

**MSC Principles and Criteria for Sustainable Fishing –
Intent of MSC’s Criteria
January 2007 Background Discussion Document**

Preface

The following worksheets were prepared to stimulate specific discussion at two expert panel workshops. A few explanatory comments about them were provided to the experts and may be useful to you in reviewing the resulting draft intent statements from these two workshops.

- The intent of the workshops and this consultation is **not** to revise the MSC’s *Principles and Criteria for Sustainable Fishing* (the MSC standard) but rather to clarify their intent. Clear intent statements will help guide the interpretation and application of the MSC standard by certification bodies (CBs). If the MSC receives ideas about revising the standard itself, these will be noted and ‘parked’ for careful consideration in a future standard setting review.
- These worksheets attempt to highlight examples of reference information to stimulate your thinking about the intent of the criteria.
- The format of these worksheets is fairly simple – ‘one sheet’ (two pages – front & back) per MSC criterion.
- The related Principle and its intent are included – these higher-level statements of intent are part of the MSC standard and were developed at the time of original drafting, thus are fixed.
- You will notice that the draft intent for each criterion is not included in this document – please refer to the main consultation document for these.
- The bullet points under each criterion were intended to help orient and stimulate discussion and represent information from a variety of sources. These include:
 - questions and observations from a variety of sources (certification bodies and their assessment teams, NGOs, fishery clients, management agencies, other stakeholders and MSC staff and members of the MSC governing bodies);
 - intent of the original drafters;
 - existing guidance by the MSC’s Technical Advisory Board (TAB) and executive staff, and
 - experience gained during implementation of the MSC program to date.
- These worksheets are meant to inform your thoughts and discussion and supplement your expertise and knowledge, and to share information that the expert panellists had available to them while drafting the intent statements;
- The worksheets also raised some questions about structural linkage and potential overlap between criteria among the three Principles, especially between Principles 1 and 2 (evaluating outcomes) and Principle 3 (evaluating inputs/delivery systems). This could have primary value in clarifying the intent of the criteria but also secondary value for helping shape guidance on the structure of the assessments themselves.

MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
January 2007 Workshop Discussion Document

<p>P1: A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.¹</p>	<p>Intent of Principle 1 The intent of this principle is to ensure that the productive capacities of resources are maintained at high levels and are not sacrificed in favour of short term interests. Thus, exploited populations would be maintained at high levels of abundance designed to retain their productivity, provide margins of safety for error and uncertainty, and restore and retain their capacities for yields over the long term.</p>
<p>C1: The fishery shall be conducted at catch levels that continually maintain the high productivity of the target population(s) and associated ecological community relative to its potential productivity.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

Questions/Observations

- High productivity' literally could be associated w/ low abundance levels and high recruit per spawner even though not intended or how applied.
- What are appropriate indicators of adequate abundance ('healthy' production levels)?
- Are biomass estimates and target/limit reference points required performance indicators – how relate to B_{MSY} ?
- What about low exploitation rate fisheries with less intensive assessment methods and information – can other types of indicators demonstrate suitable evidence of performance in meeting this criterion?
- How robust should identification of stocks be, especially with transboundary stocks where uncertainties may exist about range and reproductive isolation?
- Principle and criterion relate most closely to fisheries with one or a few target species – how to treat P1C1 in multi-species fisheries where everything is sold?
- What kinds of information uncertainties and risk are consistent w/ suitable level of precaution in evaluating this criterion?
- How should natural recruitment variability (such as those associated w/ oceanographic regime shifts, changes in predator/prey populations and catastrophic environmental events) be factored into 'target' and 'limit' reference points (or their surrogates)?
- This criterion references maintenance of associated ecological community – this is most intuitive for prey/forage species where managing their abundance has a direct influence on one or more dependent predator population. But in other cases these relationships may not be understood. What are expectations for incorporating these factors into management reference points or their surrogates?
- How should depletion be defined in this criterion, in order to serve as appropriate minimum conditional pass indicator and serve as trigger for scoring Criterion 2 (also see P1C2 below)?
- Some believe that certifying a fishery whose target stock is part of a broader distribution and exploitation picture is a flaw – if that fishery could be de-certified as a result of stock declines resulting from another fishery's actions.

¹ The sequence in which the Principles and Criteria appear does not represent a ranking of their significance, but is rather intended to provide a logical guide to certifiers when assessing a fishery. The criteria by which the MSC Principles will be implemented will be reviewed and revised as appropriate in light of relevant new information, technologies and additional consultations

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P1C1 cont'd)**

Existing Guidance

- If unit of certification involves more than one species, the scoring of this criterion can mask an unsustainable target species through scoring artefacts – MSC has guided CBs to separately score target species/stocks regardless of unit of certification. Could this approach be taken too far with respect to definition and number of stocks involved?
 - TAB has provided guidance on unit of certification (D-003) – CBs must evaluate impacts of stocks across their range considering all fisheries that exploit the species/stock under assessment, not just the candidate fishery.
 - TAB D-004 addresses status of stocks – depletion/recovery. The team must define a depleted stock level in order to assess current status and determine the need for a recovery/rebuilding plan. This guidance would have the team objectively evaluate the adequacy of existing government based reference points in this regard, implying that existing limit reference points in a fishery potentially could be set too low. But also the directive perhaps leaves ambiguity about whether an appropriate limit reference point should be the defacto definition of depletion. Stock levels below the depletion level would reflect a below 60 score for the associated performance indicator and cause the assessment to fail. See associated questions under P1C2 below.
 - Enhancement programs – TAB D-001 addresses this topic, identifying that the intent of MSC certification relates to the wild capture fishery and the sustainability of the un-enhanced components of the target stock and ecosystem. CBs are guided to include performance indicators and scoring guideposts for P1C1 (as well as P1C3, P2C1 and P2C2) to appropriately evaluate such circumstances, which ultimately raise questions about monitoring, assessment and interactions between the enhanced and un-enhanced population components. More specific intent guidance might be useful as to how assessment teams should factor in enhancement activities to various criteria. FAO ecolabelling guideline discussions on inland fisheries (now in progress) have highlighted the prevalence of enhancement programs in inland waters. The application and relevance of the MSC programme under such circumstances could be improved with clearer intent.
- Assessment experience**
- Standard treatment in assessments typically incorporates performance indicators like: is stock status/productivity known/estimated; is fishing mortality known/estimated; is variability in estimates understood/accounted for; are reference points or surrogate management triggers defined; is stock status at or above reference points or surrogates.
 - Not all assessments have been tied to biomass estimates and biomass related reference points (e.g., Dungeness crab).
 - Pacific salmon assessments have introduced performance indicators related to the adequacy of monitoring and evaluating the contribution of hatchery fish to fisheries and natural spawning escapement.

