophic level in the US Northwest Atlantic and is responsive to the state of the stock with respect to its role in the ecosystem." - draft Client Action Plan, PI 1.2.1*

In November of 2017, ASMFC put in place responsible measures to ensure the stock does not decline while it develops a more sophisticated management regime based on ecological reference points (ERPs). ERPs will help us assess the health of the stock based not only the menhaden population and harvest relative to maximum sustainable yield, but also with consideration for commercially and recreationally important fish stocks and other species that depend upon menhaden to survive.

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Unfortunately, Omega Protein has fought to prevent Virginia from adopting the ASMFC measures, including a quota reduction designed to protect menhaden in the Chesapeake Bay, which serves as a critical nursery ground and foraging area for many menhaden-dependent species. The company has been successful to this point because menhaden is the only species of fish in Virginia managed by our citizen legislature instead of the professional fishery managers at the Virginia Marine Resources Commission (VMRC).

Governor Northam has offered the legislature and Omega Protein numerous compromise options to ensure the fishery is protected while shifting the authority to implement ASMFC actions to VMRC, but to this point no agreement has been reached. This impasse renders the MSC CAP entirely ineffective, because while the CAP would require Omega Protein to have “actively contributed to the development, through ASMFC and National Marine Fisheries Service (NMFS), of an appropriate harvest strategy” and that the “strategy has been adopted by ASMFC” nowhere does the CAP require Omega Protein or Virginia to actually implement the harvest strategy. It is not sufficient to require ASMFC to pass management measures; all jurisdictions must adopt and enforce these measures.

Until these concerns are addressed, Virginia must oppose MSC certification of Omega Protein’s Atlantic menhaden purse seine fishery. The ERPs should be implemented before certification, and at a minimum, the CAP should require Omega Protein to follow ASMFC management standards and be contingent upon adoption of those standards and all future ASMFC management measures by all jurisdictions where the fishery occurs.

The best way to ensure compliance with ASMFC is to transfer management responsibility from the legislature to VMRC. It is our view that giving this company and this fishery a sustainability certification while it is being overseen by a political body instead of an expert fisheries management agency is irresponsible. Granting this certification under these circumstances would seriously undermine the credibility of the MSC.

I appreciate your consideration of Virginia’s position and I remain hopeful that ongoing negotiations with Omega Protein will result in an agreement that will allow Virginia to remove its opposition to certification of the fishery by MSC. Please do not hesitate to contact my staff or me with any questions.

Sincerely,



Matthew J. Strickler