

Objection to the certification of the 3Ps Code fishery by Ecology Action Centre

Final Decision

1. The Marine Stewardship Council (“MSC”) received a Notice of Objection from the Ecology Action Centre (“the objectors”). The objection is to the proposed certification (the “Determination”) by the certification body, Acoura Marine (“the certification body”) of the 3Ps Cod fishery.
2. My task under CD 2.7.1 of the Objections Procedure, having heard the objection, was to decide whether to confirm the Determination or to remand it for reconsideration to the certification body. I decided on 24 February 2016 to remand the Determination in relation to the objection to PI 1.1.2 and the setting of the target reference point (the upper stock reference/USR). All other points of the objection were not upheld.
3. This Final Decision addresses the one point sent on remand. This should be read with the Remand Decision for a full response to this objection.
4. My decision is to confirm the Determination.

Remand Decision

5. The Remand Decision stated the following:

“30. I have decided to remand the proposed certification to the certification body for the following reason. Given that the USR is a proxy for Bmsy, per CB2.3.4, I do find that there was a lack of justification given in the Final Report. The justification given was minimal, amounting essentially to:

“It has a similar intent as BMSY and the current outcome is to maintain the stock above that target through a harvest control rule linked to that point.”

31. None of the detailed explanation given in paragraphs 23 (k) and (l) above was referred to or even summarised. Without this explanation, I find that the certification body’s score for this PI could be said to be arbitrary in the sense that, on the reasoning given and evidence cited, no reasonable certification body could have reached such a decision. This score is to be remanded for PI 1.1.2 on this basis.”

Justification under CB 2.3.4

6. The certification body responded to the Remand Decision on 3 March 2016, suggesting additional text to be inserted into the Final Report. It is proposed that it explain as follows:

“Appendix 1: Revised Justification for PI 1.1.2, SIc, SG80.

An upper stock reference (USR) level of 2 times BLIM has been defined as part of the harvest control rules within a stock rebuilding programme. This is consistent with DFO's Precautionary Approach (PA) Framework (DFO 2006d, DFO 2009d) and the 3Ps cod CPRS. The objective of the CPRS is to achieve and maintain the SSB in the healthy zone and at or near BMSY or its proxy.

In considering the USR and its relationship to a maximum sustainable yield (MSY) level, the Assessment Team notes that MSY is an idealised concept rather than an absolute value. As a concept it is applicable to the exploitation of a wide range of wild animals, but the value of MSY may vary year-on-year in response to environmental variables.

In fisheries, the MSY is the average catch that can theoretically be taken from a stock over an indefinite period under constant environmental conditions. The value is generally accepted to be the asymptotic peak value in a domed relationship between yield (catch) and effort (fishing mortality). That yield level is dictated by a number of variables which include the age structure of the stock, weight at age, density dependent growth rates, catchability at age, selectivity of different gear types and exploitation patterns. For the management of fish stocks, that maximum yield level needs to be associated with a biomass level, usually a spawning stock biomass (SSB). Management plans for most fish stocks have an action point or trigger level ideally set at this predetermined MSY biomass (BMSY) level.

For the Newfoundland 3Ps cod stock, this trigger point is defined as the USR within the CPRS. To date this USR has not been fully evaluated on the basis of a modelled approach. Instead, DFO has calculated this USR level on the basis of being 2 x the well-defined LRP. During the site visit, DFO accepted that the estimation of actual MSY-based reference points does require an assessment framework review and further review of a modelling approach which could be used to quantify the USR. Until that work can be carried out, DFO assessment scientists were confident that the current value of the USR was precautionary and was a reasonable and appropriate proxy for the BMSY reference point. In that context the initial evaluation of the CPRS and the reference points embedded within that plan found that it was compliant with the Precautionary Approach (PA), and that it would lead to a sustainable fishery over the long term (DFO 2015).

Nevertheless, the Assessment Team was conscious of the CB 2.3.4 requirement (MSC 2013a), which states (our emphasis):

“CB2.3.4 In cases where the LRP is set at 20% B_0 , a default value for the TRP may be assumed to be $2 \times LRP$ (CB2.3.3.1). In other cases, for instance where the LRP is set at the lowest historical biomass, it cannot be assumed that $TRP (B_{msy}) = 2 \times LRP$. Teams shall justify any TRP derived from an established LRP in terms of its consistency with B_{msy} .”

In justifying that the 3Ps cod TRP as being consistent with BMSY, the Assessment Team started from the position that the 2012 point estimate for B_{1994} (= the LRP) was 10,740 t (DFO 2013d). As the $TRP = 2 \times$ the LRP, the equivalent level of the $TRP = 21,480$ t.

We then note that when the suitability of BMSY-based reference points for 3Ps cod was reviewed in the Proceedings of the National Workshop for Technical Expertise in Stock Assessment (DFO 2013f),¹ it was noted:

“Using the long term average conditions and assuming a Bacon-Watts recruitment mechanism, BMSY=31Kt ... Using the Beverton-Holt parameter estimates BMSY =19Kt” and “If more recent conditions are used to estimate the reference points, BMSY=21Kt ... assuming a Bacon-Watts recruitment mechanism. If a Beverton-Holt formulation is used, parameter estimates BMSY =30Kt.”

The report also noted that there was no clear evidence as to which stock-recruit model (i.e., Bacon- Watts or Beverton-Holt) may be more appropriate for the 3Ps cod stock, but what is apparent is that under both long-term and more recent-term conditions, one of the two models tested arrived at a BMSY 6 estimate that is highly consistent with a recent estimate of 2 x the LRP for 3Ps cod (i.e., 21,480 t is consistent with 19,000 t (long term data and Beverton-Holt), and 21,000 t (recent term data and Bacon- Watts), so fully meeting the requirements as detailed in CB 2.3.4.