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<p>P1: A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.</p>	<p>Intent of Principle 1 The intent of this principle is to ensure that the productive capacities of resources are maintained at high levels and are not sacrificed in favour of short term interests. Thus, exploited populations would be maintained at high levels of abundance designed to retain their productivity, provide margins of safety for error and uncertainty, and restore and retain their capacities for yields over the long term.</p>
<p>C2: Where the exploited populations are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level consistent with the precautionary approach and the ability of the populations to produce long-term potential yields within a specified time frame.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • How can MSC be a sustainability scheme if it allows depleted stocks to be certified? • What is the appropriate benchmark for depleted (also see P1C1 above) and what current or historic population condition does it relate to? • If depleted is defined as the limit reference point and stock status below this scores less than a 60, then the fishery would fail and couldn't be evaluated with respect to P1C2. Is this intent? Is there a need to review TAB D-004 in order to provide clear guidance to assessment teams? (Also see related bullet under P1C1) • How should 'demonstrably' in P1 be interpreted? • Does a recovery plan have to have been implemented for a sufficient period of time to demonstrate its effectiveness in order to achieve a minimum pass score for this criterion? Or would a well-developed plan that is being implemented, addressing critical uncertainties and projected likelihood of success (combined w/ M&E and adaptive management provisions) be adequate? • This is a question of what level of uncertainty and risk is acceptable with respect to a recovery/rebuilding plan – e.g., a clarification on adequate precautionary management. 	<ul style="list-style-type: none"> • There is also a question whether monitoring and evaluation elements of a recovery plan would logically be a performance question within the management system (P3) rather than within this criterion. The 'age' of the recovery effort might have a practical bearing on this question – i.e., a new plan wouldn't have any timeframe to demonstrate recovery, so M&E might be an essential element of addressing uncertainty of future performance. • A question has been raised whether there is logic that a recovery plan should formally exist/be required even in the absence of a current depletion, in case a stock depletion occurs during the life of the certificate? As it stands now, assessment teams assess (under P3) whether a fishery has the capacity to respond to a future stock depletion if it occurs (i.e., ability to respond to emergent changes and implement recovery actions). • An underlying concept here is that stock depletion reflects a substantial level of risk to sustainability and a recovery response that has a reasonably high level of expected success, with ability for course corrections, seems to be logical performance context.
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P1C2 cont'd)**

Existing Guidance

- TAB guidance (D-006) specifies that this criterion only be scored when an actual target stock depletion currently exists. However, performance indicators and scoring guideposts must be included in the assessment tree in case this scoring is needed, either at time of initial assessment, or subsequently during post-certification audits. The CB/expert team uses its assessment/review to determine whether a target stock depletion exists (Also see related bullet under P1C1).

Assessment experience

- Current assessments have typically used parameters such as probability of recovery, defined timelines consistent w/ life history characteristics, monitoring and evaluation, and implementation commitment as performance elements.

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<p>P1: A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.</p>	<p>Intent of Principle 1 The intent of this principle is to ensure that the productive capacities of resources are maintained at high levels and are not sacrificed in favour of short term interests. Thus, exploited populations would be maintained at high levels of abundance designed to retain their productivity, provide margins of safety for error and uncertainty, and restore and retain their capacities for yields over the long term.</p>
<p>C3: Fishing is conducted in a manner that does not alter the age or genetic structure or sex composition to a degree that impairs reproductive capacity.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • What level of impact is acceptable? • Should this criterion address the potential for a fishery, through exploitation rates and selective gear pressures, to alter the biological and genetic characteristics of the species/stock? • How should performance be measured? • Teams typically evaluate whether basic biological and genetic data are collected but how much is necessary and how would impacts be measured and acceptable impacts be defined? • Collecting genetic data is expensive – not clear that using this criterion to routinely compel collection of this data would be logical. • Another approach might entail an assessment of risk, where uncertainty (if potentially consequential) could lead to management measures to avoid potential risk rather than more expensive measures to collect additional data aimed at reducing uncertainty. • The use of management strategy indicators under this criterion to evaluate performance has raised a question whether these might be more appropriately nested under P3 rather than under P2 – this is the question about evaluating outcomes under P1 and P2 generally vs. measuring inputs and management system capacity under P3. 	<ul style="list-style-type: none"> • In at least one assessment there was a question whether an understanding of the structure of stocks and stock composition in the fisheries was appropriately evaluated as a performance dimension here or whether it was more logical to evaluate it as an aspect of setting appropriate harvest levels (numbers and spatial distribution). Is it logical that the spatial maintenance of healthy stock levels within a fishing area should be considered under P1C1 rather than under P1C3? • Not clear that this criterion has been that informative about a fishery’s performance or has been a distinguishing performance criteria across fisheries. <p>Assessment experience</p> <ul style="list-style-type: none"> • Intent expressed in some assessments has included the following: <ul style="list-style-type: none"> ○ The potential impact of fishing on the genetic structure of the stock(s) or on the ability of the stock to reproduce should be recognized. ○ Size, age and sex composition and abundance of mature individuals will inevitably be affected by fishing mortality. ○ However, fishing may also impact on the genetic structure of the stock(s) or affect growth or the relationship between fish length and the proportion of fish that are mature. • Teams typically evaluate whether basic biological and genetic data are collected but how much is necessary and how would impacts be measured and acceptable impacts be defined?
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P1C3 cont'd)**

