



# Form for issuing a Notice of Objection



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## Responsibility for this manual

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## Versions Issued

Version Number	Date	Description of amendment
2.1	01 October 2016	Updates for use with simplification pilots
2.0	08 October 2014	Updated with FCR v2.0
1.2	26 October 2012	Updated with CR v1.2
1.1	February 2010	Issued with TAB Directive 023 v2.0
1.0	March 2009	Issued with TAB Directive 023

## Quick Links

- [Contact Details >](#)
- [Credentials of objector >](#)
- [Objection category >](#)

# 1. Introduction

## The MSC Objections Process

The MSC Objections Process provides an orderly, structured, transparent and independent process by which stakeholder or client objections to the Final Report and determination of a certifier (or Conformity Assessment Body) can be resolved.

The Objections Process is not intended to review the fishery against the MSC fisheries standard, but to determine whether the certifier (CAB) made an error of procedure, scoring, or condition setting that is material to the determination or the fairness of the assessment.

[Learn more about MSC Objections >](#)

[View the Objections Flowchart >](#)

## Simplification Pilot Process

This template has been adapted from the default 'Notice of Objection Template' for piloting a revised assessment process. This project aims to simplify the assessment process – reduce complexity and cost, whilst improving effectiveness of stakeholder engagement and maintaining credibility.

[Read more about the simplification pilot process >](#)

The completed Notice of Objection form should be completed and sent to [objections@msc.org](mailto:objections@msc.org).

## 2. Your details

### 2.1. Contact details for objecting party

Contact Details		26 March 2019
First Name*	Whit	
Last Name*	Fosburgh	
Title	Select Title.	
Organisation Details		
Organisation*	Theodore Roosevelt Conservation Partnership (joined by Coastal Conservation Association and American Sportfishing Association)	
Department	Click or tap here to enter Department.	
Job Title*	President and CEO	
Description	<p>The Theodore Roosevelt Conservation Partnership (TRCP) is the country's largest coalition of sportsmen, conservation groups, outdoor businesses, and individuals working to advance proactive conservation solutions in the federal policy arena. Among other things, TRCP's mission is to guarantee all Americans have quality places to fish by uniting the voices of anglers to support policies, programs, and funding opportunities that conserve fish and aquatic ecosystems.</p> <p>Coastal Conservation Association (CCA) joins this objection as the largest marine resource conservation group of its kind in the nation, with almost 130,000 members in 19 state chapters. CCA has been active in state, national and international fisheries management issues since 1977. The organization is committed to ensuring the health and conservation of our marine resources, and anglers' access to them.</p> <p>The American Sportfishing Association (ASA) also joins this objection as the nation's recreational fishing trade association and represents sportfishing manufacturers, retailers, wholesalers, and angler advocacy groups, as well as the interests of America's 49 million recreational anglers. ASA also safeguards and promotes the social, economic, and conservation values of sportfishing in America, which result in a \$125 billion per year impact on the nation's economy.</p>	

Mailing Address	529 14th St., NW, Suite 500Washington, DC 20045
Phone	(202) 639-TRCP (8727) ext. 23
Email*	wfosburgh@trcp.org

## Assessment Details

Fishery Name*	Omega Protein Corporation U.S. Atlantic menhaden purse seine
Certifier (CAB) *	SAI Global

The following objection is being lodged on behalf of the below named organisation(s) and I am authorised to make this submission on their behalf.

Signature*	
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## 2.2. Objecting party's credentials

### Prior Involvement

26 March 2019

Please indicate your prior involvement with this assessment

Fishery client – <a href="#">PD2.3.1.1</a>	<input type="checkbox"/>
Written stakeholder submissions - <a href="#">PD2.3.1.2</a>	<input checked="" type="checkbox"/>
Meetings attended - <a href="#">PD2.3.1.2</a>	<input checked="" type="checkbox"/>
Participation prevented or impaired - <a href="#">PD2.3.1.3</a>	<input type="checkbox"/>

### Evidence

Please note that Objections can only be raised on a topic if you have previously raised the issue during the initial assessment stages i.e. announcement and site visit periods ([See Simplification Pilot Process](#)). See [Annex PD, Clause 2.3.1](#) for more information on who can raise an objection.