On the basis of the DFO commentary and the comparison between model outputs (DFO 2013f) and the actual TRP, the Assessment Team finds that the TRP as defined meets the requirement at SG 80. The TRP has a similar intent as BMSY and the current outcome is to maintain the stock above that target through a harvest control rule linked to that point.

However it is not entirely clear that precautionary issues such as the ecological role of the stock are taken into account within that harvest control rule with a high degree of certainty. Therefore the rigorous requirements at SG 100 are not yet met.”

7. I am satisfied that the above explanations summarise that set out in paragraph 23 (k) and (l) of the Remand Decision.

Representations by the objectors

8. The objectors sent in further representations on 8 March 2016. Insofar as this document in effect commented on the Remand Decision other than the remand points, I have no jurisdiction to reopen matters. However, I have taken into account the objectors' points in forming a view as to adequacy of the response.

9. First with regard to the references to the two stock recruitment models, the objectors state:

“In fact, there are 5 Bmsy estimates in DFO 2012 with values of 91,000 t, 31,000 t, 30,000 t, 21,000 t, and 19,000 t. The CAB selected only the two estimates that suited their argument despite acknowledging that there was no clear evidence as to which stock-recruit model may be more appropriate. We submit that no reasonable certification body could have reached such a decision on the evidence available to it.”

¹ DFO (2013f). Proceedings of the national workshop for Technical Expertise in Stock Assessment (TESA): Maximum sustainable yield (MSY) reference points and the precautionary approach when productivity varies; December 13-15, 2011. Canadian Science Advisory Secretariat Proceedings Series 2012/055.

10. Whilst I acknowledge that there were 5 Bmsy estimates in DFO 2012 and that the certification body has only referred to 2 of them, looked at on a rationality basis, this does mean that there was evidence upon which it could rely to come to its conclusions. As the objectors know, I may only order a further remand if the scoring proposals are such that no reasonable certification body could have reached this decision. Given that there clearly is evidence to support their conclusion in this particular, I am bound to find that the score reached, in relation to this point, is not arbitrary or unreasonable.

11. The objectors further reiterate that I should rely upon the more recent landings data to call into question the score for this PI. As stated in the Remand Decision, there was evidence at the hearing indicating that landings data was on its own not a scientifically sound basis for reaching conclusions as to stock assessment (there being no correlation, for instance, to fishing effort). As previously explained, even if one overlooked this, there were other reasons why one should not place over reliance upon landings data in interpreting the health of the stock. There was evidence before me that there were economic and societal reasons (which were mentioned in the Final Report) why the TAC was not being caught. Mr Connor's statement to me at the hearing addressed landings as against the TAC, as follows:

In DFO SAR 2015/001 figure 2 indicates there is a shortfall in landings against quotas. When landings of 3Ps cod began to decline in 2009/10 there was a perfect storm of events that contributed to the decline.....

The TAC was reduced by approximately 12% over 2008/9 and fleet sector quotas were reduced accordingly reducing inshore fishers individual 3Ps Cod quotas. This coincided with reductions in exchange rates in key cod markets, declines in cod prices paid to fishers and increases in marine fuel, a major vessel operating expense.

The number of active groundfish vessels operating in the 3Ps has declined steadily. The reasons for the decline is a complicated mix of changing demographics, an aging labour force, changes in government policies to reduce fishing capacity, low income and high expenses, and crewing shortages caused both by competition from higher crew earnings on bran vessels and a booming job market in western Canada.....

It is misleading to look at low landings and conclude that the stock is declining when a closer look reveals that the economic, labour and market conditions are significant contributors to the low landings."

12. The objector further questioned the Remand Decision with regard to rising mortality. As referred to in the Remand Decision, this remains a concern but as the certification body has attested this may be picked up on annual surveillance if the situation worsens. The DFO 2015 indicated that with regard to projection of the stock the indications were that $\pm 20\%$ mortality assumption nevertheless showed a strong recruitment and that "projection scenarios indicate that the 2015 SSB will remain stable or increase from the 2014 estimate. In each of the scenarios, the probability of being below the LRP in 2015 is very low (<0.01)."

13. The objector quotes the certification body as stating "An upper stock reference (USR) level of 2 times BLIM has been defined as part of the harvest control rules within a stock rebuilding programme. This is consistent with DFO's Precautionary Approach (PA) Framework (DFO 2006d, DFO 2009d)...". It is said that this is not true. I also cannot find this as part of the two

DFO stock assessments referenced. However, it is as asserted “defined as part of the harvest control rules” in the CPRS. Whether or not moreover it is “consistent” with the DFO Precautionary Approach is, as I understand this point, essentially the same arguments as have been raised previously by the objectors. The only point sent on remand was the lack of justification given in the Final Report. Given the rationale now to be included in the Final Report, further to CB 2.3.4, I do not find that this score is unreasonable or arbitrary (in the sense that no certification body could have reached this decision) as alleged.

Conclusion

14. I have considered carefully the above proposals for amendment of the Final Report and the objectors’ representations in response. My view is that the addition of the wording to the Final Report proposed by the certification body adequately addresses the remand points (and for the purposes of CD2.8.8 are adequately supported with rationale and are reasonable).
15. In light of the above reasoning and findings, I am confirming the Determination that the 3Ps Code fishery be certified.
16. I want to thank again all participants to this process for their assistance and in particular the objectors, certification body and client fishery for the diligence with which they addressed the issues before me.

Independent Adjudicator

14 March 2016