(one page only)

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<p>P2: Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.</p>	<p>Intent of Principle 2 The intent of this principle is to encourage the management of fisheries from an ecosystem perspective under a system designed to assess and restrain the impacts of the fishery on the ecosystem.</p>
<p>C1: The fishery is conducted in a way that maintains natural functional relationships among species and should not lead to trophic cascades or ecosystem state changes.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p>	
<ul style="list-style-type: none"> • Does the choice of words in Principal 2's intent statement have a purposeful bearing on expected performance and the definition of performance indicators (words such as 'encourage' in P2 intent vs. 'ensure' in P1's intent)? Other P2 intent words include 'assess' and 'restrain'. • What is the intent of 'maintain' in this criterion, i.e., in relationship to what condition ... current, historic or virgin state? • There will be some impact on the ecosystem from any fishery – there is an inherent acceptability of some impact clearly implicit in this criterion – but to what degree? • How should assessment teams practically interpret trophic cascades and ecosystem state changes? Is this a complicated way of stating the intended avoidance of significant impacts? • The interaction of the fisheries with associated non-target species (bycatch) is a fairly tractable concept, as is the concept of evaluating gear interaction with habitat. However, relating that to broader ecosystem impact concepts is not well understood. Are the assessment teams left to use component analysis to draw conclusions about the whole? • For multi-species fisheries that keep and sell the entire catch, the term bycatch has little relevance as a label. What approaches are appropriate to assess the fishery's impact on a wide range of species (e.g., use of key indicators species or stocks)? 	<ul style="list-style-type: none"> • With respect to habitat, how to define allowable impacts – probably premised on the distribution of essential habitats and the degree of the fishery's impacts on various habitat types? How should non-fished areas be factored in – both within and outside the physical area of the unit of certification? • How might environmental risk assessment tools be used to address uncertainties and avoid creating performance requirements in areas where likelihood of fishery impact is small? • Concept discussed in regional workshops that the type of evidence required to demonstrate acceptable performance might logically be different for different types of fisheries (e.g., high vs. low intensity) even though level of performance to pass should be the same. Again risk assessment discussed as tool – not a concept unique to this particular criterion. • Should some form of environmental risk assessment eventually be a required performance indicator for an MSC assessment to assist overall performance evaluation? If so, raises questions about what type etc. • Where target species are prey items in the food chain, the topic of whether fishery managers have incorporated this function into determining (e.g., decreasing) allowable catch levels is relevant. Some discussion in regional consultations that this consideration should be evaluated here rather than P1C1, but the latter has more frequently occurred in context of evaluating basis for setting TACs.

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P2C1 cont'd)**

- Could it be appropriate to manage target species harvest to levels below normal target reference points to contribute to overall ecosystem recovery objectives? Example might be where ecosystem has a temporary imbalance and target species is depressing another species.
- The same questions applies to where a non-native species has now become established as a permanent, self-sustaining natural population but a lower, sustainable stock maintenance level might have an overall ecosystem benefit for the native species complex.

Assessment experience

- Typical performance indicators in current MSC assessments have included areas such as sufficiency of information regarding the following elements: ecosystems, habitats and associated species where the fishery operates; trophic relationships with the target species; characteristics of the fishery's operation in relation to these factors; the level and acceptability of impacts of the fishery; and whether management strategies are in place to avoid impacts where uncertainties exist.

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<p>P2: Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.</p>	<p>Intent of Principle 2 The intent of this principle is to encourage the management of fisheries from an ecosystem perspective under a system designed to assess and restrain the impacts of the fishery on the ecosystem.</p>
<p>C2: The fishery is conducted in a manner that does not threaten biological diversity at the genetic, species or population levels and avoids or minimises mortality of, or injuries to endangered, threatened or protected species.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • This criterion contains two fundamental ideas – biodiversity and endangered, threatened and protected (ETP) species. • The ETP aspects are fairly straightforward and tend to be the focus of assessments for this criterion. • The biodiversity aspect has not typically been captured in assessment trees in an explicit sense, though it might be implicitly addressed through component analysis of ETP, bycatch, habitat and other ecosystem elements. • Some clarification on intent for the biodiversity aspect is needed that can provide practical guidance to interpreting and applying this criterion. • For example some fishery clients have asked whether this criterion implies the requirement for extensive and expensive genetic monitoring, for example. • This criterion provides an interesting example where existing laws could either be more restrictive than necessary to protect ETP (e.g., zero mortality tolerance) and perhaps situations where following existing laws may not be sufficient to avoid or minimise mortality/injuries. 	<p>Existing Guidance</p> <ul style="list-style-type: none"> • A number of draft assessment trees have incorporated the term ‘icon’ species under this criterion, in conjunction with evaluating ETP parameters. MSC’s guidance has been that this category/term does not have a commonly accepted definition or specific reference under P2 and therefore should not be included in the assessment in this way. If a species has some type of unique biological significance, it might logically be evaluated as an aspect of maintaining biodiversity. <p>Assessment experience</p> <ul style="list-style-type: none"> • With respect to ETP, current assessments typically evaluate the adequacy of current knowledge in areas such as: occurrence of ETP species where the fishery operates; trophic relationships between the ETP species and the target species; potential bycatch of or other interactions with ETP; impacts of each gear type used in the fishery on critical species habitats where the fishery operates; and likelihood or magnitude of associated risks. • Assessments also have evaluated whether sufficient strategies have been implemented in the fishery and the adequacy of monitoring and evaluation programs to ensure their likely effectiveness. Ostensibly these could be strategies in the context of avoiding/ minimising ETP issues or in the context of an ETP recovery plan.
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P2C2 cont'd)**