Supporting evidence of prior involvement to indicate that you raised this topic previously.	The Theodore Roosevelt Conservation Partnership submitted comments on the PCDR in January 2019. Additionally, associated party Dr. Jerry Ault, University of Miami, spoke with the 3rd party reviewers and submitted comments to MSC earlier in the certification process, prior to release of public comment document, during which the importance of the menhaden as a key low trophic level species was discussed as a principal issue. Click or tap here to provide evidence and/or outline details to support this classification.
Background	<p>The Theodore Roosevelt Conservation Partnership (TRCP) is the country's largest coalition of sportsmen, conservation groups, outdoor businesses, and individuals working to advance proactive conservation solutions in the federal policy arena. Among other things, TRCP's mission is to guarantee all Americans have quality places to fish by uniting the voices of anglers to support policies, programs, and funding opportunities that conserve fish and aquatic ecosystems.</p> <p>Coastal Conservation Association (CCA) joins this objection as the largest marine resource conservation group of its kind in the nation, with almost 130,000 members in 19 state chapters. CCA has been active in state, national and international fisheries management issues since 1977. The organization is committed to ensuring the health and conservation of our marine resources, and anglers' access to them.</p> <p>The American Sportfishing Association (ASA) also joins this objection as the nation's recreational fishing trade association and represents sportfishing manufacturers, retailers, wholesalers, and angler advocacy groups, as well as the interests of America's 49 million recreational anglers. ASA also safeguards and promotes the social, economic, and conservation values of sportfishing in America, which result in a \$125 billion per year impact on the nation's economy.</p>

## 3. Your Objection

### 3.1. Categorisation of Objections

#### Objection category

26 March 2019

Are you objecting on the basis that, in your opinion...

There was a serious <b>procedural</b> or other irregularity in the fishery assessment <b>process</b> that was material to the fairness of the assessment – <a href="#">PD2.7.2.1</a> , <a href="#">Complete Section 4</a>	<input type="checkbox"/>
The setting of <b>conditions</b> by the certifier (CAB) in relation to one or more Performance Indicators cannot be justified because the conditions fundamentally cannot be fulfilled, or the <b>condition-setting decision</b> was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available to it – <a href="#">PD2.7.2.2</a> , <a href="#">Complete Section 5</a>	<input checked="" type="checkbox"/>
The <b>score</b> given by the certifier (CAB) in relation to one or more of the Performance Indicators cannot be justified, and the effect of the <b>score</b> in relation to one or more of the particular Performance Indicators in question was material to the determination - <a href="#">PD2.7.2.3</a> , <a href="#">Section 6</a>	<input checked="" type="checkbox"/>
<b>Additional information</b> not forming part of the record (as defined in <a href="#">PD2.6.5.1</a> ) that is relevant to the circumstances at the date of determination has not been considered - <a href="#">PD2.7.3</a> , <a href="#">Section 7</a>	<input checked="" type="checkbox"/>

## 4. Process

## 5. Conditions

### 5.1. Objection in line with [PD2.7.2.2](#)



Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly indentify –

- a. The reason(s) why you or your organisation believes that the condition assigned to the Performance Indicator within the Final Report cannot be justified because it cannot fundamentally be fulfilled; or,
- b. The reason(s) why you or your organisation believes the condition setting decision was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available.

Conditions	
Performance Indicator	1.2.1 Harvest strategy
Condition	The Client Group must provide evidence of the implementation of a harvest strategy that is designed to take into consideration the ecological role of Atlantic menhaden and is responsive to the state of the stock with respect to its role in the U.S. Northwest Atlantic ecosystem.
Reason	The condition is reliant on mistaken material facts with regard to proposed ecological reference points (ERPs) and mistaken conclusions that rule of thumb ERPs are consistent with MSC standards. Moreover, this condition fails to establish definitive and quantifiable performance metrics that are necessary to demonstrate compliance with MSC's standards.
Supporting Rationale	<p>Implementation of a harvest strategy that incorporates menhaden's critical ecological role in the Atlantic coastal ecosystem is highly unlikely because the appropriate ERPs that fully consider this ecological role are still under development by Atlantic States Marine Fisheries Commission (ASMFC).</p> <p>The MSC assessment team explicitly acknowledged the ongoing development of menhaden-specific ERPs, and they conceded that ERPs are much better suited for the management of Atlantic menhaden. They also suggested that "rule of thumb" reference points were inappropriate. Thus, it is unacceptable that the MSC Final Report chose to provisionally recommend that the menhaden purse seine fishery be certified specifically based on <i>ad hoc</i> rule of thumb guidelines. This is disingenuous and contrary to rules of scientific objectivity.</p> <p>This contradictory reasoning is flawed, and further, highlights the consistent shortcomings found throughout the Final Report and the striking paucity of data on which arbitrary decisions were rendered concerning sustainable management programming of the Atlantic menhaden resource.</p>

