

MSC Notice of Objection Form

This form should be completed in accordance with the MSC Objections Procedure. More information on the procedures can be found at <http://www.msc.org/get-certified/fisheries/assessment/objections>

This form may be completed and emailed to the MSC at objections@msc.org, where it will be forwarded to the Independent Adjudicator.

Objectors should note the following excerpt from the MSC Certification Requirements in relation to how the Independent Adjudicator will assess the admissibility of an objection:

CD2.3.4 The notice of objection must set out clearly and precisely the basis upon which CD2.7.2 is said to apply. It must:

- CD2.3.4.1 Identify the alleged errors in the final report and determination;
- CD2.3.4.2 Explain in sufficient detail why it is claimed that the alleged errors made a material difference to the outcome of the determination or the fairness of the assessment.

Objectors should further note that an objection will be dismissed if it is not judged to have a reasonable prospect of success:

CD2.4.2 For purposes of this Section, an objection has a “reasonable prospect of success” if, in the view of the Independent Adjudicator:

- CD2.4.2.1 It is not spurious or vexatious;
- CD2.4.2.2 Some evidence is presented on the basis of which the Independent Adjudicator could reasonably expect to determine that one or more of the conditions set forth in CD2.7.2 are satisfied.

Correct in 1.1.2 and need to repeat in the new form.

Megan’s comment re: mixing Harvest strategy and Harvest control rules

1.2.1 harvest strategy and 1.2.2 harvest control rules need to be clear on which is the problem, conservation plan and recovery strategy – control rule

don’t want to leave to put 1.2.1 and 1.2.2 ..not that close to what they wrote and what we have a problem with

told Janice one thing that we should consider – relates to something that we raised before, the reference points, 1.1.2 – re indicator, clause – certifier spoke about the clause, and talk to others as necessary...CB and adjust some scores depending on the clarity goes

US ESA listing decision .

PART ONE: IDENTIFICATION DETAILS

Fishery assessment to which this objection applies	3Ps Atlantic Cod, Northwest Atlantic
Name of conformity assessment body (CAB)	Acoura
Contact details for objecting party	
Organisation(s)	Ecology Action Centre
Contact person	Susanna Drake Fuller
Address	2705 Fern Lane, Halifax Nova Scotia Canada B3K 4L3
Phone Number (including country code)	+01902-446-4840 (office), +01902-483-5033(cell)
Fax Number (including country code)	+01902-405-3716
Email address	marine@ecologyaction.ca

The following objection is being lodged on behalf of the above named organisation(s). I am authorised to make this submission on the above named organisations' behalf.

Name: Susanna Drake Fuller

Position: Marine Conservation Coordinator

Signed: 

Dated: November 5th, 2015

PART TWO: OBJECTING PARTY'S CREDENTIALS

Please outline your prior involvement with this assessment	Subject fishery - CD2.3.1.1	<input type="checkbox"/>
	Written submissions - CD2.3.1.2	x
	Meetings attended - CD2.3.1.2	<input type="checkbox"/>

<p>If you are objecting on the basis that you were a party to the assessment process that made written submissions to the conformity assessment body during the fishery assessment process or attended stakeholder meetings (as per Paragraph CD2.3.1.2 of the objections procedure) or that the failure of the conformity assessment body to follow procedures prevented or substantially impaired your participation in the fishery assessment process (as per Paragraph CD2.3.1.3 of the objections procedure), then please provide evidence and/or outline details to support this classification.</p>	<p>Participation prevented/impaired - CD2.3.1.3 <input type="checkbox"/></p> <p>The Ecology Action Centre (EAC) submitted comments on the PCDR in July 2015. We have also expressed our concerns regarding the certification of this fishery directly to the MSC on October 28th, 2015.</p>
<p>Please state your interest in the fishery and its certification</p>	<p>The Ecology Action Centre's (EAC) Marine Program's has been working towards a recovered marine ecosystem in Atlantic Canada since 1994. Our vision is that Canada's oceans are healthy and our coastal communities thrive. This is achieved through sound conservation-based management, equitable policy and resilient markets that incentivize sustainable fishing practices, while ensuring that Canadians have access to fresh, fair fish. We work locally, nationally and internationally towards protecting the marine ecosystem and maintaining sustainable fisheries, which support vibrant coastal communities. We are currently focused on the recovery of Atlantic groundfish and fisheries management measures that may help or hinder this recovery, particularly for at-risk marine fish populations. We are also concerned about the implication of climate change on recovery potential. Additionally, we are members of SeaChoice, a coalition of organizations working towards market based approaches to sustainable seafood, through retailer purchasing commitments. We are also members of the Conservation Alliance for Seafood Solutions.</p>