(one page only)

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<p>P2: Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.</p>	<p>Intent of Principle 2 The intent of this principle is to encourage the management of fisheries from an ecosystem perspective under a system designed to assess and restrain the impacts of the fishery on the ecosystem.</p>
<p>C3: Where exploited populations are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level within specified time frames, consistent with the precautionary approach and considering the ability of the population to produce long-term potential yields.</p>	<p><i>See draft intent statement</i></p>

Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • One of the biggest questions raised about this criterion relates to what it is intended to apply? • The wording was duplicated from P1C2, dealing with recovery of depleted target species. Since P2C2 addresses protection of ETP species, by deduction the interpretation often has been that this criterion then applies to other bycatch or byproduct species, and/or to degraded habitat where protection/rehabilitation strategies may be necessary. • What is considered the baseline for ecosystem impacts, depletion and recovery? How do you factor in historical damage to an area, or damage to the ecosystem from another fishery or activity? What 'state' does the maintenance of the ecosystem structure, productivity function and diversity refer to in the possible range from already impacted to pristine? • The exploited stock language makes the direct link to habitat unclear or indirect. • Beyond this basic question the other aspects of intent and evaluation here would be seem similar to P1C2. • For example, what criteria are used to categorise a depletion/degradation; does such a situation exist; if so this criterion is scored; is there a recovery/rehabilitation strategy in place; is it monitored and evaluated or if new, been carefully designed? • Same questions apply here as in P1C2 – that discussion should have a direct bearing. 	<ul style="list-style-type: none"> • Ecosystem recovery and research generally entail longer timeframes than 5-year life of an MSC fishery certificate – this raises the question of how to consider these performance outcomes when setting conditions of certification? • A number of questions have arisen about how to treat impacts to species and ecosystem status due to 'externalities' – factors outside the fishery that impact biological productivity and ecosystem functionality. Impact to coral reef habitat from sedimentation was used as an example in Southeast Asia. The FAO ecolabelling guideline consultation raised the issue of acute impacts on inland fishery resources from competing land and water uses and their impact on fishery sustainability and fishery certificates. • Besides the fishery management system's need to be able to respond to changes in stock productivity and production, this raises the question as to whether an MSC assessment should evaluate other factors. <p>Assessment Experience</p> <ul style="list-style-type: none"> • West coast N. America salmon assessments have included performance factors that evaluate the management system's performance at protecting and/or trying to positively influence protection of critical freshwater habitat. <p>Existing Guidance</p> <ul style="list-style-type: none"> • TAB guidance (D-006) also applies to this criterion - specifying that it only be scored when an actual depletion currently exists.
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P2C3 cont'd)**

(one page only)

**MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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A. Management System Criteria

<p>CA1: The fishery shall not be conducted under a controversial unilateral exemption to an international agreement.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

Original Drafters' References

- Instruments identified at the original drafting session for the Principles and Criteria (Bagshot workshop) included: the United Nations Convention on the Law of the Sea; the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks; the FAO Code of Conduct for Responsible Fisheries; and relevant regional and sub-regional fisheries management organisations (RFMOs) such as ICCAT, NAFO, CCSBT, etc).
- Convention on Biodiversity mentioned in 'intent' statement in some assessments.
- The list of instruments from the Bagshot workshop suggests the idea that agreements are limited to those applicable only to the delivery of target species and ecosystem outcomes related specifically to Principles 1 and 2.

Questions/Observations

- Definition of "controversial unilateral exemption" might be read broadly, that is, taking in the idea of '*consistency with aspects*' of international agreements, which could be interpreted as less precise than the original intent underpinning the list of international instruments/agreements.
- The definition might be read more narrowly by matching the intent precisely with the terminology used in the criterion. For example, a government, fisheries management authority or regulator, controversially replacing binding legal requirements² with unilateral exemptions from those rules – i.e., an obvious attempt to sidestep those rules.

- A specific example might involve: TACs agreed by the parties in an RFMO (through the agreed protocols and procedures for reaching such agreement) and a party enabling or allowing its fishers to ignore or fish outside those TACs, or creating a 'legal' loophole to enable fishing. This would be controversial for the other parties to the agreement/RFMO.
- If granting a unilateral exemption to rules/ requirements is not controversial to the parties, or is even acceptable and agreed by the parties, this might not violate the standard providing a certification body clearly and transparently explains its rationale for judging it so.
- Criterion has been interpreted to mean that the management system *does not employ or otherwise seek to operate under* any exemption to any applicable international law.

Objections Procedure Experience

- An issue relating to a fishery's compliance with UNCLOS and the MSY principle was raised in an objection to the South Georgia toothfish assessment.
- The objection alleged that the assessment gave no indication that any attention had been given to the UNCLOS provisions relating to the MSY of target stock, or provisions related to associated species. The certification body's response stated that the fishery was managed in accordance with CCAMLR, and that the CCAMLR conservation measures were more precautionary than UNCLOS.

² Binding in an international law context.

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA1 cont'd)**

- While the Objections Panel concurred with the CB in this case, that CCAMLR is more precautionary than UNCLOS, the Panel did question whether in fact the issues to assess were: 1) the need to explain the relationship between the management of the fishery and UNCLOS; or 2) reading narrowly – is the fishery managed in compliance with UNCLOS; or 3) reading more broadly – does the fishery management regime (in this case CCAMLR) meet the management standards set by UNCLOS?