The condition set by the assessment team does not reflect the MSC standard that a target stock must be maintained at a sustainable level. A condition is supposed to be a mechanism to improve the performance of the fishery so that, at a *minimum*, it passes the unconditional pass mark. The condition applied to performance indicator 1.2.1 does not provide an avenue for the fishery to meet MSC's unconditional pass mark.

Currently, the condition requires a "harvest strategy," that takes into consideration the menhaden's ecological role. However, the assessment team provides no measurable guidance that allows Omega to successfully implement this condition and meet MSC standards. Nor does the condition provide the MSC or other stakeholders with any guidance on how to measure Omega's progress. The lack of guidance and measurability allows Omega to design any kind of "harvest strategy" that, theoretically, could be found in compliance with this condition, regardless of its relevance to addressing MSC's principal concerns.

While new data cannot be introduced at this time, it is our understanding that a new Atlantic menhaden benchmark assessment is scheduled for completion in late 2019. Additionally, the Ecological Reference Point (ERP) Working Group's Report of scientific findings will be published in 2020. Despite the anticipated release of these highly important reports to guiding the process of sustainability certification, the assessment team prematurely recommended a conditional certification that simply requires Omega to implement an unspecified harvest strategy.

In order for the condition to comply with MSC guidelines, and consider the ecological role of the menhaden, it should be remanded to the assessment team for revision.

Finally, the Report ensures compliance with these conditions through yearly "audits." The assessment team, however, noted its intention to conduct the on-site audit during the fishery's off-season where the auditors will essentially review paper documentation of Omega's efforts, but will not interview the employees, fishermen, or observe practices on-board the fishing vessels during a day of catch, which is necessary to ensure true compliance with these conditions as well as verify whether the certification is still appropriate at all.

## Conditions

Performance Indicator

1.2.2 Harvest Control Rules and tools

Condition	The client must provide evidence of implementation of well-defined harvest control rules that take into consideration the ecological role of Atlantic menhaden as key low trophic level in the U.S. Northwest Atlantic and that; 1. ensure the exploitation rate is reduced as the point where serious ecosystem impacts could occur and; 2. are expected to keep the stock fluctuating around a target level consistent with ecosystem needs.
Reason	The condition is reliant on mistaken material facts and, even if a condition was proven to be appropriate in these circumstances, it is not written concisely or definitively enough to ensure compliance with MSC's standards, which mandate a precautionary approach (i.e., "highly likely that the stock is above the point where serious ecosystem impacts could occur").
Supporting Rationale	<p>The latest menhaden stock assessment indicates that only 46% of the unfished total population biomass exists in the sea (n.b., this fraction is substantially less for the mature fraction of population biomass). This decision point presents a critical threat to sustainability of menhaden and the predators that depend on them.</p> <p>The reviewers asserted that the menhaden fishery meets the 40%B<sub>0</sub> criterion with the current total biomass (46%B<sub>0</sub>); and therefore, the fishery can be certified. However, the assessment team failed to provide any substantive support for this assertion as fully required by MSC. Moreover, the total population biomass that the assessment team focused on is inappropriate for assessing not only the menhaden fishery, but any fishery.</p> <p>The assessment team focused on the total biomass present, rather than focusing on spawning biomass, which would provide greater clarity, reflect the stock-recruitment process, and additional accuracy as to the health, sustainability and reproductive capability of the fishery. In relying on total biomass, the assessment team has effectively rounded down the reproductive unit. Specifically, the use of total biomass prevents the assessment team from understanding the actual number of juvenile menhaden and adult menhaden. As a result, the assessment team is getting a higher current biomass regardless of the level of exploitation.</p> <p>While fishery management is currently organized by single-species assessments, a single species assessment does not provide a complete picture of the menhaden fishery and its role in the surrounding ecosystem. Such an approach is on its face arbitrary and capricious. Specifically, single-species assessments do not rely on or pull data from outside of that particular fishery. In this case it means that the biomass relied on as "sustainable" is inflated. A sustainable approach, and the one required by MSC standards, requires the use of precautionary values for each of these measurements. To accurately assess the menhaden fishery, the assessment team</p>

needed to also consider fishery resource data outside of the tunnel view of the menhaden stock.