PART THREE: CATEGORISATION OF OBJECTIONS

You must complete one or more of Parts Three to Five in accordance with your answers to the following questions.

<p>Are you objecting on the basis that there was a serious procedural or other irregularity in the fishery assessment process that made a material difference to the fairness of the assessment, as per Paragraph CD2.7.2.1 of the objections procedure?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>If YES, complete Part 4</p>
<p>Are you objecting on the basis that the setting of conditions by the CAB in relation to one or more performance indicators cannot be justified because the conditions fundamentally cannot be fulfilled, and the condition setting decision was arbitrary or unreasonable in the sense that no reasonable CAB could have reached such a decision on the evidence available to it, as per Paragraph ACD2.7.2.1 of the objections procedure?</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Part 5</p>
<p>Are you objecting on the basis that the score given by the conformity assessment body in relation to one or more performance indicators cannot be justified, and the effect of the score in relation to one or more of the particular performance indicators in question was material to the outcome of the Determination, as per Paragraph CD2.7.2.2 of the objections procedure?</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Part 6</p>
<p>Are you objecting on the basis that additional information not forming part of the record¹ that is relevant to the circumstances at the date of the Determination has not been considered, as per Paragraph CD2.7.2.3 of the objections procedure?</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If YES, complete Part 7</p>

¹ As defined in Paragraph CD2.6.5.1 (a) of the objections procedure.

PART FOUR: OBJECTION PURSUANT TO PARAGRAPH CD2.7.2.1

4.1 Please identify:

- a) the procedure(s) that you or your organisation believe were omitted or incorrectly followed by the conformity assessment body in the conduct of this assessment and the relationship of these matters to the MSC's procedural rules, as set out in the MSC Scheme Requirements that were in force at the time of the assessment; and/or

N/A

- b) any other irregularity in the fishery assessment process that you or your organisation believe made a material difference to the fairness of the assessment.

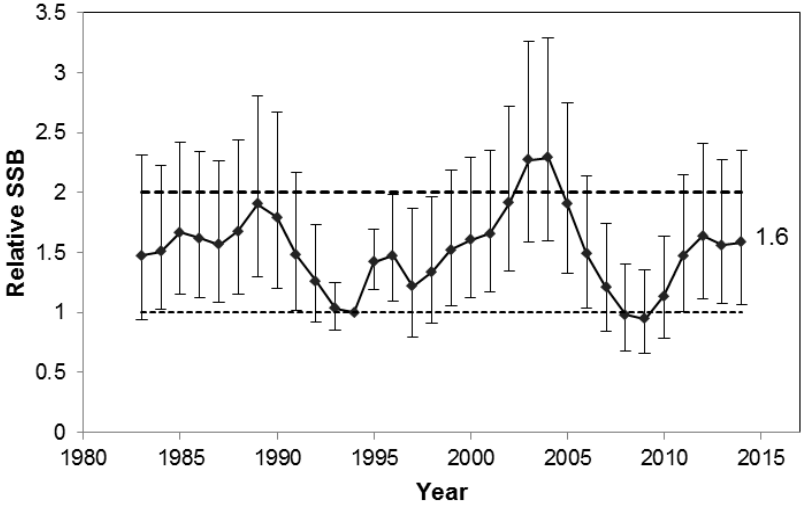
4.2 Please state why you or your organisation believes that the failure to follow procedures by the conformity assessment body has significantly affected the result of the Determination such that the Determination should be altered?

