

# MSC Disputes Process



**Version 1.0, 25 March 2020**

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The official language of these requirements is English. The definitive version is maintained on the MSC website ([msc.org](http://msc.org)). Any discrepancy between copies, versions or translations shall be resolved by reference to the definitive English version.

The MSC prohibits any modification of part or all of the contents in any form.

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## Responsibility for these requirements

The Marine Stewardship Council (MSC) is responsible for these requirements.

Readers should verify that they are using the latest copy of this and other documents. Updated documents, together with a master list of all available MSC documents, can be found on the MSC website ([msc.org](http://msc.org)).

### Versions published

Version no.	Date	Description of amendment
1.0	25 March 2020	First version issued for application by Conformity Assessment Bodies (CABs). The MSC Disputes Process incorporates the Objection Procedure which was formerly an Annex to the Fisheries Certification Process.

## Introduction to this document

The MSC Disputes Process defines the process for stakeholders, CABs and other parties when there is a dispute about the determination of the CAB in a fishery assessment.

CABs shall use this document in conjunction with the MSC Fisheries Certification Process (FCP).

This document contains the Objection Procedure which defines the process for stakeholders, CABs and the independent adjudicator when there is an objection to the Final Draft Report and Determination of the CAB in a fishery assessment.

Stakeholders may use the following approaches to report concerns about fishery assessments:

- Raise a complaint with the CAB as set out in the [General Certification Requirements \(GCR\) Section 7.6](#).
- Report an incident to the MSC's independent accreditation body, Assurance Services International (ASI).

These two options do not prevent certification of the fishery while they are investigated.

Nothing in the Objection Procedure prevents stakeholders from also raising a complaint with the CAB or reporting an incident with ASI, but the Objection Procedure will not be affected by the outcome of the incident or complaint (see 5.10.11).

## Derogations

A derogation indicates a measure that allows for all or part of the requirement to be applied differently, or not at all, to certain applicants or certificate holders. Derogations are indicated by a footnote including:

- The authority who made the decision on the derogation.
- The date or meeting number of the decision.
- The date on which the derogation came into force or expires.
- A short description of the derogation.

Derogations are also issued via the MSC Interpretation Log. The MSC shall inform CABs when derogations are issued.

## Implementation timeframe

### Effective date of the MSC Disputes Process v1.0

The effective date for the MSC Disputes Process v1.0 is 25 September 2020. Any initial or reassessment process that is announced on or after 25 September 2020 shall be conducted in conformity with the MSC Disputes Process v1.0.

## Review

The MSC welcomes comments on the MSC Disputes Process. Comments will be considered as part of the next review process. Reviews will take place at least every 5 years. Please submit comments to [standards@msc.org](mailto:standards@msc.org).

More information about the MSC policy development process and MSC Standard Setting Procedure can be found on the MSC website ([msc.org](http://msc.org)).

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# MSC Disputes Process

## 1 Scope

The MSC Disputes Process sets out the activities that shall be undertaken by parties involved in the Disputes Process.

## 2 Normative Documents

The documents listed below contain provisions that, through reference in this text, become part of the MSC Disputes Process.

For documents listed, the latest published edition of the document applies.

The documents are:

- a. MSC Notice of Objection Template.

## 3 Terms and Definitions

All definitions are in the [MSC-MSCI Vocabulary](#).

Terms or phrases used in the MSC Disputes Process that have multiple definitions are defined within the text where such terms or phrases appear.

## 4 General requirements

### 4.1 Version of the Disputes Process

- 4.1.1 Parties to the MSC Disputes Process shall use the version of the MSC Disputes Process that is effective at the time of announcement of the fishery assessment.

