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## Objections Procedure - overview

The objectives of the MSC's Objections Procedure are to:

- a. Provide an orderly, structured procedure by which specific concerns about certification decisions can be formally lodged, reviewed and resolved, fairly and transparently.
- b. Provide for a review of contested certifier decisions that is independent of the certifier, objector and the MSC, to ensure that such decisions on certification meet the expected Principles and Criteria of the [MSC standard for sustainable and well-managed fisheries](#).

## Who is the Objections Procedure open to?

The objections process is open to the client for the fishery or any parties that were previously involved in the fishery assessment process either through written submissions or attendance at stakeholder meetings. The process is also available to any parties who feel that they were prevented from participating in the assessment process through deficiencies in the certifier's procedures.

## Submitting an objection

Following the publication of the *Final Report and Determination* for a fishery, which will indicate the certifiers proposed decision on the achievement of MSC-certification, there is a 15-working-day period during which stakeholders can lodge a formal objection. The closing date and time for this period will be specified by the certifier when the MSC publishes the *Final Report and Determination* on its website in [Track a fishery](#) and sends the corresponding [stakeholder announcement](#). Any notice of objection should be addressed to both the [Independent Adjudicator – MSC Objections Procedure](#) and to the MSC's Chief Executive, Rupert Howes, at [objections@msc.org](mailto:objections@msc.org) or the [MSC Head Office](#).

The MSC provides a template, called the 'Notice of Objection' that an objector must use in order to submit an objection. **If the objector does not follow the correct format, the objection will be refused.** If an objection is refused due to incorrect format or content, the objector is permitted 5 working days in which to resubmit the Notice of Objection in the required format. If this again fails to be presented in the correct format, the objection will be dismissed and no further objections will be received from the objector.

[Download the 'Notice of objection' template form for submitting objections.](#)

## Independent Adjudicator assesses the objection

An [Independent Adjudicator](#) will assess the objection to determine whether it has 'a reasonable prospect of success'. This depends primarily on whether:

- a. The objection identifies a serious procedural or other irregularity in the assessment process that made a material difference to the fairness of the assessment;
- b. The score given for one or more performance indicators cannot be satisfactorily justified by the certifier due to factual errors, omission of relevant information or arbitrariness;
- c. Additional information has been identified that is relevant to the assessment by the date of Determination and was not available or known to the certifier.

### **Supporting materials**

The Independent Adjudicator may request additional material in support of the objection. The objecting party will be notified of this and any time limits for responding. This would normally be a further 5 working days but is set by the Independent Adjudicator.

### **What happens if the objection is disallowed?**

If the Independent Adjudicator deems the objection is not likely to succeed, the objection will be dismissed and the objector will be notified. The objection may also be dismissed if the Independent Adjudicator considers it to be 'spurious or vexatious'.

In the event that the Independent Adjudicator dismisses the objection at this stage, the objector has 5 working days in which submit a new or amended notice of objection. Only one such resubmission will be permitted.

### **What happens if the objection is allowed?**

If the objection is accepted the Independent Adjudicator will notify the objector, the certifier, the fishery and any other objectors. The MSC will post the *Notice of Objection* on its web site in [Track a fishery](#) and send an [email announcement to stakeholders](#).

In the 15 working days following publication on the MSC website, written submissions on the matters raised in the objection may be submitted by any stakeholder that participated in the assessment process. The MSC will also post these submissions on its website.

In the 20 working days following publication the certifier will reconsider its *Final Report and Determination* in light of the matters raised in the objection. A written response by the certifier is expected during this period, addressing the matters raised by the objection and also taking into account any representations/objections received from other parties.

On receipt of the response by the certifier the Independent Adjudicator will consult with the objector, the fishery and the certifier in order to determine whether the certifier has adequately addressed the issues raised in the *Notice of Objection*. This period would ideally be concluded within 10 working days, however the Independent Adjudicator may extend the consultation period if there appears to be a prospect of reaching a solution that is acceptable to all parties.

**Issues raised in the objection may be resolved through consultation**

If the issues can be resolved through consultation the certifier will make any required amendments or revisions to the *Final Report and Determination* and proceed as in a standard assessment with preparation of the *Public Certification Report*. Following this outcome no other appeals or objections will be permitted.

**Issues not resolved through consultation - proceed to oral hearing and adjudication**

If no resolution is achieved through consultation, the Independent Adjudicator will notify all parties that the matter will proceed to adjudication and convene an oral hearing of the objection within 30 working days. The objector(s), certifier and fishery may submit additional or supplementary written material on the matters raised in the *Notice of Objection*. These must be submitted through the Independent Adjudicator and must be received no later than 5 working days before the hearing date.