- Should assessments and subsequent reports against this criterion explicitly document assessment teams’ analyses of whether fisheries, with all their attendant management and scientific uncertainty, are operating *in compliance* with all applicable international law? (An observation of the toothfish Objections Panel)

Respect for laws (a Principle level issue perhaps)

- Recommendation from Wildhavens review of MSC and subsequent meeting of some representatives of US eNGOs and some funders at Airlie House in 2004: that MSC should modify Principle 3 to require compliance with all outstanding judicial and administrative orders. In other words “respect for laws” should mean that a fishery is not under sanction, with an outstanding judicial or administrative order concerning non-compliance with relevant fisheries or environmental protection laws. They further recommended as a ‘critical indicator’ that should be satisfied prior to certification being allowed.

- Issue may be germane to the breadth of intent for P3,CA1 on controversial unilateral exemptions to international agreements and whether it is relevant to consider whether fisheries are operating *in compliance* with all applicable international or other laws.

- Suggestion that ‘in compliance with’ and ‘controversial unilateral exemption’ have completely different meanings and that the mixing up of this criterion with the ‘respect for laws’ issue will benefit from clear statement of intent. (See below for examples and distinction made between “respect for laws” and “in compliance”)

Respect for laws (cont'd)

- The Icefish assessment (2004-05) contained two different indicators (scoring elements) that included:
 - the extent to which the fishery is managed and conducted in a manner that **respects** international conventions and agreements; and
 - the extent to which the fishery is managed and conducted **in compliance** with domestic law.

- The BSAI and GOA pollock assessment reports contain pages of detailed analysis and consideration of the issues relating to the concept of “respect for laws”. The conclusions therein were upheld by the MSC Board of Trustees in dismissing a further objection against the certification of the BSAI pollock fishery. The pollock assessment team considered that “Respect is different from enthusiasm or alacrity or perfection.”

- Paraphrasing and quoting from the pollock reports: Respect is distinct from compliance with law, but compliance may be the most revealing evidence of respect for the law. A management system’s record of compliance with domestic law might be evaluated over time with respect to the number of instances management actions have been overturned in court for not fulfilling the requirements of a particular law. Complex laws and complex facts, such as those associated with the pollock fisheries, can make compliance difficult despite good faith efforts to meet legal requirements. That said, a pattern of instances where agency decisions are overturned in court on the same or similar grounds does give rise to the inference that the agency has failed to give the law the respect it is due. And the basis on which an agency is found out-of-compliance can, and did in this case, reveal factors that were relevant to scoring of this indicator.

- NB: the fisheries did not fail on this indicator, but conditions were raised with regard to monitoring and evaluating continued efforts to comply and circumstances where certification would be jeopardised.

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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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A. Management System Criteria

<p>CA2: The management system shall: Demonstrate clear long-term objectives consistent with MSC Principles and Criteria and contain a consultative process that is transparent and involves all interested and affected parties so as to consider all relevant information, including local knowledge. The impact of fishery management decisions on all those who depend on the fishery for their livelihoods, including, but not confined to subsistence, artisanal, and fishing-dependent communities shall be addressed as part of this process.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • The intent statement might need to make an important distinction – that the key words in the last sub-component above are “impacts” and “addressed”, e.g., that the assessment should evaluate whether impacts have been taken into account. • This criterion does not imply that fishery dependent communities may not be subject to changes for sustainability reasons, or imply a requirement for the assessment team to judge or evaluate allocation decisions (of fishing rights, access or other economic benefits), which are excluded from the scope of the Principles & Criteria. • Intent of Criterion could pick up on language expressed in Intent of Principle 3, “appropriate to the scale and intensity of the fishery”: <ul style="list-style-type: none"> ○ there is a management framework that includes clear objectives related to the performance of Principles 1 and 2 that address long term resource management needs; and ○ the management framework includes a transparent approach to consulting, considering and incorporating relevant information from affected parties, and provides affected parties with an opportunity to contribute to consultative approaches. 	<ul style="list-style-type: none"> • Suggestion that the intent is not to require “a formal or statutory management plan”, but a clearly described management framework or system. <p>Assessment experience</p> <ul style="list-style-type: none"> • There are multiple components in this criterion that have sometimes been divided into sub-components in fishery assessment trees to capture the intent that: <ul style="list-style-type: none"> - there are clear, long-term objectives consistent with the Principles and Criteria; - there is a consultative process that is transparent, involves interested and affected parties and considers all relevant information, including local knowledge; - the impact of fishery management decisions on those who depend on the fishery for their livelihoods are addressed (in the consultative process?), (and/or management decisions?). • Some fishery assessment trees have assessed multiple Principle 3 criteria within single performance indicators. For example the intent described in the SCS BSAI Pollock report – “...construct a logical hierarchy that incorporates all the requirements spelled out by the 17 MSC Criteria and note the relationship of each Performance Indicator to the various MSC Criteria, as many of the Performance Indicators proposed can be linked to more than one MSC Criterion.”
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA2 cont'd)**

(one page only)

MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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A. Management System Criteria