## 5 Objection Procedure

### 5.1 Purpose

- 5.1.1 The purpose of the Objection Procedure is to provide an orderly, structured, transparent and independent process by which objections to the Final Draft Report and Determination of a CAB can be resolved.
  - 5.1.1.1 It is not the purpose of the Objection Procedure to review the subject fishery against the MSC Fisheries Standard, but to determine whether the CAB made an error of procedure, scoring or CAB review of the Client Action Plan that is material to the determination or the fairness of the assessment.
- 5.1.2 Subject to 5.4.1.c, the Objection Procedure is open only to parties that made written submissions to the CAB during the assessment process, or to parties that attended stakeholder meetings or the site visit, either in-person or remotely.
- 5.1.3 An independent adjudicator will examine the claims made by an objector in a 'Notice of Objection' and will make a written finding as to whether any of the grounds as set out in 5.9.2 are met.
  - 5.1.3.1 If any of the grounds as set out in 5.9.2 or 5.9.3 are met, the independent adjudicator will remand the determination to the CAB for reconsideration.

- 5.1.4 If a 'Notice of Objection' is filed, the CAB shall not issue a certificate until the Objection Procedure has run its course in accordance with the procedures set out in the MSC Disputes Process, and the Public Certification Report has been issued.

## 5.2 The CAB

- 5.2.1 The CAB shall upload an announcement with the Final Draft Report including a hyperlink to the 'MSC Notice of Objection Template' and the timeline for stakeholder input.
- 5.2.2 The CAB shall note that a 'Notice of Objection' may be filed with an MSC independent adjudicator during a period of 15 United Kingdom working days from the posting of the Final Draft Report and Determination on the MSC website.
- 5.2.3 The CAB shall not make a certification decision until either:
- a. The 15 United Kingdom working day period for objection is complete and no 'Notice of Objection(s)' have been filed, or
  - b. If 'Notice of Objection(s)' have been filed, until the Objection Procedure has finished.
- 5.2.4 If no 'Notice of Objection' is filed or a 'Notice of Objection' is filed and dismissed by an independent adjudicator after the Final Draft Report stage, the CAB should publish the Public Certification Report within 60 days after the closing date of the consultation period on the Final Draft Report.
- 5.2.5 If a 'Notice of Objection' is accepted by an independent adjudicator during a reassessment, the CAB may extend the current certificate up to a maximum of 6 months from the date that the independent adjudicator accepts the 'Notice of Objection', to allow the Objection Procedure to be followed.
- 5.2.6 If a 'Notice of Objection' is accepted by an independent adjudicator, the CAB shall incorporate all published written decisions arising from the Objection Procedure in a separate section or appendix to the Public Certification Report.

## 5.3 The independent adjudicator

- 5.3.1 The MSC Board of Trustees shall appoint an independent adjudicator to consider any objections to a Final Draft Report and Determination.
- 5.3.1.1 An independent adjudicator shall be appointed for a period of 3 years and may be reappointed.
  - 5.3.1.2 The decision of the MSC Board of Trustees in appointing or reappointing the independent adjudicator shall be final.
  - 5.3.1.3 The independent adjudicator shall perform all the functions allocated to them in accordance with the procedures set out in the MSC Disputes Process.
  - 5.3.1.4 A different independent adjudicator may be appointed at any time to act in cases where the original independent adjudicator is unable to act for any reason, including a conflict of interest or unavailability.
  - 5.3.1.5 If, in relation to any objection, there is a conflict of interest involving the independent adjudicator, unless the parties agree otherwise, they shall excuse themselves from further participation in that objection.
    - a. If there is any difference of opinion between the independent adjudicator and any party to the objection as to whether a conflict of interest exists, the decision of the MSC Board of Trustees on the matter shall be final.
- 5.3.2 The independent adjudicator may be removed by the MSC Board of Trustees for good cause, including incompetence, bias or impropriety.
- 5.3.3 The independent adjudicator shall be independent of the MSC, but the MSC may provide them with appropriate administrative and logistic support, including sending and receiving notices and correspondence.

- 5.3.4 The independent adjudicator may, at their discretion, use the independent paralegal for any logistical and administrative support relating to the Objection Procedure, including correspondence with the parties and issuing of independent adjudicator decisions.