**Oral hearing and adjudication**

In order for the oral hearing and the adjudication to proceed, the objector(s) will need to sign a contract for recovering the costs of an objection within 20 working days following the date on which the Independent Adjudicator notifies all parties of his or her intent to proceed to Adjudication. The current limit for cost recovery is established as £15,000. Where there is more than one objector, the cost shall be shared evenly across the objectors, but the total limit remains £15,000. Objectors can apply for a waiver to costs in exceptional circumstances. The application for a waiver will be considered by the Independent Adjudicator and the onus is on the objector to demonstrate such exceptional circumstances.

During the oral hearing, which should normally be completed during one session there will be an opportunity for the objector(s), the certifier and the fishery to present their respective cases in person or via video or teleconference. In the event the Independent Adjudicator determines that additional sessions are required the hearing may continue at a later date via electronic communications or other means.

**After the oral hearing**

Following the hearing, the Independent Adjudicator may seek external expert advice on technical matters relating to the issues raised in the objection. These experts, subject to strict conflict of interest requirements, take no part in the decision making. Any material tendered by these experts will be provided with the Independent Adjudicator's written decision.

Following the hearing, the Independent Adjudicator will issue a written decision either confirming the original Determination by the certifier or remanding the Determination by the certifier. If the Determination is remanded the certifier has 10 working days to submit a written response to the MSC, the fishery and the objector.

Written submissions on the response may be submitted to the Independent Adjudicator no later than 5 working days following the response by the certifier.

The Independent Adjudicator will, within 10 working days of the response by the certifier, either accept the response as an adequate resolution of the matters raised in the remand and approve the original (or amended Determination) or uphold the objection.

The certifier will then amend the *Final Report and Determination* in the light of the findings of the Independent Adjudicator. Finally, this will form the basis for the *Public Certification Report*.

### **Objections Procedure - Independent Adjudicator**

To ensure independence and remove the potential for any conflict of interest in this process, the MSC appoints an Independent Adjudicator for a term of three years. The Independent Adjudicator is responsible for implementing the [Objections Procedure](#) including making decisions on whether an objection will be formally reviewed (according to existing decision criteria) and, if so, for forming and chairing a formal Objections Panel.

The individual selected for this role has demonstrated expertise in one or more of the following areas:

- Jurisprudence
- Fisheries law
- Dispute resolution and/or mediation preferably related to natural resource management.

He/she shall not be involved in activities that constitute a conflict of interest. Such conflicts shall include, but are not limited to:

- Commercial involvement with the fisheries under objection or businesses handling products from such fisheries
- Involvement in management, research or lobbying for or against any fishery under objection or be involved with an organisation that has indicated its opposition to the certification of the fishery
- Any other reason that would be expected to create a potential conflict of interest in this role.

The position of Independent Adjudicator has been held by Michael Lodge since 2006.

### **Michael Lodge (Independent Adjudicator) - Biography**

Michael Lodge is an experienced international lawyer, with a strong background in fields including:

- public international law
- law of the sea (particularly fisheries and deep seabed mining)
- the marine environment
- human rights.

He has extensive practical experience in multilateral and bilateral diplomacy and possesses internationally-recognized high-level skills in negotiating and drafting international treaties and agreements.

**Michaels's experience includes:**

- Counsellor to the Round Table on Sustainable Development at the OECD
- Associate Fellow at the Royal Institute of International Affairs (Chatham House), London, and Director of an independent panel examining the problems of regional fisheries organizations
- Secretariat for the Ministerial-led Task Force on IUU Fishing on the High Seas
- Legal adviser to the International Seabed Authority
- Legal Counsel to the South Pacific Forum Fisheries Agency
- Executive Secretary of the Conference for Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific
- Head of the Interim Secretariat for the Preparatory Conference for the Western and Central Pacific Fisheries Commission
- Immigration Judge, Asylum and Immigration Tribunal, UK
- Member of Advisory Board, Pew Marine Fellows Program, USA.

Michael Lodge has worked as a consultant on fisheries, environmental and international law in Europe, Asia, Eastern Europe, the South Pacific and Africa. He has written widely on fisheries and deep seabed mining. He is a barrister of Gray's Inn, London and also holds an MSc. in Marine Policy from the London School of Economics. He has over 20 years' experience of living and working in numerous countries with different social and cultural backgrounds.

**Further information**

For a copy of the MSC Objections Procedure or further information please email Matt Watson, Standards and Licensing Team Administrator, [matt.watson@msc.org](mailto:matt.watson@msc.org).

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