

To: All parties involved in the Objection to the certification of the Pacific Hake fishery

From: Michael Lodge (MSC Independent Adjudicator)

Date: 13 August 2009

Further to my circular memorandum dated 2 August 2009 addressed to all parties involved in the objection to the certification of the Pacific Hake midwater trawl, I would like to take this opportunity to provide a further update on the current status of the objection procedure.

It will be recalled that the primary purpose of my 2 August 2009 memorandum was to circulate a formal written proposal for a negotiated settlement, which included attaching further conditions to the certification of the fishery, on acceptance of which the objectors would agree to withdraw the current objection. The objectors had also submitted a request for me to extend the consultation phase under paragraph 4.5.3 of the MSC Objections Procedure by a further 10 days.

I had declined to make any formal extension at that stage, but had requested a response to the proposal for settlement by close of business on 7 August 2009 (PDT) indicating whether the measures set out in that proposal would be acceptable in their current form or whether they provided any reasonable basis for continued consultations with a view to settlement. I further indicated that if, as a result of that response, it appeared to me that there is a general willingness to continue negotiations, I would then consider whether there is any purpose in further extending, for a finite period, the consultation phase in accordance with the request by the objectors prior to fixing a date for formal adjudication.

Responses to the objectors' proposal were submitted by the fishery client and the certification body on 4 August 2009. For technical reasons these were not physically received by me until Monday 10 August, but I accept that the documents were properly submitted in a timely manner. Copies of the responses are attached herewith for the information of the objectors.

Once again, I do not need to comment on the merit of the responses in detail, but it is clear to me from the content of the two letters that there is at the present time no "real and imminent prospect" of reaching a negotiated solution that is acceptable to all parties on the basis of the proposal made by the objectors on 31 July 2009. Accordingly, I can see no alternative but to make a decision under §4.6.5 of the Objections Procedure to proceed to adjudication and to formally notify all parties of my decision through this memorandum.

In accordance with the Objections Procedures, the next step (§4.7.1) is for me to convene an oral hearing of the objection, unless the parties agree otherwise. Subject to §4.10 (costs), the oral hearing is to take place within 30 days of the date on which I notify the parties of my intent to proceed to adjudication (i.e. by 24 September 2009).

Taking into account the views expressed by the fishery clients in their most recent communication, as well as the length of time taken to reach this stage, I have taken the opportunity to consult with MSC as well as my own diary, and I would like to propose that an oral hearing be convened during the week of 7 to 11 September 2009 in London. I would imagine that only one, or at most two, days would be needed, so I would propose to commence on 7 September, with the possibility of continuing for as long as may be necessary during the week.

This proposal is of course, contingent on two further factors. The first, as I have already mentioned, is §4.10 of the Objections Procedure, as regards liability for costs. In the first instance, this is a matter between the objectors and MSC, and at this stage I would merely wish to refer all parties to the provisions of §4.10.7, which apply in the event that 45 days elapses without the provisions of §§4.10.1 to 4.10.6 being complied with (i.e. by 15 October 2009). The second factor (which does not affect the first factor) is whether the parties agree not to convene an oral hearing. In this case, I would proceed to determine the objection on the basis of the record presently before me.

Both the fishery client and the certification body have indicated to me in their letters of 4 August that, for their part, they do not consider that an oral hearing is necessary. I would appreciate the views of the objectors as to the need for an oral hearing as soon as possible and at the latest by Monday 17 August (GMT). With regard to the question of an oral hearing, I would refer the parties to §§4.7.2 and 4.7.3 of the Objections Procedure as to the purpose and scope of the oral hearing. I should note in particular that, should an oral hearing be requested by one party, it is not necessary for other parties to attend unless they so wish. I would also intend to exercise flexibility in terms of permitting representation at the hearing, particularly in view of the physical location of the parties to the objection. I would in any event propose to promulgate very simple rules of procedure for any oral hearing in due course.

Finally, although the consultation phase has now ended, I would draw the attention of all parties to §4.10.8 of the Objections Procedure, which continues to apply.

I look forward to a response to my proposals as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Lodge', written in a cursive style.

Michael Lodge

Independent Adjudicator