## 5.4 Notice of Objection

- 5.4.1 The following parties may file a 'Notice of Objection' to the Final Draft Report and Determination:
- a. The fishery client(s).
  - b. Any party to the assessment process that made written submissions to the CAB during the assessment process or attended stakeholder meetings, either in person or remotely.
  - c. Any other party that can establish that the failure of the CAB to follow procedures prevented or substantially impaired the party's participation in the assessment process.
- 5.4.2 A 'Notice of Objection' shall be filed no later than 15 United Kingdom working days after the date on which the Final Draft Report and Determination is published on the MSC website.
- 5.4.3 The 'Notice of Objection' shall be filed using the 'MSC Notice of Objection Template'.
- 5.4.4 The 'Notice of Objection' shall be addressed to the MSC and independent adjudicator and sent to the MSC objections email, [objections@msc.org](mailto:objections@msc.org).
- 5.4.5 The 'Notice of Objection' shall set out clearly and precisely the basis upon which 5.9.2 is said to apply.
- 5.4.6 The 'Notice of Objection' shall:
- a. Identify the alleged errors in the Final Draft Report and Determination.
  - b. Explain in sufficient detail why it is claimed that the alleged errors were material to the determination or the fairness of the assessment.
  - c. Include a summary of the evidence to be relied on in support of the objection.
  - d. Include only information that was publicly available in final (not draft) form on or before the last day of the site visit or agreed in writing between the CAB and any participant to the site visit to be published after the site visit as set out in FCP 7.20.2.c.
    - i. Information that came into existence after that date shall not be used as a basis for objection.
- 5.4.7 If it is asserted that the CAB's determination should be remanded for the reasons set out in 5.9.3, the 'Notice of Objection' shall specify, in sufficient detail, the:
- a. Nature of the additional information that it is asserted should reasonably have been made available to the CAB.
  - b. Reasons why it is considered that the information, if considered, could have been material to the determination or the fairness of the assessment.
- 5.4.8 Upon receipt of a 'Notice of Objection', the MSC shall publish a statement on the MSC website indicating that a 'Notice of Objection' has been received and will be reviewed for eligibility by an independent adjudicator.
- 5.4.9 Upon receipt of a 'Notice of Objection', the independent adjudicator shall proceed in the manner set out in Section 5.5.



## 5.5 Procedure on receipt of a 'Notice of Objection'

- 5.5.1 If the independent adjudicator, in their discretion, determines that the 'Notice of Objection' is not in the form required by these procedures or has no reasonable prospect of success, the independent adjudicator may either:
- a. Dismiss all or part of the 'Notice of Objection', giving written reasons, or
  - b. Request further clarification from the party that filed the 'Notice of Objection' on all or part of the 'Notice of Objection'.
- 5.5.2 For purposes of this section, a 'Notice of Objection' has a "reasonable prospect of success" if, in the view of the independent adjudicator:
- a. The 'Notice of Objection' is not spurious or vexatious.
  - b. Some evidence is presented on the basis of which the independent adjudicator could reasonably expect to determine that 1 or more of the grounds set out in 5.9.2 are satisfied.
- 5.5.3 If the independent adjudicator decides to dismiss the 'Notice of Objection', the party that filed the 'Notice of Objection' may nonetheless file an amended 'Notice of Objection' within 5 days of being so notified by the independent adjudicator.
- 5.5.3.1 The party shall have only 1 opportunity to file an amended 'Notice of Objection'.
- 5.5.4 If the independent adjudicator requests further clarification from the party that filed the 'Notice of Objection', the independent adjudicator shall notify the party in writing of the clarification sought and the time limit for responding (which, in the absence of special circumstances to justify a longer time, should normally be no longer than 5 days).
- 5.5.4.1 If the party fails to respond within the specified time, the independent adjudicator shall assume that the party does not wish to proceed further and the independent adjudicator shall issue a notice in writing dismissing the 'Notice of Objection'.
- 5.5.5 If the independent adjudicator determines that the amended 'Notice of Objection' does not disclose any of the grounds set out in 5.4.6, is not in the form required by the Objection Procedure, has no reasonable prospect of success, or is spurious or vexatious, the independent adjudicator shall dismiss the 'Notice of Objection', giving written reasons therefore.
- 5.5.6 Where an independent adjudicator accepts a 'Notice of Objection', the independent adjudicator shall promptly notify the CAB, the fishery client(s) and the party or parties that filed a 'Notice of Objection' and send a copy of the 'Notice of Objection' to all parties.
- 5.5.6.1 The MSC shall establish a dedicated email inbox for all parties to communicate and submit required information during the objection.
- 5.5.6.2 The MSC shall ensure the 'Notice of Objection' is published on the MSC website.
- 5.5.6.3 The date upon which the 'Notice of Objection' is posted shall be the "date of publication".

