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May 4<sup>th</sup>, 2016

Dear Mr Hynes,

We are writing to register a complaint with respect to the recent final Surveillance Audit on the NW Atlantic Canada Longline Swordfish fishery for their first MSC certification period. The final revised version of the Audit Report was published on April 18<sup>th</sup>, 2017. We have a number of procedural concerns about this audit that we have brought to the attention of MSC technical oversight and we would like to discuss with Acoura through your official complaint process.

In the light of the extensive and unanticipated scoring changes and new rationale presented by Acoura in the Final Surveillance Audit, the timeline for re-assessment should be re-examined. Stakeholder comments submitted in October 2016 would no longer be relevant for the re-assessment. Numerous procedure concerns need to be addressed, information released, and time should be given for stakeholders to review and submit input based on this new scoring and information before the re assessment PCDR is released.

This complaint is about procedural concerns and does not include details as to the material findings and scoring rational of the Acoura team.

While the below is not exhaustive in terms of details, our main concerns are as follows:

**1) Use of old information and Rescoring of Original Assessment Findings**

The rationale used for closing Conditions 6 related to loggerhead sea turtle impact. The audit team reviewed research information that is now more than 10 years old and was part of the original information presented in the 2011-2012 assessment process. Acoura came to the conclusion that the original assessment CAB, Intertek Moody Marine, had made errors in their original analysis and scoring. Therefore, the Acoura team seems to argue the fishery never needed conditions to show they were 'highly unlikely' to have an impact on loggerhead recovery. Therefore, the remaining condition milestones that are incomplete and noted in Year 3 are moot.

The information and research reviewed by the Acoura team was taken into account during the initial assessment and discussed in depth between the CAB, stakeholders, the client, and DFO. Key points including the proportional impact of the fishery on the sea turtle population, the number of turtles being hooked, the 'adult equivalency' idea put forward in the NMFS 2009 paper, definition of 'unlikely' and 'highly unlikely' according to MSC and the CAB, and the uncertainty around the statistical significance of the observer coverage (not the percentage of cover) - these points and many more details were discussed in detail during the two years of assessment and, subsequent objection process.

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The objection process resulted in negotiation on the specific language of the conditions and new, clear milestones for this fishery. This result was presided over by an Independent adjudicator. The CAB, the client and, ourselves all responded with new wording and milestones that resulted in the final report and commitments to those planned actions.

The process Acoura took in rescoring this condition ignores the original discussions, the IA decisions, the objection, and the years of work since then devoted to ensuring progress was made against the conditions and client action plan.

It is unprecedented in our experience for a full reversal using old information by a CAB in an audit or assessment. It seems to undermine both the standard audit process and the objection procedures.

## 2) Rationale for Condition 8

Rationale used for closing Condition 8 is also a concern for both the above procedure reasons we outline in relation to Condition 6 and due to the use of a specific statement by a DFO manager that was taken out of context. The condition is related to loggerhead turtle impact and the ability to assess that impact through available information from observer data. The original assessment scoring and ongoing audits were not satisfied that the information collected through the observer program, the LCAP, and other research is statistically robust enough to answer outstanding questions about the fisheries impact on recovery.

The Acoura team has relied heavily on a statement made verbally by a DFO manager at a fishery advisory committee meeting. This statement was in the context of a discussion about porbeagle shark measures after the completion of porbeagle RPA and whether the fishery was meeting its 5% by sea days observer coverage targets. The statement is not in reference to loggerhead turtles nor was the word 'sufficient' in reference to the ongoing questions about the representative nature of the observer coverage - spatially and temporally. This statistical significance analysis continues and has not been answered – it is not a matter of ensuring 5% coverage is met (indeed that was never the main point of contention in the assessment). The analysis has been funded by DFO and is a priority for the department – they have undertaken two incidental catch RPA workshops (2011, 2016) and since those have been inconclusive they have included this fishery in a current review of fishery observer coverage statistical robustness under their DFO Catch Monitoring Policy analysis and have identified concerns that will lead to next steps.