N/A

PART FIVE: OBJECTION PURSUANT TO PARAGRAPH ACD2.7.2.1

5.1 Listing the conditions placed on the relevant performance indicator(s) and using the template below, please clearly:

- identify the reason(s) you or your organisation believe that the condition assigned to the performance indicator within the Final Report cannot be justified because it fundamentally cannot be fulfilled, and
- ensure you include rationale for why you believe the condition setting decision was arbitrary or unreasonable, as described in ACD2.7.2.1 of the Certification Requirements.

c) <i>Performance Indicator</i>	1.1.1 Scoring 80
<i>Condition</i>	1
a) <i>Reason</i>	The condition states that by the end of the third year of certification it has to be demonstrated that the stock is at or fluctuating around its target reference point . Notwithstanding that the target reference point is unrealistically low, as is addressed under CD 2.7.2.2, The current SSB is well below the target and the total mortality rate is high and increasing despite a decline in total catch. It is highly unlikely that the target will be reached in 3 years, given that the average in the time series is well below the URP.
b) <i>Rationale</i>	<p>The relative SSB exceeded the target reference point in only 2 years (2003-2004) of the 32-year time series (1983-2014). These 2 peak years occurred following a 10-year increase in SSB initiated when the fishery was closed (1994-1996) and the total mortality rate for the stock was relatively low. These facts indicate this condition cannot be fulfilled.</p>  <p>Figure 5 from DFO 2015.</p> <p>Since then the total catch in the fishery has declined, the annual TACs have not been taken, and the total mortality rate has increased.</p>

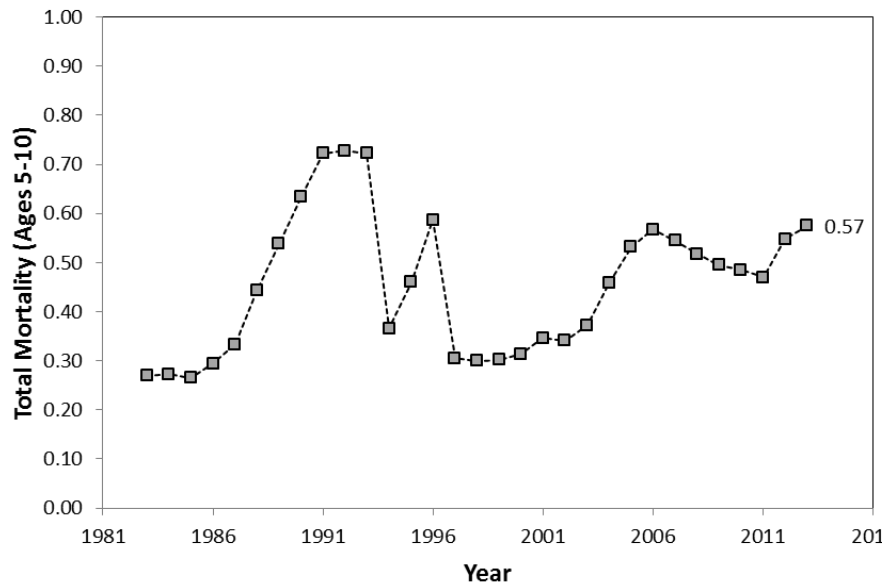


Figure 6 from DFO 2015.

(While new data cannot be introduced at this time, it is our understanding that a new stock assessment conducted since the certification report was prepared, indicates the SSB is now further from the target and the total mortality rate is higher.)