The assessment team correctly determined that menhaden are a KLTL species. However, the assessment team's determination that the stock is not overfished and that overfishing is not occurring is based on a single species assessment, which has many outstanding questions concerning assumptions about demographics (i.e., lifespan, maturity, natural mortality) and fishery selection. It was not based in any way on an ecosystem-level assessment.

The certification of the reduction fishery should not be granted and this condition should be remanded to more fully consider the effect Omega's purse seine fishing operations have on the menhaden spawning biomass.

Additionally, implementing a "robust and precautionary" harvest control strategy for Atlantic menhaden, requires the full cooperation and enforcement of the new management measures by all jurisdictions. Historically, the Atlantic states have worked together to manage their shared fishery resources. Currently, all of the Atlantic states, except Virginia, have banned purse seine fishing in their inshore and nears-shore waters. Omega Protein centers its operations in this one jurisdiction that has consistently failed to take a sustainable science-based approach to the management of the menhaden fishery.

The condition set by the assessment team does not reflect the MSC standard that a target stock must be maintained at a sustainable level. A condition is supposed to be a mechanism to improve the performance of the fishery so that, at a *minimum*, it passes the unconditional pass mark. The condition applied to performance indicator 1.2.2 does not provide an avenue for the fishery to meet MSC's unconditional pass mark.

To meet MSC standards, the condition should be structured and specific. For example, the condition could require that the implemented harvest control rules keep the stock at a size that mildly fluctuates around a *defined* target level consistent with supporting *all* components of the ecosystem that depend on Atlantic menhaden. A description of the types of evidence the auditors would need to see and review to ensure that the condition is met explicitly, and standards against which to compare the evidence are necessary to ensure compliance with this condition if the condition relies solely on evidence provided by Omega.

Finally, the burden of monitoring the fishery to ensure compliance and implementation of the condition should fall squarely with Omega Protein, not the ASMFC, NMFS or the State of Virginia. None of these regulatory entities are seeking certification from the MSC. If Omega Protein is responsible for implementing these conditions, then it should also be

	<p>responsible for monitoring the fishery and providing the MSC and other stakeholders with valid data to demonstrate compliance.</p> <p>History illustrates the miniscule likelihood that Omega Protein will comply with this condition and supporting any harvest control rule. The company has been given ample opportunity to support the same standards as those required by MSC for KLTL species, but the company instead opposed those standards during the ASMFC Amendment 3 process. Omega Protein has also opposed even the modest catch limit for Chesapeake Bay. Moreover, with the start of a new Virginia legislative session, Omega Protein has already confirmed its opposition to any potential catch cap for the Chesapeake Bay. Given its past and present actions, it is unlikely that Omega Protein will support meaningful menhaden-specific ecological reference points and a harvest control rule. Without evidence that a fishery operation will comply with such a vague condition, the condition must be completely defined with clear benchmarks against which the fishery can be assessed. In short, the existence of a potential company “policy” years from now does not equate to the effective implementation of that policy.</p> <p>It is only under Principle 3 of MSC’s standards that scores should reflect the adequacy of and reliance upon any legal framework which exists and encompasses an applicant fishery. In accordance with MSC’s standards, the onus and burden of ensuring a sustainable fishery is primarily on the applicant—Omega Protein. The assessment team’s continual reliance upon a “legal” framework that lacks enforcement authority and any true mandate to adopt the most effective fishery management strategies is a fatal flaw throughout much of this Report.</p>
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## Conditions

Performance Indicator	Click or tap here to select a Performance Indicator.
Condition	Click or tap here to enter the condition, as stated in the Final Report.
Reason	Click or tap here to enter reason in line with (a) and (b) above.

Supporting Rationale	Click or tap here to enter supporting rationale for the reason(s) above.
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Please repeat table as needed for each Performance Indicator and condition to be included in the Objection.

## 6. Scoring

### 6.1. Objection in line with **PD2.7.2.3**

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly indentify –

- a. The reason(s) you or your organisation believes that the score(s) presented within the Final Report cannot be justified; and,
- b. Your rationale and/or evidence in support of a different conclusion, making reference to the particular Performance Indicator in question.