## 3) Incomplete milestones and conditions

The process followed by Acoura in this rescoring and closing of conditions undermines the objection process, the role of client action plan commitments, and audits. Aside from the above concerns with the rationale used, this process has the effect of changing the rules of the game at the last whistle. In this particular assessment, a main concern brought up by stakeholders and in our objection was that the conditions and milestones did not meet MSC guidance set out to ensure conditions were realistically able to bring fisheries up to the 80 score within five years. The EAC consistently argued that the fishery client and the DFO management did not have the capacity or planned funding and timeline to pursue the client actions and condition milestones needed.

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This concern was reviewed in the objection with the following response:

“it is not appropriate to make such a judgment *a priori*. Progress in addressing the Condition will be evaluated through annual surveillance audits.”

As stakeholders, we have thus engaged at each audit and followed the progress closely. The IMM audit team also reviewed progress each year and concluded at the end of 3<sup>rd</sup> year that there were still many outstanding actions not completed by the client and they had concerns these would not be met.

The Acoura team has not justified why many of these actions have not been completed or used ‘exceptional circumstances’ to leave conditions open – instead they have shifted the goal posts entirely to dismiss the planned actions and milestones as unnecessary. How can stakeholders engage meaningfully in a process such as this? What is the point of review, client action plans, stakeholder input, or objection procedures if these can be wiped away at will?

#### 4) **Availability of significant information for stakeholders**

The minutes of the 2016 meeting were circulated to the Advisory Committee meeting, including the EAC, only on March 14<sup>th</sup>, 2017 – one day before the ALPAC 2017 meeting. It seems from the audit report the Acoura team were given the ALPAC minutes sometime in the fall of 2016.

Due to the delay of the Audit report release, we were not able to review how the 2016 minutes were used to lead to significant scoring changes and closing of conditions in the Audit. Had we already seen the audit report, we would not have accepted the 2016 minutes at the 2017 Committee meeting. In light of the audit, we would have asked for clarification on the record of that particular statement.

#### 5) **Availability of significant information for stakeholders**

These minutes and other DFO documents referenced in the Audit were not available to us as stakeholders to inform our input. Since these have not been made available going into the re-assessment process, this is also cause for concern since the CAB has relied on them heavily for closed at least two conditions.

#### 6) **The timing and delay of Audit and Re-Assessment process**

The timing of the audit and re-assessment has not been appropriate to ensure full stakeholder participation. Not having the results of the final audit public before closing input on a fishery re-assessment is undermining the process of stakeholder participation. The long delay on the Audit report publishing further exacerbated that.

The final surveillance audit was announced on September 1<sup>st</sup> 2016 at the same time as the re-assessment process on with a deadline of December 8<sup>th</sup>, 2016 for the publication of the report. On December 5<sup>th</sup>, 2016 Acoura requested the first of four variation requests to extend the Audit Report deadline. The final report was published eventually on April 18<sup>th</sup>, 2017.

The EAC met with the Acoura audit team on October 4<sup>th</sup> to discuss the fishery. At that meeting, we were told that we must submit our comments for both the audit and re-assessment as soon as possible as the team planned to do the bulk of the work on the reports by the end of the month to accommodate their other workplans. As we had not expected submitted our reassessment comments so soon, we

negotiated to submit our audit comments that week (submitted on Oct 6) and our reassessment comments at the end of the month (submitted Nov 2).

This meant that we submitted our input for the re-assessment of the fishery before seeing the result of the Final Surveillance Audit. The fishery entered the final surveillance audit with 6 open conditions the EAC had significant concerns about 4 of them not meeting the required milestones and submitted substantial comments addressing this and other issues for both the audit and re-assessment.

The Final Surveillance Audit resulted in all remaining conditions being closed with some surprising rationale that could not have been anticipated from reviewing the 3<sup>rd</sup> Audit surveillance comments nor from the October 4<sup>th</sup> meeting with the Acoura team or from our extensive work on regulatory policies with this fishery.

This makes our comments for the reassessment, which took a considerable amount of time, quite irrelevant. These comments, which will be published in the PCDR, will appear unrelated to the scoring rationale and off point, making the EAC appear uninformed when, in fact, we are part of the Advisory Committee for this fishery and have worked on large pelagic fishery issues for more than 10 years. Indeed, we have been the only stakeholder to consistently engage in the MSC Certification processes for this fishery over the last 8 years.

We look forward to your reply and actions on this,



**Shannon Arnold**  
Marine Policy Coordinator  
Ecology Action Centre