## 5.6 Consultation between parties

- 5.6.1 The objector(s), the fishery client(s), and the CAB have a period of 15 days from the date of publication to consult with each other to reach agreement on 1 or more items raised in the 'Notice of Objection'.
- 5.6.1.1 If more time is needed, the parties may ask the independent adjudicator to extend the consultation period between parties.
- 5.6.1.2 The independent adjudicator may extend the period for consultation if satisfied there is a real and imminent prospect of agreement being reached on 1 or more items in the 'Notice of Objection'.

- 5.6.2 At any time, if any party considers there is no real and imminent prospect of reaching an agreement on any items raised in the 'Notice of Objection', they shall notify the independent adjudicator.
- 5.6.3 Where the period for consultation has expired, or as notified under 5.6.2, the independent adjudicator shall continue with the proceedings as per 5.6.6.
- 5.6.4 If all items raised in the 'Notice of Objection(s)' can be resolved through consultation, the parties shall notify their agreement to the independent adjudicator.
  - 5.6.4.1 The CAB shall make such changes and revisions to the Final Draft Report and determination as may be agreed and shall proceed to prepare a Public Certification Report as per FCP Section 7.24.
  - 5.6.4.2 The independent adjudicator shall issue a notice of cessation.
  - 5.6.4.3 No further appeal or objection shall be permitted.
- 5.6.5 If some but not all items in the 'Notice of Objection' are resolved, the parties shall notify the independent adjudicator of the items and the nature of their agreement.
- 5.6.6 The independent adjudicator shall notify all parties that the objection will proceed to written representations as set out in Section 5.7.
  - 5.6.6.1 The date on which the independent adjudicator notifies all parties that the objection will proceed to written representations shall be the "Written Representations Start Date".
  - 5.6.6.2 The MSC shall ensure that the independent adjudicator's decision including the Written Representations Start Date and, if applicable, any agreement on items raised in the 'Notice of Objection' (as per 5.6.5) is published on the MSC website.

## **5.7 Written representations and reconsideration by the CAB**

- 5.7.1 The fishery client(s) or any stakeholder that participated in the assessment process (other than the objector(s)) may, within 15 days of the Written Representations Start Date, submit written representations on the items raised in the 'Notice of Objection' that remain unresolved further to any notification made under 5.6.6.2.
  - 5.7.1.1 All such written representations shall be submitted through the independent adjudicator and shall be published on the MSC website.
- 5.7.2 The CAB shall reconsider its Final Draft Report and Determination considering the items raised in the 'Notice of Objection' that remain unresolved further to any notification made under 5.6.6.2.
  - 5.7.2.1 The CAB shall, within 20 days of the Written Representations Start Date, provide a written response to those items.
  - 5.7.2.2 The CAB shall provide appropriate information indicating the extent to which those items were considered in the fishery assessment and the impact thereof on the determination.
  - 5.7.2.3 In formulating its response, the CAB shall consider any written representations received in accordance with 5.7.1.
  - 5.7.2.4 The CAB shall also indicate and give reasons for any proposed changes to its Final Draft Report and Determination as a result of the reconsideration.
- 5.7.3 The response of the CAB shall be made available to all parties, including the objector(s), the fishery client(s) and the MSC, and shall be published on the MSC website.
- 5.7.4 Upon receipt of the response by the CAB, the independent adjudicator shall consult with the objector(s), the fishery client(s) and the CAB to determine whether the response of the CAB, including any proposed changes to the Final Draft Report and Determination, adequately addresses the items raised in the 'Notice of Objection' that remain unresolved further to any notification made under 5.6.6.2.