<i>Performance Indicator</i>	PI 2.1.3 Information on the nature and extent of retained species is adequate to determine the risk posed by the fishery and the effectiveness of the strategy to manage retained species
<i>Condition</i>	2
<i>a) Reason</i>	<p>Condition 2 states:</p> <p>By the end of the fourth year of certification, for UoCs 1 and 2, the SG 80 scoring requirements for PI 2.1.3 must be met in full. This will be achieved when it has been demonstrated that:</p> <p>Sl_a, SG 80 – “Qualitative information and some quantitative information are available on the amount of main retained species taken by the fishery.”</p> <p>Sl_b, SG 80 – “Information is sufficient to estimate outcome status with respect to biologically based limits.”</p> <p>Sl_d, SG 80 – “Sufficient data continue to be collected to detect any increase in risk level (e.g. due to changes in the outcome indicator score or the operation of the fishery or the effectiveness of the strategy).”</p> <p>UoC 1 and 2 (handline, longline) are generally relegated to the inshore fishery. It is noted that the inshore fishery, represented by the Fish Food and Allied Workers union (FFAW) is not part of the client group. As stated in the meeting held on the 7th of August 2014 “the FFAW represent members who collectively hold approximately 85% of the Canadian cod quota in the 3PS</p>

	area” and that the FFAW, while it undertakes research and science in regards to the 3PS fishery, it does not want to be considered a stakeholder in the MSC process, nor is it a client. It follows, then that only 15% of the quota for 3PS is represented by the client group. And that 85% of the quota holders have no incentive to meet conditions or milestones associated with those conditions. While we expect that there is an interest in improved data collection, this does not mean that the milestones or the specific condition will be met.
<i>b) Rationale</i>	The incentive for the conditions to be met, and elements of the workplan completed, particularly when these UoC’s in the < 35’ are not part of the client group present are few, if any. In addition, this fleet has ~1.5% observer coverage (see also Condition 3) and currently are not catching any where near the TAC. As noted in the meeting notes with the FFAW (page 204 of the PDRC), the FFAW represents members who hold 85% of the quota. It is stated that the members “may therefore be subject to undue pressure to meet conditions.” There is no indication that the certification will result in the engagement of these UoCs in meeting conditions.

<i>Performance Indicator</i>	PI 2.2.3 Information on the nature and the amount of bycatch is adequate to determine the risk posed by the fishery and the effectiveness
<i>Condition</i>	3
<i>a) Reason</i>	This condition is specific to UoC 1,2 and 3 and as noted above this pertains to 85% of the quota holders who are not part of the client group. The condition states: By the end of the fourth year of certification, for UoCs 1, 2 and 3, the SG 80 scoring requirements for PI 2.2.3 must be met in full. This will be achieved when it has been demonstrated that: Slb, SG 80 – “ <i>Information is sufficient to estimate outcome status with respect to biologically based limits.</i> ” Slc, SG 80 – “ <i>Information is adequate to support a partial strategy to manage main bycatch species.</i> ” Again, as stated above in the reason for Condition 2 potentially not being fulfilled, it pertains to fleets that are not part of the client group, not catching their share of the TAC and likely not incentivized by the certification to engage in either the conditions or the milestones. For these reasons, it is unclear how the conditions can be met, particularly Slb and the reference to biologically based limits. While we expect that there is an interest in improved data collection, this does not mean that the milestones or the specific condition will be met, particularly if conservation measures expected from this certification – including pre spawning closures are not part of the conditions for the other UoC.
<i>b) Rationale</i>	The incentive for the conditions to be met, and elements of the

	<p>workplan completed, particularly when these UoC's in the < 35' are not part of the client group present are few, if any. In addition, this fleet has ~1.5% observer coverage (see also Condition 3) and currently are not catching any where near the TAC. As noted in the meeting notes with the FFAW (page 204 of the PDRC), the FFAW represents members who hold 85% of the quota. It is stated that the members "may therefore be subject to undue pressure to meet conditions." There is no indication that the certification will result in the engagement of these UoCs in meeting conditions.</p>
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Repeat table as needed for each performance indicator and condition to be included in objection.

PART SIX: OBJECTION PURSUANT TO PARAGRAPH CD2.7.2.2

- 6.1 Listing the relevant performance indicator(s) and using the template below, please clearly identify the reason(s) you or your organisation believe that the score(s) presented within the Final Report cannot be justified, ensuring you link those reasons with the requirements of Paragraphs CD2.7.2.2 (a), CD2.7.2.2 (b) and/or CD2.7.2.2 (c) of the objections procedure. Please provide your rationale and/or evidence in support of a different conclusion, making particular reference to the specific scoring guideposts associated with the particular performance indicator(s) in question.

