

MARINE STEWARDSHIP COUNCIL

IN THE MATTER OF OBJECTIONS TO THE FINAL REPORT ON THE PROPOSED CERTIFICATION OF THE USUFUKU HONTEN NORTHEAST ATLANTIC LONGLINE BLUEFIN TUNA FISHERY UNDER THE MSC PRINCIPLES AND CRITERIA FOR SUSTAINABLE FISHING

NOTICE REGARDING CONSULTATION PROCESS AND HEARING LOGISTICS

1. Pursuant to the Independent Adjudicator's Notice of Acceptance of January 24, 2020, both objectors, WWF and the Pew Charitable Trusts ("Pew"), have responded to the request that they advise the MSC "whether they consider that there is any reasonable basis for exploring an acceptable solution to the whole or any part of the objections." WWF, in an e-mail dated February 26, 2020, has indicated that, based upon the February 21, 2020 submission of the Conformity Assessment Body (the "CAB"), though WWF is "available to participate in a consultation phase," it sees "little to no grounds for exploring an acceptable solution to the objection." For its part, Pew, in a communication of the same date, has stated that it is "willing to participate" in an effort to explore settlement but expressed "concern that . . . [the CAB] has not altered any of the scores on PIs for which we have shown concern" and identified no basis for believing that settlement is currently a realistic option.
2. It is apparent from the responses of the objectors, especially that of WWF, that a mutually agreeable resolution of the objections is unlikely at this time. Therefore, it is now necessary to consider the logistics of scheduling a hearing on the objections. Two scheduling issues require immediate attention: first, the venue for a hearing, and, second, the date on which a hearing would be held. Of course, there is nothing to prevent the parties from opening discussions among themselves about settlement, if they deem it fruitful, and I would be happy to mediate such discussions.
3. With respect to the hearing venue, it appears to me, considering the location of the parties, that realistically only two venues make sense. First, the hearing could be held in London, England, which would be most convenient for the CAB and WWF. Second, and alternatively, the hearing could be held in Washington, DC, which would be most convenient for myself and Pew. In any case, unfortunately, extensive international travel would be required for at least some parties, especially the fishery client. As explained below, I would like the parties' views on the choice of venue.

4. With respect to hearing dates, under PD 2.6.1 nominally a hearing should be held within thirty working days of a decision to proceed to adjudication. However, there is flexibility, if the parties agree, to choose a later date. As indicated, in the Notice of Acceptance, my predecessor advised the parties that the week of March 23 was provisionally booked for the hearing. After considering my schedule and consulting with the MSC, I have concluded that a hearing could be held during that week on either Thursday, March 26, or Friday, March 27, in either London or Washington, DC. Alternatively, the following week (of March 30) would also be feasible for me. During that week, a hearing could be held any day in Washington, DC, and on Thursday, April 2, or Friday, April 3, in London. At this point, I contemplate no more than one day for a hearing. My preference would be for holding the hearing on Thursday, April 2, if agreeable to the parties. This would provide more time for compilation of the record, preparation of supplemental submissions under PD 2.6.4 and development of PowerPoint presentations. Again, I wish to solicit the parties' views regarding the choice of hearing dates and, in particular, their ability to attend a hearing on the dates specified.
5. The parties are requested to provide me with their views on possible hearing venues and hearing dates not later than 5:00 pm Greenwich Mean Time on February 28, 2020. I hope that we will be able to resolve these logistical issues through correspondence. If we are not able to do so, then it may be necessary to hold a teleconference of all parties. In her Notice of Acceptance, my predecessor asked the parties to be available for a teleconference on either March 2 or March 3, 2020. Such a teleconference could also be used to explore settlement prospects, if the parties request. Should a teleconference be necessary, I will task Francesca Gage, who is acting as my assistant in this matter while Kay-Dene Petgrave is on annual leave, to query the parties regarding an appropriate date/time. Please consider in this regard that we would need to come up with a time that would be workable for participants in Japan, Europe and the United States. Once a date and time are set, I will issue a notice with a call-in number and passcode for the call.



Eldon V.C. Greenberg
MSC Independent Adjudicator

Dated: February 27, 2020