- 5.7.4.1 The independent adjudicator shall strive to conclude such consultations within a period of 10 days but may if necessary, at their discretion after consultation with the parties, extend such period if it appears that there is a real and imminent prospect of reaching a solution that is acceptable to all relevant parties.
- 5.7.4.2 If the items raised in the 'Notice of Objection' that remain unresolved further to any notification made under 5.6.6.2 can be resolved through consultations, the CAB, in consultation with the independent adjudicator, shall make such changes and revisions to the Final Draft Report and Determination as may be agreed and shall proceed to prepare a Public Certification Report. No further appeal or objection shall be permitted.
- 5.7.4.3 If some or all of those items cannot be resolved through further consultations, the independent adjudicator shall notify all parties that the adjudication phase will commence immediately as set out in Section 5.8.

## 5.8 Adjudication

- 5.8.1 Subject to Section 5.11, the independent adjudicator shall, within 30 days of the date upon which the parties were notified of the intention to proceed to adjudication, convene an oral hearing of the objection, unless the parties to the objection agree, or the independent adjudicator determines otherwise.
  - 5.8.1.1 A written hearing shall be undertaken if the parties agree that an oral hearing is not wanted, at the discretion of the independent adjudicator.
- 5.8.2 The oral hearing is intended to provide an opportunity for the CAB, the objector(s) and the fishery client(s) (if not the objecting party) to present their respective cases in person, including by videoconference or teleconference at the discretion of the independent adjudicator.
- 5.8.3 The independent adjudicator shall conduct the hearing in accordance with the provisions of this section but may also promulgate additional rules of procedure, including time limits on oral presentations, page limits for written submissions, and rules as to representation.
  - 5.8.3.1 The independent adjudicator shall normally aim to complete the hearing during 1 session but may, where necessary, adjourn to continue the hearing using electronic communications or other means.
- 5.8.4 The fishery client(s), the objector(s), and the CAB may submit additional written representations on the items raised in the 'Notice of Objection' or in response to written representations submitted by other parties under 5.7.1.
  - 5.8.4.1 All such written representations shall be submitted through the independent adjudicator and shall be received no later than 5 days before the date set for an oral hearing or as set out by the independent adjudicator in the case of a written hearing.
  - 5.8.4.2 A list of the persons whom the parties would wish to attend the hearing and their representation shall be submitted to the independent adjudicator for circulation to all hearing parties and shall be received no later than 5 days before the date set for hearing.
  - 5.8.4.3 All such written representations pursuant to 5.7.1 and/or 5.8.4 shall be published on the MSC website.
- 5.8.5 The independent adjudicator shall evaluate objections solely on the basis of:
  - a. The record, which shall include and be limited to:
    - i. The Final Draft Report of the CAB and the record on which the Final Draft Report was based, including written submissions and reports provided to the CAB during the assessment process, the written record of oral, written or documentary evidence submitted in the assessment process, and any other evidence referenced or cited in the Final Draft Report.