<p>CA3: The management system shall: Be appropriate to the cultural context, scale and intensity of the fishery – reflecting specific objectives, incorporating operational criteria, containing procedures for implementation and a process for monitoring and evaluating performance and acting on findings.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Questions about duplication of “intent” under Principles 1 and 2 that relate to monitoring and evaluating performance also may be important to make a specific distinction related to Principle 3 here – for example, P3 should be about the inputs (processes) and Principles 1 and 2 are about the outcomes of monitoring & evaluation. • Suggestion that it might be easier to state what the intent behind this criterion is NOT – i.e., the intent was not to restrict fishery certification to westernised concepts of management, to data rich, ‘big’ science approaches, to highly regulated and modernised management systems, nor to require ‘formal, statutory management plans’. • Might this criterion describe the generally accepted components and stages of a fisheries management system? • And, might it further do so without requiring some kind of formal or statutory management plan? The intent perhaps should be to ensure the ability to clearly describe the management framework or system, and determine that the component issues (objectives, operational criteria, implementation procedures and monitoring processes) are appropriate to the cultural context, scale & intensity of the fishery? 	<ul style="list-style-type: none"> • One example of applied <i>cultural context</i> might be the extensive analysis of the “management system” in the BSAI and GOA pollock assessments – relevant to the US cultural context and cardinal elements of the American approach to government and participatory democracy. Defining the management system as a complex array of influences, including both the government and private sector, as well as judicial and public sector (or non-governmental) influences. The complexity of the management system seemed to the pollock assessors consistent with the scale & intensity of the fishery. • The formal structure of the management system may vary depending on the cultural and fishery context. And the manner of evaluating objectives, sophistication of regulatory processes, types of decision rules and triggers and the types of monitoring and evaluation conducted may vary. However, the adequacy of any particular approach should be comparable to any other in producing appropriate outcomes under Principles 1 and 2. <p>Existing Guidance</p> <ul style="list-style-type: none"> • The broad approach to defining management systems, not restricted to just regulatory bodies, was endorsed by MSC trustees, who observed that fisheries managed by voluntary codes of conduct, through co-operatives or other non-regulatory mechanisms must have access to fishery certification and the standard is amenable to assessing these types of fisheries.
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**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA3 cont'd)**

(one page only)

**MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
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A. Management System Criteria

<p>CA4: The management system shall: Observe the legal and customary rights and long term interests of people dependent on fishing for food and livelihood, in a manner consistent with ecological sustainability.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • The rights and long term interests of people dependent on fishing can range from rights either conferred legally by treaties and laws (e.g., Treaty of Waitangi in New Zealand or the Native Title Act in Australia) or those established through long tradition such as customary resource tenure handed down through the generations (e.g., freshwater prawns in Mekong tributaries in northern Lao). The management system should observe these rights and interests in a manner that is appropriate to their basis. • Suggestion that intent should go beyond considering whether rights & interests are observed, but are actually part of a functional, effective management system. • Should the intent of this criterion suggest a distinction needs to be made between judging the outcomes of this criterion, or the processes? • If process, then the intent behind this criterion might be for certification bodies to demonstrate, in their assessments and scoring of the fishery, <i>how</i> legal and customary rights and/or long term interests of are <i>observed</i> in the fishery management system. • Should assessments be determining whether the observation of such rights & interests is appropriate, while still avoiding judging allocation decisions? 	<ul style="list-style-type: none"> • Examples of <i>how</i> might also include demonstration that people’s rights and interests are observed through appropriate, transparent and meaningful access and/or involvement in management processes and/or decision-making - noting that this might create an overlap with P3,CA2 relating to stakeholder involvement in management processes. • We shouldn’t forget “in a manner consistent with ecological sustainability”. This implies that the rights and interests shall not compromise ecological sustainability. And that ecological sustainability is the primary concern here, consistent with the Intent of Principle 3 described above – that is, that the management framework enables Principles 1 and 2 to be met. • A scenario that might give pause to the overriding consideration of ecological sustainability might be a situation where a more politically or economically powerful (or perhaps alleged to be corrupt) regime forges agreement under UNCLOS Article 62.2³ and the rights and interests of coastal fishing communities are not observed or demonstrated to be observed. Again, the issue of allocation is a fine line that should be avoided. This might be a situation where simply sticking to the ‘ecological sustainability’ side of the equation is undesirable.
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³ UNCLOS 62.2 describes provisions relating to a Coastal State not having the capacity to exploit resources, thus surplus may be caught by other States – through agreement etc

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA4 cont'd)**

(one page only)

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A. Management System Criteria

<p>CA5: The management system shall: Incorporate an appropriate mechanism for the resolution of disputes arising within the system⁴.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • From the post-Wildhavens Airlie House meeting in 2004, attended by some representatives of US eNGOs and some funder organisations. They suggested clarifying language to the footnote of Principle 3 (A) (5) and suggested reconsideration of TAB Directive D-002: “Outstanding disputes of substantial magnitude involving a significant number of interests will normally disqualify a fishery from certification. This may involve, but is not limited to: <ul style="list-style-type: none"> ○ Fisheries operating in international waters not subject to a management regime; ○ Fisheries operating in areas subject to international disputes over jurisdiction or allocation (e.g., “cod wars”).” • There is a suggestion that this wording would seek to exclude fisheries without the benefit of having their individual circumstances assessed and judged in the context of the Principles and Criteria. The question raised is: who is to say that all disputes for fisheries operating in international waters not subject to a management regime would compromise the ability of the fishery to meet the standard set by the Principles and Criteria? • A further question raised: again, who is to say that international disputes over jurisdiction compromise a fishery’s ability to meet the Principles and Criteria without the benefit of analysis of the facts? 	<ul style="list-style-type: none"> • And finally, “allocation” issues are explicitly excluded from consideration under the Principles and Criteria, regardless of whether allocation disputes are local, national, regional or international in scope. So, again the germane question is surely whether the dispute itself prevents the management regime from functioning to meet the Principles and Criteria – for example, preventing the implementation of appropriate measures to limit catch or exploitation rates such that the fishery cannot be effectively managed. <p>Sovereignty Dispute</p> <ul style="list-style-type: none"> • Stakeholders raised an issue relating to the sovereignty dispute between Argentina and the UK in the SG toothfish assessment as a reason for not allowing an assessment or the subsequent certification to proceed. The opinion of the Objections Panel in refusing to reverse the certification body’s judgement said: “The disagreement among nations in the area covered by this assessment is relevant to assessment of the fishery and certification under MSC Principles and Criteria only to the extent that the dispute affects the quality of fishery management evidenced in the disputed zone. In this case, the Assessment Team determined that the GSGSSI is able to exercise its claimed sovereignty in the area in a manner that allows for effective fishery management and that is not impaired by competing territorial claims from any other nation.”
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⁴ Outstanding disputes of substantial magnitude involving a significant number of interests will normally disqualify a fishery from certification.