Scoring	
Performance Indicator	1.1.1 Stock status
Reason	Use of total stock biomass (immature and mature), rather than spawning (mature) stock biomass, does not accurately reflect menhaden stock status or dynamics, and further, artificially inflates the stock proportion remaining in the water after exploitation.
Supporting rationale and or evidence	<p>The total population biomass that the assessment team focused on is inappropriate. The assessment team focused on the total biomass (immature and mature menhaden) present, rather than focusing on spawning biomass (i.e., the mature component of the stock), which would provide more clarity as to the health and reproductive capacity of the stock and sustainability of the fishery. In relying on total biomass, the assessment team has effectively obliterated the effect of rounding down the reproductive component of the stock and its impact on sustainability. Specifically, the use of total biomass prevents the assessment team from understanding the relationship between the number of juvenile menhaden and adult menhaden and how this reflects current stock status and future population recruitment. As a result, the assessment team assumed a higher relative population biomass than what is actually present, regardless of the level of exploitation.</p> <p>Specifically, large scale taking of early juveniles, as well as the continued heavy exploitation of age-3+ menhaden has resulted in a diminished number age-3+ spawners, and a highly truncated population size/age structure. Older, mature and highly fecund menhaden are essential to a healthy spawning stock, and removing them has a negative effect on recruitment and stock</p>



sustainability. While the assessment team recognized that the fishery does not currently land substantial tonnage of age-0 fish (recruits in their first year of life), it incurs heavy exploitation pressure on older (ages 1s and 2s), but immature menhaden that have yet to contribute to the spawning stock. By utilizing total population biomass (immature and mature fish combined) instead of only mature fish to the computation of spawning stock biomass in the assessment artificially inflates the spawning potential ratio (i.e.,  $\%B_0$ ), and thus fails to adequately assess the risks to health and sustainability of the fishery. Using the spawning stock biomass as the benchmark, the internationally recognized standard, would have allowed the assessment team to better assess the status of the stock. More concerning, however, is that the approach taken by the assessment team fails to meet the requirement to have legitimately considered the trophic position of the stock to “ensure precaution in relation to their ecological role, in particular for species low in the food chain.”

## Scoring

Performance Indicator

2.1.3 Primary species information

Reason

The assessment team has made a mistake as to material facts and its conclusions are unsupported by the data available in the record.

Supporting rationale and or evidence

When scoring PI 2.1.3, the assessment team discusses the current status of bycatch studies. In its final report, the assessment team determined that there was sufficient information to find that SG 80 was met. As explained below, and this score is more appropriately 60 or less.

To meet SG 80, there needs to be a “partial strategy” in place. A “partial strategy” represents a cohesive arrangement which may comprise one or more measures, an understanding of how it/they work to achieve an outcome and an awareness of the need to change the measures should they cease to be effective. The assessment team notes that there is no strategy in place, yet it still found that the SG 80 threshold was met. This on its face is arbitrary and unreasonable.

In reviewing bycatch of primary species as part of the menhaden reduction fishery, the assessment team found that data on bycatch is collected on an ad hoc basis. The most recent study on bycatch with the menhaden fishery was conducted over 20 years ago (i.e., Kirkley 1995). And the more-recent data, collected by NOAA and relied on by the assessment team, was conducted in the Gulf of Mexico, which is only relevant in that it shows the high percentage of bycatch



	<p>that Omega’s reduction fishery processes have—ninety-three percent of the total weight of the retained bycatch was accounted for by only eight species according to Condrey’s 1994 study: Atlantic croaker (25%), striped mullet (17%), gafftopsail catfish (12%), silver seatrout (10%), Spanish mackerel (9%), Atlantic bumper (8%), hardhead catfish (6%), and sand seatrout (6%).</p> <p>Moreover, as part of rationalizing this particular section’s score, the assessment team stated that “adequate information will continue to be collected into the future to assess any changes to risk levels.” Omega’s low and sporadic observer coverage already led the assessment team to recommend that Omega engage in bycatch studies. However, recommendations are not requirements, thus Omega has no incentive to increase observer coverage, but in fact the recommended certification and conditions as presented in the Report would serve as a disincentive. Importantly, in the few instances where Omega has reported bycatch, there have been dolphin (marine mammals) listed. If Omega actually engaged in regular systematic observer coverage, then the assessment team may have been able to conduct a meaningful evaluation, rather than relying on Omega’s insufficient and undoubtedly faulty reporting system to conclude that there is no significant bycatch problem with the Atlantic menhaden purse seine fishery.</p> <p>Finally, to justify the SG 80 score, the assessment team consistently notes that the “low levels of bycatch” are a result of the way in which the fishery operates. However, the scope of Omega’s operations and the effect of bycatch cannot be fully known when Omega does not consistently engage in collection of or systematically report bycatch. Therefore, this score is unsupported and should be rejected. At best, it merits a conditional requirement rather than a recommendation.</p>
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## Scoring