<i>Performance Indicator</i>	1.1.2 Limit and target reference points are appropriate for the stock
<i>Reason</i>	The CAB failed to consider information we presented during the review process that clearly indicated the limit and target reference points are not appropriate for the stock (CD 2.7.2.2 (a)). This PI does not meet SG80 and the assigned scoring is unreasonable based on the available evidence (CD 2.7.2.2 (c)).
<i>Rationale</i>	<p>Regarding scoring of 1.1.2 we questioned the choice of limit and target reference points. The limit reference point (LRP) was set at the lowest SURBA estimated SSB in the time series from which there has been a sustained recovery. This minimum occurred in 1994 and the SSB then increased for 1 generation (10 years). However, the SSB then declined rapidly by over 50% to below the SSB in 1994. Thus, the recovery was not sustained and the basis for the LRP is questionable. The CAB failed to respond to this specific comment (CD 2.7.2.2 (b)).</p> <p>The cited upper stock reference (USR) was estimated to be twice the LRP and the CAB states that the USR is an appropriate proxy for B_{MSY}. The estimated USR is 21,260 t (p. 80). The stock produced annual catches fluctuating around 40,000 t for 3 decades (1960-1990), almost twice what is being proposed as B_{MSY}. The USR is not consistent with the catch history and severely underestimates B_{MSY}.</p> <p>In response, the CAB alleged that 3Ps Cod was currently in an unproductive regime and that the situation is being prudently managed by DFO. An analogy was made to North Sea Cod gadoid outburst and productivity changes in North-east Arctic Cod. However, the report makes no reference to any regime changes either in 3Ps or elsewhere and we are unaware of any published material that supports regime changes in 3Ps. We can only conclude that the scoring of this PI is unreasonable based on the available evidence (CD 2.7.2.2 (c)).</p> <p>Finally, there is no reference point for the removal (harvest) rate. The SURBA analysis does not use any commercial catch data and there are no estimates of the removal rate. The DFO Precautionary Approach framework (PA) requires a removal reference.</p>

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<i>Performance Indicator</i>	1.2.1 There is a robust and precautionary harvest strategy in place
<i>Reason</i>	We argued earlier in our submission on the PCDR that scores for this PI were far too high and that there is no indication that there is a robust harvest strategy in place.
<i>Rationale</i>	<p>The CB refers to the Conservation Plan and Recovery Strategy (CPRS) adopted in 2013 as the primary evidence that a “robust and precautionary harvest strategy is in place”. Simply stating that the harvest strategy is robust (initial part of first sentence in justification of SI (c)) is not sufficient. Nor is the uncited reference to “similar harvest strategies”. Furthermore, the concept of robustness is not developed in the justification. Additionally, the harvest strategy was only approved in 2014 and that it has not been fully evaluated.</p> <p>DFO science response to the quantitative evaluation of the CPRS indicates that there are significant uncertainties as well as inability to quantitatively assess the CPRS (DFO 2012d http://www.dfo-mpo.gc.ca/Library/347618.pdf.) The evaluation states: (items bolded added by EAC) “The management objectives are ‘To achieve and maintain the 3Ps Cod Spawning Stock Biomass (SSB) in the ‘healthy zone’ as defined by DFO’s Precautionary Approach framework, and at or near Bmsy or its proxy, and to provide reasonable fishing opportunities during the rebuilding period’. These objectives have not been stated in a way that can be measured. Timelines to reach the ‘safe zone’ and Bmsy need to be identified and risk tolerances specified. Further in the proposed CPRS it states ‘The fishing mortality rate should not exceed Fmax’. It is assumed that this is meant to be Fmsy. The time horizon and risk tolerance for evaluating F>Fmsy are also not identified. Finally, the meaning of ‘reasonable fishing opportunities’ would need to be presented within the objectives in a quantitative manner. Until these aspects are specified it is neither possible to test if any CPRS would meet the management objectives nor to determine if objectives are actually being met should the plan be implemented.</p> <p>Additionally the report concludes: “The CPRS, in its present form, is unable to be quantitatively evaluated. However, modifications may be possible that would allow such an evaluation, where wording is prescriptive of decisions to be made under particular conditions. The present (SURBA)</p>