- ii. The 'Notice of Objection'.
  - iii. Any written representations submitted pursuant to 5.7.1 and/or 5.8.4.
  - iv. Any representations made by any party at an oral hearing pursuant to these procedures.
  - v. Other clarifications required by the independent adjudicator, including documents or evidence admitted into proceedings as deemed necessary by the independent adjudicator.
- b. Any additional information, not forming part of the record, that was publicly available on or before the last day of the site visit, or agreed in writing between the CAB and any stakeholder to be made available and considered after the site visit, and is relevant to items raised in the 'Notice of Objection' that:
- i. Was known or should reasonably have been known to any party to the assessment process.
  - ii. Should reasonably have been made available to the CAB.
  - iii. If considered, could have been material to the determination or the fairness of the assessment.
- c. The MSC Fisheries Standard.
- d. The FCP effective at the announcement of the assessment in question, together with Guidance to the FCP and amendments thereof made by the MSC Technical Advisory Board and the Board of Trustees, and any related interpretations to these documents whether or not of mandatory effect with regard to CAB conformity made by the MSC and the MSC-appointed accreditation body.
- 5.8.5.1 Documents and presentations that form part of the record but are not written representations pursuant to 5.7.1 and/or 5.8.4 shall remain confidential to parties to the objection and shall not be published on the MSC website unless instructed by the independent adjudicator.
- 5.8.6 The independent adjudicator shall only consider items raised in the 'Notice of Objection' that remain unresolved further to any notification made under 5.6.6.2, even if the independent adjudicator is of the view that an issue should have been raised or remain unresolved.
- 5.8.6.1 In no case shall the independent adjudicator substitute his or her own views or findings of fact for those of the CAB.
- 5.8.7 The independent adjudicator may solicit external advice on technical matters from, and for this purpose may sit with and receive technical advice from, technical experts.
- 5.8.7.1 Such technical experts shall not take part in decision making.
- 5.8.7.2 Any written reports or advice tendered by the technical experts shall be attached to the independent adjudicator's written decision.
- 5.8.8 The experts selected by the independent adjudicator to provide advice in relation to any objection shall not be involved in any activity that constitutes a conflict of interest. Such conflicts include, but are not limited to, the following criteria:
- a. Experts shall not be members of the MSC Board of Trustees, Technical Advisory Board, Stakeholder Advisory Council or the MSC.
  - b. Experts shall not have commercial involvement with the CAB, the subject fishery or the objector(s).
  - c. Experts shall not be involved in management or lobbying for or against the fishery or be involved with an organisation that has indicated its opposition to the certification of the fishery under objection.
  - d. Experts shall not have been involved in any part of the current assessment process for the fishery under objection.

- 5.8.9 To facilitate the Objection Procedure, the MSC may maintain a public register of suitably qualified persons willing and available to act as independent experts.
- 5.8.9.1 Experts who are not on the register may be selected.
- 5.8.10 During the objections process, any party to an objection may, by notification in writing, call the attention of the independent adjudicator to an alleged error of fact, procedural error or unfairness on their part with respect to the objections process and the independent adjudicator shall respond as soon as practicable.

## 5.9 Powers of the independent adjudicator

- 5.9.1 The independent adjudicator shall issue a decision in writing either:
- Confirming the determination by the CAB, or
  - Remanding the determination to the CAB.
- 5.9.2 After adjudication, the independent adjudicator shall remand the determination to the CAB if they determine:
- There was a serious procedural or other irregularity in the assessment process that was material to the fairness of the assessment, and/or
  - The CAB review of the Client Action Plan cannot be justified because the conditions fundamentally cannot be fulfilled within the allocated time frame, and/or
  - The score given by the CAB in relation to 1 or more PIs cannot be justified, and the effect of the score in relation to 1 or more of the PIs in question was material to the determination, because:
    - The CAB made a mistake as to a material fact, or
    - The CAB failed to consider material information put forward in the assessment process by the fishery or a stakeholder, or
    - The CAB failed to consider material information put forward by the peer reviewer(s), or
    - The scoring decision was arbitrary or unreasonable in the sense that no reasonable CAB could have reached such a decision on the evidence available to it.
- 5.9.3 It is necessary to remand the determination in order to enable the CAB to consider additional information described in 5.8.5.b and described in the 'Notice of Objection'.
- 5.9.3.1 In such a case, the remand shall be limited to a request to the CAB to consider the impact of the additional information on its original determination and to provide a response in accordance with 5.10.2.

## 5.10 Remand

- 5.10.1 If a determination is remanded, the independent adjudicator shall state, in writing, the reasons for which the objection has been remanded, the specific items that the CAB shall consider in the remand and the relationship of these items to the MSC Fisheries Standard or procedural requirements.
- 5.10.1.1 Copies of the remand shall be sent to the CAB, the client, the objecting parties, and the MSC to be published on the MSC website.
- 5.10.2 Within 10 days of receipt of the remand instructions, unless the independent adjudicator has granted the CAB a specific amount of additional time, the CAB shall respond in writing to the items specified in the remand, with copies sent the client, the objectors, and the MSC for publication on the MSC website.
- 5.10.2.1 The response of the CAB shall either:

- a. Include a statement of “no change” in relation to the scoring of PIs, or
  - b. Indicate any proposed changes to the rationale for a score or indicate a change in the score in relation to any of the PIs, and
  - c. Give reasons for its decision under either 5.10.2.1.a or 5.10.2.1.b.
- 5.10.3 Any party to the objection may make written submissions on the items specified in the remand or on the response thereto by the CAB under 5.10.2. Such submissions shall be received by the independent adjudicator no later than 5 days following the publication of the CAB response on the MSC website.
  - 5.10.3.1 The independent adjudicator shall determine what actions are necessary following submissions, if any.
- 5.10.4 The independent adjudicator shall, within 10 days of the publication of the CAB response on the MSC website, either:
  - a. Accept the response as adequately addressing the findings raised in the remand and confirm the original or amended Final Draft Report and Determination by the CAB, or
  - b. Determine that the objection shall be upheld on 1 or more of the grounds specified in 5.9.2 after reviewing the response of the CAB.
- 5.10.5 If the CAB does not respond to the remand within the time limits specified in 5.10.2 the independent adjudicator shall proceed to 5.10.4 as if the CAB had made a “no change” response to the remand.
- 5.10.6 The independent adjudicator shall include in the final decision a summary of conclusions from previous decisions, to provide a complete record of items raised in the ‘Notice of Objection’ including, for example, items that are rejected, dismissed or closed prior to the final decision.
- 5.10.7 A decision by the independent adjudicator under 5.10.4 is final. No additional objections may be lodged under these procedures in respect of such a decision.
- 5.10.8 The certification decision of the CAB shall be made with reference to the decision of the independent adjudicator.
- 5.10.9 If the independent adjudicator confirms the amended determination, the CAB shall make such amendments to the Final Draft Report and Determination as may be necessary in the light of the findings of the independent adjudicator and shall proceed to issue a Public Certification Report in accordance with FCP Section 7.24, which shall be assessed for adequacy by the independent adjudicator.
- 5.10.10 The independent adjudicator shall, prior to the issue of the Public Certification Report, determine whether the amendments to the Final Draft Report and Determination made by the CAB adequately address the findings of the independent adjudicator.
  - 5.10.10.1 If the independent adjudicator determines that the amendments adequately address the findings of the independent adjudicator, the MSC shall publish the Public Certification Report.
  - 5.10.10.2 If the independent adjudicator determines that the amendments do not adequately address the findings of the independent adjudicator, the Public Certification Report shall not be published, and the independent adjudicator shall send the Public Certification Report back to the CAB for further amendments to be made and then to be considered by the independent adjudicator.
- 5.10.11 Nothing in the Objection Procedure shall prevent any party to a fishery assessment from submitting a complaint relating to the CAB to the MSC-appointed accreditation body in accordance with the procedures of that provider.
  - 5.10.11.1 No such appeal to the MSC’s accreditation body shall affect the outcome under the Objection Procedure.

