

# **MARINE STEWARDSHIP COUNCIL**

## **INDEPENDENT ADJUDICATION**

### **IN THE MATTER OF**

### **JOINT DEMERSAL FISHERIES IN THE NORTH SEA AND ADJACENT WATERS**

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#### **DECISION OF THE INDEPENDENT ADJUDICATOR PURSUANT TO FCR PD 2.4**

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1. By Notice of Objection dated 10 May 2019 an NGO Consortium has submitted an Objection to the report and recommendation of Control Union Pesca Ltd (hereafter “CUP”), the Conformity Assessment Body (CAB) to certify the ‘Joint Demersal Fisheries In the North Sea and Adjacent Waters’ (hereafter shortened to “JDF” for convenience). The NGO Consortium objects to the proposed certification.
2. The NGO Consortium is made up of World Wildlife Fund (WWF) Netherlands, WWF Germany, WWF Denmark, WWF Sweden, the North Sea Foundation, and the Dutch Elasmobranch Society. The contact person is Dr Aafke Brader of WWF Netherlands.
3. The fishery clients are: Danish Fishermen’s Producers’ Organisation (DFPO); Swedish Fisherman’s Producer Organisation (SFPO); The Erzeugergemeinschaft-nordsee (EZG) and Cooperatieve Visserij Organisatie (CVO).
4. The fishery has been assessed on FCR v2.0 and the Objection is subject to Annex PD in FCR v2.0.

5. CUP has produced a lengthy report following its assessment of the fishery. There are in fact four separate reports: a general background and three reports each for Principles 1, 2 and 3 of the MSC Fisheries Standard. I have read the reports. It is clear from Appendix 3.1.5 and pages 119 to 126 that the NGO Consortium provided detailed comments before the PCDR. At Appendix 3.2.2, there is a detailed letter and report set out at pages 130 to 218 of the report, setting out the NGO Consortium's detailed response to the PCDR. I cannot find a record of who attended the site visits, but the NGO Consortium state they participated in meetings pursuant to PD 2.3.1.2. The NGO Consortium is plainly a party to the assessment process that made written submissions for the purposes of PD 2.3.1.
6. The Notice of Objection is 23 pages long. It contains detailed submissions supporting two grounds of objection based on PD 2.7.2.1; one ground of objection based upon the settings of a condition, pursuant to PD 2.7.2.2; and one grounds of objection related to a scoring challenge, pursuant to PD 2.7.2.3.
7. Considering PD 2.3.6, I am clear the Notice, as amended, meets the minimum requirements for validity. The first ground of objection clearly sets out the alleged error in respect of the Unit of Assessment and explains why this was material to the determination. The second ground clearly sets out the alleged procedural error in respect of which scientific evidence CUP took into account and why this impacted on the assessment. The third and fourth grounds of objection set out complaints in respect of Performance Indicators 3.2.3 and 2.4.1 (b) respectfully. The Notice sets out a summary of the "evidence" relied upon in support. Evidence is placed in inverted commas, because strictly speaking the supporting material is a submission.
8. I am therefore satisfied pursuant to PD 2.4 the amended Notice of Objection meets the requirements of PD 2.3.4.
9. Turning to PD 2.4.2, which states:

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.

10. From my reading of the Notice and the CUP's reports the four grounds of objection raise points which at this early stage are neither spurious nor vexatious. Secondly, given the submissions made there is a basis upon which an adjudicator could reasonably determine the conditions of PD 2.7.2 are met, because the CUP may have made an error when determining the Unit of Assessment. The issue of what scientific evidence should have been considered will also require careful attention.
11. I have carefully considered the condition and scoring grounds in the Notice of Objection. It plainly cannot be said these grounds of objection are spurious or vexatious. At each stage of the Notice the NGO Consortium raises, what seems to me at this early stage, appropriate challenges with intelligible reasoning. For this reason, I am persuaded the grounds of objection are neither spurious nor vexatious and the principle set out at PD 2.4.2.2 is also met.
12. Therefore, this Objection will provisionally proceed. I say, 'provisionally' because given there are six individual bodies objectors which make up the NGO Consortium I require each of the six organisations to file a letter from the appropriate authority within each organisation making clear they form part of the NGO Consortium and setting out who has authority to act on their behalf in this objection. I direct these letters must be filed with the MSC as soon as possible and within 5 working days of this decision. If these letters are received, I will direct as follows:
  - a. Pursuant to PD 2.4.7.1 the MSC shall post the Notice of Objection, as amended, on their website forthwith;
  - b. The fishery client and any stakeholder who participated in the fishery assessment process (other than the NGO Consortium) may file written representations on

matters raised in the amended Notice of Objection and if they choose to do so, they shall file those in accordance with PD 2.4.8.

- c. Pursuant to PD 2.5.1 the CAB, CUP shall comply with the requirements of PD 2.5.1.1 to PD 2.5.1.4.

**John McKendrick QC**  
**Independent Adjudicator**  
**16 May 2019**