assessment model cannot be used in a quantitative evaluation of a CPRS which makes decisions regarding TAC given that it is unable to evaluate the specific impacts of catch levels. Other assessment models exist that can be used when there is uncertainty in landings, but these would need to be developed for the 3Ps stock of Atlantic Cod and peer reviewed in an assessment framework process. Notably, these developments are not possible in the near future (and not before the 2013/2014 fishing season) and require the investment of significant human resources and require additional expertise. **Finally, regarding the management objectives of the CPRS – these are also unable to be quantitatively evaluated as currently stated.** “

The inability to quantitatively evaluate the CPRS is based on two reasons: 1) The TAC decision rules are poorly defined and subjective and 2) the SURBA method does not estimate exploitation rate, and therefore the impact the fishery is having on the stock.

Perhaps most importantly, the harvest strategy has no explicit mechanism to control the harvest rate of the fishery. While the strategy will reduce the TAC as the SSB index declines, the recent TACs have not been taken and the TAC is not restricting exploitation. A removal reference is integral to the DFO PA framework. Thus, it is difficult to understand how the harvest strategy can be considered precautionary.

Without an estimate of exploitation rate, it is impossible to understand the proportion of Z that is attributable to fishing. Z has been increasing since 1996. There is no condition that requires that the TAC be at least reduced to an average of recent catch levels, suggesting that there is no incentive to further reduce fishing mortality. If natural mortality is increasing, there is little that the industry can do within a Client Action Plan to affect this. Additionally, the SSB is largely (64% according to 2016 estimates) between 4-6 with a low proportion of > 6. This has been a continuously downward trend since 1983. The weight at age continues to decline, suggesting reduced fitness of the population. Finally, as we noted in our submission to the PDRC, there has been no increase in effort to close the fishery in during pre-spawning, which should be an integral part of a robust harvest strategy.

<i>Performance Indicator</i>	1.2.2 There are well defined and effective harvest control rules in place
<i>Reason</i>	We argued earlier in our submission on the PCDR that scores for this PI were far too high and that there is little evidence that the HCR as defined by the CB are effective.
<i>Rationale</i>	<p>As stated by the CB “the overarching harvest control rule is the annual TAC set according to the protocol defined under the harvest strategy (see 1.2.1). Please refer to our objection to the scoring in 1.2.1, as the CPRS details harvest control rules. We refer specifically here to the text in the evaluation of the CPRS, where it is stated that “if the CPRS is meant to serve as a guide to managers to provide a range of annual TAC options, rather than a prescriptive harvest control rule when the stock is in a particular condition, then it cannot be evaluated since the subjectivity of such a process cannot be quantitatively simulated.</p> <p>Under the assumption that the plan is meant to specify the actual TAC value that managers would apply each year, then modifications could be made to allow it to be quantitatively evaluated.</p> <p>The rules as they are currently written define a decision space from which the TAC could be chosen rather than prescribing a specific TAC that one would choose under particular conditions.” From this statement, it is difficult to conclude that there are effective harvest control rules in place.</p> <p>As we stated in our original submission regarding the scoring of this PI, in order to achieve a score of 80 for SI (a) the harvest strategy must ensure that the exploitation rate is reduced as the LRP is approached. As noted previously, the harvest strategy does not contain explicit consideration for the harvest rate (removal reference) and hence we fail to see how the harvest control rule can be effective. While the strategy will reduce the TAC as the SSB index declines, the recent TACs have not been taken and the TAC is not restricting exploitation.</p> <p>SI (b) deals with taking uncertainty into consideration while implementing the harvest strategy. The scoring justification describes how apparently contradictory data (commercial catch and catch at age) were eliminated from the</p>

	<p>assessment in order to reduce uncertainty. Any apparent reduction in uncertainty would be artificial since the data uncertainties are masked. The evidence provided does not support the assigned score, or any other score for that matter.</p> <p>SI (c) asks for evidence that the available tools are used effectively to achieve a target exploitation rate. As noted previously, the harvest strategy does not include explicit targets for the exploitation rate. The evidence presented indicates that current catch monitoring tools are effective.</p>
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6.2 For each issue identified in question 5.1, please state why you or your organisation believes that the effect of the score in relation to one or more of the particular performance indicators in question was material to the outcome of the Determination such that the Determination should be altered?