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA5 cont'd)**

Existing Guidance

- TAB Directive D-002 provides explanation and interpretative guidance on P3,CA5 in the general context of controversy and disputes in fisheries. “The intent behind the wording of P3,CA5, as envisaged by the original drafters, was not so that the existence of controversy or dispute were of themselves enough to discount a fishery as being eligible for certification. Rather the certification body must consider whether the controversy or dispute so overwhelms the fishery’s management system that the system does not have the ability to meet the standard set by Principle 3, and indeed Principles 1 and 2.

- “Similarly the existence of law suits themselves are also not considered a barrier to certification.... The certification body must consider whether the legal action prevents the fishery’s management system from having the ability to meet the standard set by Principle 3. Stakeholders may have availed themselves of dispute mechanisms and remain unhappy with the outcome, but this does not rule out certification.... It is the ability of the management system to meet the standard that is the test.”

MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
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A. Management System Criteria

<p>CA6: The management system shall: Provide economic and social incentives that contribute to sustainable fishing and shall not operate with subsidies that contribute to unsustainable fishing.</p>	<p><i>See draft intent statement</i></p>
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Questions/ Observations, Existing Guidance, Experience, and Other Comments

Questions/Observations	Existing Guidance
<ul style="list-style-type: none"> • Key questions from an intent perspective: <ul style="list-style-type: none"> - How do we define incentives? - How do we define subsidies? • Key issues/questions to consider in assessments: <ul style="list-style-type: none"> - Are there subsidies? - Do they contribute to overfishing? Increased risks of over harvest or degradation of habitats and/or ecosystems? - Do other incentives or management mechanisms exist that lead to appropriate fleet sizes; appropriate (or improved) fishery, stock & ecosystem information; appropriate (or improved/more selective) fishing methods and practices. 	<ul style="list-style-type: none"> • MSC feedback to CBs and expert assessment teams on draft assessment trees has included: <ul style="list-style-type: none"> - “There is nothing explicit within Principle 3 criteria that requires an extensive research planning effort and implementation actions to understand the economic impacts of fishing. Economic elements have been built into indicators that address <i>consideration</i> of socio-economic potential and impacts of the fishery. The MSC believes that the inclusion of indicators requiring extensive research planning and actions to understand economic impacts reflects an expansion well beyond the scope of Principle 3 intent. - “An indicator that calls for a specific action (effort reduction) to reduce adverse economic impacts, although potentially beneficial to this fishery, is not worded as an appropriate indicator of performance, including that specifically intended for this criterion.”

**Questions/ Observations, Existing Guidance, Experience, and Other Comments
(P3CA6 cont'd)**

(one page only)

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A. Management System Criteria

<p>CA7: The management system shall: Act in a timely and adaptive fashion on the basis of the best available information using a precautionary approach particularly when dealing with scientific uncertainty.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Need to define or clarify intent of “precautionary approach” – firm guidance or definitions called for by certifiers, assessment teams, objections panel members, clients & stakeholders. The statement is considered “so wide that in any one room, you can’t get consensus on what it means.” • Is the central concern from an “intent” perspective: how does the fishery management system demonstrate, implement or operationalise a precautionary approach, i.e., a process question under Principle 3 rather than an outcome question that is more appropriate under Principles 1 and 2. (See the summary of the Pollock Objections Panel commentary on the weakness of the MSC Principles & Criteria as specified in Principles 1 and 2 below). • Questions and issues raised in other contexts: <ul style="list-style-type: none"> - how much uncertainty/risk can be accepted in an MSC assessment context? - can we be prescriptive about probabilities in the context of risk / uncertainty? The Fish Stocks Agreement says risks of exceeding limit reference points should be “very low”. - what is the ultimate consequence for a fishery of being wrong? - we’re striving to be absolute, quantitative and objective, when often the precautionary principle/approach is applied intuitively or judged subjectively in management contexts, especially when considering issues beyond target & limit reference points for target stocks. - whose job is it to determine in each ‘unique’ fishery assessment that an approach is “precautionary enough” – MSC? Certification bodies? 	<ul style="list-style-type: none"> • Perhaps being absolute is inappropriate in terms of intent, but is necessary in order to interpret criterion operationally – i.e., what performance indicators and scoring guideposts should there be specifically (a question for a later part of this project – not for this workshop). • Potential for creating overlaps with both Principles 1 and 2. Guidance about intent and thus where appropriate performance and scoring elements should be located in assessment hierarchies might be appropriate. Can this be addressed specifically using a clear statement of intent – e.g., Icesfish assessment tree includes sub-criteria under Principle 2, Criterion 1 relating to the understanding of risk elements when it comes to ecological function and relationships in the context of fishing activity. • How to harmonise potentially conflicting concepts embodied in FAO codes, guidelines & international agreements with the intent of Principle 3 that refers to “appropriate to the size and scale of the fishery” is fundamental? • How to craft intent for this Criterion that does not contradict other criteria that relate to cultural context – i.e., that does not impose ‘big, westernised’ management approaches (objectives, plans, management strategies, decision-rules, control rules, etc) on small-scale, community-based fisheries that use different approaches? • In terms of consistency for MSC related assessments of different fisheries, can intent statement help ensure that precautionary approaches are assessed equally – is some risk assessment approach an ‘equalizer’?
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CA7 cont'd)**

Existing Guidance

- The original drafters of the Principles and Criteria included an implicit expectation of consistency with precautionary management principles in the FAO Code of Conduct for Responsible Fisheries. Article 7.5 refers in detail – taking uncertainties into account; setting stock specific target & limit reference points and using them to guide management decisions; and implementing cautious conservation or management measures in new or exploratory fisheries.
- Other relevant instruments/international texts – the Straddling & High Seas Fish Stocks Agreement – Article 6, Annex II states:
“The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks that are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.”
- FAO Technical Guidelines on the precautionary approach in fisheries (1995) – “A precautionary approach to managing a fishery involves developing, within management strategies and plans, explicit consideration of precautionary actions that will be taken to avoid specific undesirable outcomes.”
- FAO Technical Guidelines on ecosystem based fisheries management (Reykjavik expert consultation 2002) describe an ecosystem approach “where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. This should result in conservative management action being taken until more is known about ecosystem structures and functions.
- Under EAF the principle is much broader than just environmental degradation, and applies to any undesirable outcome (ecological, social or economic); it should also be applied in all stages of the management process.