## 5.11 Costs

- 5.11.1 The MSC shall not bear the costs of any party that participates in the Objection Procedure.
- 5.11.2 If an objection proceeds to adjudication, the objector or objectors shall be required to pay a fee payable (up to a maximum level established from time to time by the MSC Board of Trustees) to cover the administrative costs of adjudication ("Fee").
  - 5.11.2.1 The Fee shall be borne by the objector or, if there is more than 1 objector, the objectors in equal shares.
  - 5.11.2.2 The Fee amount and general payment details are set out in the 'MSC Notice of Objection Template'.
- 5.11.3 The objector or objectors shall pay the Fee within 15 days of the independent adjudicator's notification that the objection will move to adjudication.
  - 5.11.3.1 Subject to the grant of any Fee waiver in accordance with 5.11.5, if an objector has not paid the Fee within the time frame specified in 5.11.3, the objector shall not be entitled to participate in the rest of the Objection Procedure.
    - a. The independent adjudicator shall dismiss the 'Notice of Objection' of the objector who fails to meet 5.11.3.
- 5.11.4 Objectors may apply to the independent adjudicator for the Fee to be waived (in whole or in part) using the application form in the 'MSC Notice of Objection Template'.
  - 5.11.4.1 The objector shall submit the Fee waiver application to the independent adjudicator within 15 days after the date of publication.
  - 5.11.4.2 Such an application shall provide the justification as to why a waiver is sought and shall be accompanied by appropriate evidence to demonstrate exceptional circumstances, including, where available, the objector's most recent audited financial report.
- 5.11.5 The independent adjudicator shall decide within 5 days of receiving any waiver application whether to refuse the application or to waive the whole or part of the costs that would otherwise be attributed to the objector.
  - 5.11.5.1 A waiver shall only be granted if the independent adjudicator is satisfied that there are exceptional circumstances justifying such a waiver. The onus is on the objector to demonstrate that there are such exceptional circumstances. In determining whether there are exceptional circumstances, the independent adjudicator shall consider:
    - a. Any evidence relating to the financial ability of the objector to meet the costs of the adjudication process.
    - b. The impact on the objector's other activities of paying the costs of the adjudication process.
    - c. The ability of the objector to raise funds from external sources, including support from other participants in the assessment process, for the purposes of meeting the costs of the adjudication process.
  - 5.11.5.2 If the independent adjudicator fails to decide on the waiver application within the time frame specified in 5.11.5, and such failure is attributable solely to the independent adjudicator, the independent adjudicator shall extend the time frame and inform relevant parties of the extension.
- 5.11.6 Where the application is refused or where only a partial waiver is granted, the objector shall pay the Fee in accordance with 5.11.3.
- 5.11.7 Nothing in this section shall prevent reconsideration by the CAB and consultations pursuant to Section 5.7.



## **5.12 General provisions relating to the objections process**

- 5.12.1 Where these procedures require that any notice or document is to be submitted to the independent adjudicator or to the MSC within, or before, a specified time limit, the following provisions shall be applied in order to determine whether the notice or document was served in time:
- a. Any references to time shall be, unless it is otherwise specifically stated, Coordinated Universal Time (UTC).
  - b. Any references to “days” shall mean, unless it is otherwise specifically stated, “United Kingdom working days”.
  - c. A document served after 17:00 or at any time on a Saturday, Sunday or a United Kingdom public holiday will be treated as being served on the next working day.
  - d. Where the time limits prescribed in these procedures do not account for statutory holidays in countries where involved stakeholders reside, the independent adjudicator may allow an extension of time limits to give effect to the intent of these procedures that all parties have the nominated number of days within which to respond.
  - e. In exceptional circumstances, the independent adjudicator may consider and grant an extension to any of the time limits set out in these procedures.
- 5.12.2 Service shall be effective if made by hand, or by the provision of the information in an electronic document containing a digital signature.
- 5.12.2.1 All parties shall include the date of service on each submission.
- 5.12.3 Service by hand shall be effective when made. An electronic document is presumed to be received by the addressee when it enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and can be retrieved and processed by the addressee.
- 5.12.4 The working language of the MSC is English. Documents shall be submitted in English, or with an accompanying full English translation at the cost of the submitting party.
- 5.12.5 For the avoidance of any doubt, every notice or document issued, or published on the MSC website, by the independent adjudicator or the MSC, shall bear the date upon which it was so issued or posted and shall also specify the date upon which any subsequent notice, response, submission or document is required to be submitted in accordance with these procedures. Notwithstanding any other provision of these procedures, and regardless of whether a particular document is published on the MSC website or not, any documentation submitted by any party to an objection, except for documentation relating to costs under Section 5.11, shall be available to any other party.
- 5.12.6 The MSC reserves the right to publish documents issued by the independent adjudicator, subject to confidentiality.

## **5.13 Final documentation of an objection on the MSC website**

- 5.13.1 In accordance with FCP 7.24.2, the Public Certification Report shall include all decisions made by the independent adjudicator and shall indicate all the changes to the Final Draft Report and Determination that have been made as a result of the objection.
- 5.13.2 All objections-related documents, except the Public Certification Report, will be removed from the MSC website 6 months after the completion of the assessment.

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End of Disputes Process