Performance Indicator	2.5.2 Ecosystem mangement strategy
Reason	The assessment team has made a mistake as to a material fact.
Supporting rationale and or evidence	Omega does not have a partial strategy in place that would, if necessary, take into account available information and is expected to restrain impacts of the UoA on the ecosystem so as to achieve the Ecosystem Outcome 80 level of performance. Omega barely has measures in place that would, if necessary,

take into account the potential impacts of the fishery on key components of the ecosystem.

Peer Reviewer B explicitly admits that it was “uncertain” whether this standard was met, as NOAA’s policy of EBFM is single species-based and does not consider other species. Peer Reviewer B leaned towards a score of 60 but is “persuaded” by MSC’s assertion that the U.S. has a “broad range of regulatory measures in plan which aim to limit adverse effects of fishing on the marine ecosystem.” This is factually incorrect, and as the U.S. fishery management has moved towards an ecosystem-based management model, Omega has consistently and vehemently pushed back against the incorporation thereof at every stage of the process.

The fishing mortality rate (F), according to the 2015 assessment, has been below the reference target since the early 2000s. However, the previous benchmark assessment stated that menhaden were overfished and that overfishing was occurring. Peer Reviewer B concludes, without any support, that “technical measures used to constrain fishing mortality are working” and that SG80 is warranted despite there being “no clear evidence available because there is *no* strategy in place to address the impacts of the menhaden fishery on the ecosystem.”

Essentially, this recommended certification provides a passing grade for the menhaden purse seine fishery impact on the surrounding ecosystem, despite there being no evidence to support such a finding.

In reality, the management strategy currently in place is severely flawed and fails to meet even MSC’s low standards. Certification relies only on a conclusory assumption that NOAA implements, enforces, and requires such a strategy. The certification states that the “partial strategy in place” has “relevant information regarding the stock status, fleet composition, catch composition” and that this data is available to “improve the knowledge about the role of menhaden” in the U.S. Atlantic and yet only one such study is cited.

The certification qualifies and defends its score for 2.5.2 by discussing the ASFMC’s plans to implement an ecosystem-based management program for the menhaden. However, Omega has consistently protested the implementation of such a program and has vigorously lobbied to prevent the program from being passed during several previous ASMFC voting sessions. In its conclusion, the certification explicitly concedes that there is “no strategy in place to address the impacts of the menhaden fishery on the ecosystem” and, thus, there is neither testing nor high confidence that any such strategy would work. The approach taken by the assessment team falls far short of the

	requirement to follow a precautionary and sustainable approach to assessing ecosystem impacts.
<b>Scoring</b>	
Performance Indicator	3.1.1 Legal and/or customary framework
Reason	A score of 100 is not met for this PI and the assessment team has made a mistake as to a material fact.
Supporting rationale and or evidence	<p>The assessment team cites the existing laws and fisheries management groups that exist within the U.S. with no reference whatsoever to the fact that the regulations adopted by the ASMFC are not binding on affected states until and unless affected states ratify those regulations. Ignoring the dual federalism principles apparent throughout the U.S. legal system, the assessment team wholly ignores that when states do <i>not</i> adopt regulations supported by the ASMFC, there is no binding procedure in place for the ASMFC to require such states to adopt and implement measures adopted by the Commission to ensure a sustainable fishery. This failure to fully account for the serious limitations in existing legal frameworks requires that this performance indicator be reassessed in full.</p> <p>Importantly, a similar situation arose during the certification of the Faeroese Pelagic Organization North East Atlantic mackerel fishery. In that case, many coastal states worked to implement a catch limit for the fishery, but one state decided to declare its own unilateral quota. When reviewing the CAB's decision and the condition it set, the independent adjudicator found the CAB's decision unreasonable due to the lack of conformity between the states. This is the exact situation that exists here with respect to Atlantic menhaden.</p> <p>The Independent Adjudicator found that there was no appropriate framework in place that would allow for the implementation of the condition. Specifically, the Independent Adjudicator noted that the score for this performance indicator depends in part on the presence or absence of an appropriate and effective legal and/or customary framework that is capable of delivering sustainable fisheries in accordance with MSC Principles 1 and 2. Ultimately, the Independent Adjudicator found it unreasonable that the CAB concluded there was an appropriate framework in place, despite the fact that the alleged framework did not have a TAC, nor did it include all of the Coastal States.</p>