For P1.1.2 and PI 1.2.2, we previously argued that scores were too high, and resulted in the recommendation for certification. It is our contention that in both cases, the information available does not meet the 60 scoring level. For PI 1.1.2, the guidepost for 60 states: “Generic limit and target reference points are based on justifiable and reasonable practice appropriate for the species category.” We contend, as stated above, that the limit reference point (LRP) was set at the lowest SURBA estimated SSB in the time series from which there has been a sustained recovery. This minimum occurred in 1994 and the SSB then increased for 1 generation (10 years). However, the SSB then declined rapidly by over 50% to below the SSB in 1994. Thus, the recovery was not sustained and the basis for the LRP is questionable. A score above 60 is not warranted.

For P1 1.2.2, the information provided above is self-explanatory. The guidepost of a 60 score is not met and the case for this is made by the management body, DFO – itself in the science evaluation of the CPRS. The scoring guidepost for 60 states “generally understood harvest rules are in place that are consistent with the harvest strategy and which act to reduce the exploitation rate as limit reference points are approached”. The harvest control rule does not set a removal rate, so we cannot understand how the scoring achieved above 60.

PART SEVEN: OBJECTION PURSUANT TO PARAGRAPH CD2.7.2.3

7.1 Using the template below, please list all additional information not forming part of the record² that is relevant to the circumstances at the date of the Determination has not been considered, as per Paragraph CD2.7.2.3 of the objections procedure. Ensure that reasons are provided as to 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, and
- b) should reasonably have been made available to the conformity assessment body during the assessment process, and
- c) if considered, could have made a material difference to the outcome of the assessment;

<i>Information</i>	COSEWIC Report 2010 http://www.sararegistry.gc.ca/virtual_sara/files/cosewic/sr_Atlantic%20Cod_0810_e1.pdf and consideration of Atlantic Cod, Laurentian North for listing under SARA http://www.dfo-mpo.gc.ca/species-especes/species-especes/atlanticcod-morue_laurentian-laurentienne-eng.htm . In addition, the “Default Listing Policy”, made public in September 2014 is not referenced in the report. http://www.dfo-mpo.gc.ca/species-especes/policy-politique-eng.htm , representing an oversight of an important piece of Canadian policy, with direct relevance to the 3Ps cod certification and fisheries management.
<i>Reason why information should reasonably have been known</i>	While we understand the issue between the 3PS stock units and the combined assessment for 3Pn4s used in COSEWIC assessment, we do not understand why this report is not included in the references and referred to in terms of the assessed status of 3Ps cod by an appointed government body of scientists. This information was available and is not used by the assessment team. Secondly, the legal process for listing under the Canadian <i>Species At Risk Act</i> (SARA) began in 2013, with the public consultation period as required under the Act. This information is readily available and we expect that the client groups were involved in submitting to the public consultation. The Default Listing Policy has been available since September 2014.
<i>Reason why information should reasonably have been made available</i>	The information is available.
<i>Reason why</i>	Information on status of population and the fact that it is

² As defined in Paragraph CD2.6.5.1 (a) of the objections procedure.

<p><i>information could have made a material difference to the outcome of the assessment</i></p>	<p>under consideration for species at risk listing should have impacted the scoring on P 1 as well as informed the discussion on ETP species, given that the Laurentian North population, which includes 3Ps is in the legal listing process. Had this been acknowledged, and Default Listing Policy been referred to, we expect that this would have influenced the scoring and the conditions as well as the final determination.</p>
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