

April 27, 2017

VIA E-MAIL

Ms. Melanie Carter
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Independent Adjudicator, NETP Assessment
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Re: Northeastern Tropical Pacific Purse Seine Yellowfin and Skipjack Tuna Fishery

Dear Ms. Carter:

Pursuant to your April 26, 2017 Further Directions, objector WWF respectfully submits this letter in reply to Dr. Morgan's request for clarification regarding scope of hearing in the above-referenced fishery assessment.

The Fishery Units of Certification Subject to Adjudication

The fishery is seeking four units of certification:

- dolphin sets on yellowfin;
- dolphin sets on skipjack;
- free school sets on yellowfin; and
- free school sets on skipjack.

WWF's objection in the first instance applies only to the dolphin sets, not the free school sets.

The Notice of Objection and MSC Criteria Define the Scope of the Adjudication

Second, WWF submits that the scope of the adjudication hearing should be guided by the Notice of Objections and the MSC Certification Requirements, rather than preliminary views

formed by the certifying body arising from compromise discussions. Deciding scope outside these criteria present potential for interlocutory decisions on the merits without hearing.

The Notice of Objection form requires by its very structure and content a detailed articulation of objection tied specifically to the MSC requirements. The substance and scope of the matters WWF seeks to adjudicate are therefore plainly articulated in that submission:

Part Four: the Notice of Objection states two principal faults: that the CAB (1) did not provide the raw observer data forming the basis of its conclusions regarding dolphin mortality; and (2) omitted dolphin population data – the most salient statistic requisite to analysis – in its entirety.

With respect to the raw observer data that WWF objects was not made available, the Notice of Objection relates this procedural error directly to the MSC Requirements:

Relevant MSC Requirements or Guidance in force at the time of the assessment CRv1.3

24.5 Access to information

24.5.1 *The CAB shall ensure that un-published key information necessary to enable a stakeholder who is not party to this information to be able to properly review the logic used by the team in their conclusion about a particular PI score is made available electronically, in printed form or otherwise for viewing by stakeholders.*

24.5.1.1 *The CAB shall make un-published key information available before the posting of the Public Comment Draft Report, and shall ensure that the information is available throughout the subsequent stages of the assessment process until such time as a certification decision is made.*

The CAB's unilateral and untested proffer that it provided all data on which it relied sidesteps this Objection. The CAB provided **summary** data, not the raw observer data underlying the summaries, regarding dolphin mortality.

Allowing the CAB to limit the scope of an adjudication to summary statements of evidence, without providing the underlying evidence itself, would defeat these MSC Requirements. Relying on summary reports is relying on the evidence summarized. WWF should be allowed to adjudicate its objection that the dolphin mortality evidence has not been made available.

Likewise WWF directly related the omitted dolphin population data to the MSC criteria that the form of objection itself commands – specifically:

- Part 4.1(b), which requests “any other irregularity in the fishery assessment process that you or your organisation believe made a material difference to the fairness of the assessment;” and
- Part 4.2, which asks the objector to “state why you or your organisation believes that the failure to follow procedures by the conformity assessment body has significantly affected the result of the Determination such that the Determination should be altered?”

WWF consequently submits that its objections regarding the critical omitted dolphin population statistics – necessary to assign meaning to dolphin mortality – are properly within the scope of Part Four.

Part Five: WWF's Notice of Objection states that the Client Action Plan is arbitrary and unreasonable in eleven distinct specifically identified and discussed ways. In each case, WWF states that the condition does not require action, result, outcome or evidence.

The CAB now essentially seeks an *in limine* ruling regarding potential conditions **not** listed in the objection, but surfacing in the compromise discussions that have occurred – namely, discussions regarding mechanisms to assure scientifically appropriate dolphin population surveys are performed and scientific standards and measures followed.

WWF intends to adjudicate the objections it listed in Part Five, not ideas or mechanisms that may have surfaced in the compromise discussions.

At the same time, WWF submits that it could be premature for the Independent Adjudicator to categorically exclude subject matter that may arise and could be appropriate to resolve a proper objection. That type of ruling at this stage would seem to WWF not only to jeopardize legitimate good faith pre-adjudication discussions, but stand potential to work against the process on the merits should a post-adjudication condition appear to help the MSC goals and criteria.

Part Seven: WWF's Notice of Objection in Part 7 indicates that the CAB should have reviewed and considered the dolphin mortality observer data and that it omitted any consideration of dolphin population data.

The CAB seeks an interlocutory ruling on the merits without adjudication that the only relevant data it should have considered exists over the past 3-5 years. There is, however, no means to evaluate the core issue – change in dolphin mortality, and most importantly, dolphin population, by that limitation. The impact to dolphins can only be measured by comparison over broader measured periods.

By seeking this formalistic limitation, the CAB is essentially asking the Independent Adjudicator to rule on the merits that these comparisons are not relevant, without hearing evidence as to why. This fishery targets marine mammals – perhaps the most known intelligent, social and communicative marine mammals on the planet. Evidence of their status can only be assessed by the comparisons WWF seeks to discover.

WWF submits the Independent Adjudicator should assess the relevance of this data upon hearing the evidence at the adjudication. Relevance determinations can then occur on the merits of the adjudication.

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Conclusion

For the foregoing reasons, WWF respectfully requests that the Independent Adjudicator order the scope of the adjudication be guided by the actual Notice of Objections as related in the form and in fact to the MSC Certification Requirements and criteria.

Sincerely,

Michael P.A. Cohen
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FOR WORLD WILDLIFE FUND

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