	<p>This is substantially similar to the current legal and governmental framework in place on the Atlantic Coast. As stated throughout, there is no better illustration of this failed legal framework than the Virginia legislature's refusal to adopt ASMFC's standards and quotas with regard to the menhaden fishery. Every single Atlantic state, <u>except</u> Virginia has agreed to catch limits and has banned purse seine fishing in important menhaden waters. As such, there is no appropriate governmental framework in Virginia, where Omega conducts its operations that will allow for the successful implementation of this condition. Moreover, the Assessment team fails to account for the fact that in Virginia, the only fishery not managed by the Virginia Marine Resources Commission is the menhaden fishery, underscoring the political rather than science-based approach to the management of this fishery.</p> <p>A Report that not only relies functionally on the incorrect assurance that the Omega menhaden fishery will comply with any rules, including ERPs established by the ASMFC in the next year, is a fatal flaw to the scores set forth in this PI as well as the entire Report.</p>
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## Scoring

Performance Indicator	3.2.3 Compliance and enforcement
Reason	The assessment team has made a mistake as to a material fact and has also failed to engage directly with the state-level and national-level government entities, who are key stakeholders to and lynchpins of this Report.
Supporting rationale and or evidence	Sanctions to deal with non-compliance barely exist and these sanctions are not consistently applied in a manner so as to provide effective deterrence. The enforcement mechanisms for fisheries in the U.S. depend on a comprehensive and complicated dual federalism approach whereby both the ASMFC, operating at a federal level, and the individual affected states adopt and enforce the same rules. The Virginia state legislature does not always, and has not, with respect to the menhaden fishery, adopted the same standards as mandated by the ASMFC. Similarly, the federal enforcement arm—the Department of Commerce—does not and has not brought any action requiring the Virginia state legislature to comply with the federal standards. Without Virginia's adoption of the federal system, Virginia operators such as Omega operate under a different management system and set of rules than fishery operators in other states.

Generally, all available evidence supports a finding that Omega does not and has not complied with the ASMFC management system upon which this certification has relied so heavily. Specifically, Omega does not comply with the ASMFC mandated catch cap in Chesapeake Bay. Omega has a glaring history of advocating against ecological management of Atlantic menhaden. In advocating before both the ASMFC and the Virginia State legislature, Omega has repeatedly lobbied for the least number of restrictions on its fishery and tepid ineffectual management efforts that ignore protection of the Chesapeake Bay ecosystem specifically and the Atlantic menhaden population generally. Omega publicly announced that it did not support the ASMFC's recommended reduction of total allowable catch and has ensured the Virginia legislature has followed with support of this notion. Omega also has publicly announced it did not support the use and implementation of ecological reference points to assess the fishery.

Please repeat table as needed for each Performance Indicator and score to be included in the Objection.

## 7. Additional Information

### 7.1. Objection in line with **PD2.7.3**

Please ensure you have filled in your [contact details \(Section 2\)](#) and [objections category \(Section 3\)](#) before filling in this section.

Using the template below, please list all additional information not forming part of the record (as defined in [PD2.6.5.1](#)) that is relevant to the circumstances at the date of the determination that you feel has not been considered. Be sure to provide the reasons why you or your organisation believes that the particular information in question:

- a. Was known or should reasonably have been known to any party to the assessment process;
- b. Should reasonably have been made available to the CAB; or,
- c. If considered, could have been material to the determination or the fairness of the assessment.

#### Additional Information

Please identify...

Information	Click or tap here to state the additional information.
Reason why information was known or should reasonably have been known	Click or tap here to enter reasons why information was known or should reasonably have been known, and should have been made available.
Reason why information could have been material to the determination or the fairness of the assessment.	Click or tap here to state reasons why information could have been material to the determination or the fairness of assessment.