Objections Procedure Experience

- The Pollock Objections Panel wrote to the MSC Chairman in 2005 suggesting:
 - The need for MSC to develop guidelines for the application of the Principles and Criteria and the use of the precautionary approach in situations of *regime change*.
 - As it is currently set out in Principles 1 and 2, the specification of the precautionary approach is weak, suggesting only application to target stocks and that the threshold of harm at which precautionary measures need to be taken arises only after fishery depletion has occurred. This is inconsistent with the way the precautionary approach is invoked in international agreements and the way it has been interpreted in numerous examples of national legislation and practice. Neither is there a clear statement in the Principles & Criteria of the nature of the precautionary action to be taken.
 - The Panel was satisfied with the certification body’s interpretation in the GOA pollock situation.
 - Annex to the Panel’s letter relating to regime change is attached at the end of this document for the information of workshop participants.

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A. Management System Criteria

<p>CA8: The management system shall: Incorporate a research plan – appropriate to the scale and intensity of the fishery – that addresses the information needs of management and provides for the dissemination of research results to all interested parties in a timely fashion.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Appropriate to the scale and intensity of the fishery implies that “plan” should be interpreted flexibly. • Key considerations: <ul style="list-style-type: none"> ○ That an appropriate ‘plan’ exists, with appropriate prioritisation* of research needs. ○ Prioritisation – that there is a mechanism to determine the most important research needs given the available financial and human resources. ○ That appropriate resources are directed to implementation of research plans. ○ That the research plan is implemented. • The formal structure or sophistication of a research plan would be expected to reflect the nature of the fishery. Care is needed in interpreting what is needed in small-scale fisheries. 	<p>Original Drafters’ Intent</p> <ul style="list-style-type: none"> • Original drafting of Principles and Criteria did not envisage a must-pass or best practice performance requirement that included research into social and economic aspects of a fishery except to the extent that these are directly relevant to performance under Principles 1 and 2, to maintain high productivity of the target stock and ensure that ecosystem function is not significantly impacted.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CA8 cont'd)**

(One page only)

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A. Management System Criteria

<p>CA9: The management system shall: Require that assessments of the biological status of the resource and impacts of the fishery have been and are periodically conducted.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • This criterion logically relates to whether assessments of the biological status of the resource and impacts of the fishery are conducted (periodically etc), rather than judging and scoring the outcomes of those assessments, which is what Principles 1 and 2 are about. • The knowledge of resource status is pivotal to an objective evaluation of a stock’s sustainability, and knowledge of the impacts of the fishery are pivotal to objective evaluation of the ability to “encourage management of the fishery from an ecosystem perspective” [Intent of Principle 2]. The approach to these assessments could range from formal stock assessments that estimate stock biomass, with peer reviews, under a large scale, data-rich circumstance, to the use of appropriate biological indicators for small-scale, low intensity fisheries. • While the type of assessment information might vary according to fishery, the level of performance with respect to ensuring sustainability is expected to be the same. • Assessment teams have struggled at times to reduce redundancy and overlap between this criterion and those under Principles 1 and 2 where performance indicators and scoring elements have sometimes sought to score whether stock assessments and fishery impact assessments are conducted, as well as score actual outcomes of those assessments. 	<p>Existing Guidance</p> <ul style="list-style-type: none"> • A relatively regular misconception about target stock assessments has arisen for some potential clients and some applicant certification bodies that this criterion implies some kind of formal stock assessment requirement, i.e., obtaining a biomass estimates, rather than assessing biological status in a way that is appropriate to the species’ biological factors. In response, guidance from the MSC has stated that in order to ensure/maintain “high productivity” of the target species (as required by Principle 1), biological factors preventing estimation of standing biomass should not be an obstacle. The germane question is ‘whether there is an appropriate proxy for biomass assessed under the management system to determine biological status?’ <p>Assessment Experience</p> <ul style="list-style-type: none"> • Assessment trees (hierarchies) have typically incorporated elements relating to the adequacy of internal and external review, usually as a performance indicator used by certification bodies to measure performance for this and other Principle 3 criteria (e.g., P3, CA1; and P3, CA2). • This embodies the idea that such reviews are common features in assessments of biological status, as well as other features of the management system, and thus are logical tools to evaluate both adequacy and performance of the management system itself.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CA9 cont'd)**

(One page only)

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A. Management System Criteria

<p>CA10: The management system shall:</p> <p>Specify measures and strategies that demonstrably control the degree of exploitation of the resource, including, but not limited to:</p> <ul style="list-style-type: none"> a) setting catch levels that will maintain the target population and ecological community's high productivity relative to its potential productivity, and account for the non-target species (or size, age, sex) captured and landed in association with, or as a consequence of, fishing for target species; b) identifying appropriate fishing methods that minimise adverse impacts on habitat, especially in critical or sensitive zones such as spawning and nursery areas; c) providing for the recovery and rebuilding of depleted fish populations to specified levels within specified time frames; d) mechanisms in place to limit or close fisheries when designated catch limits are reached; e) establishing no-take zones where appropriate. 	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Perhaps the basic intent of this criterion is clearly stated: that it can be clearly demonstrated that measures & strategies are effectively employed, and are appropriate to the nature of the fishery and existing management objectives. • Question – is there a need to develop performance guideposts for everything listed from (a) to (e)? If so, do there need to be intent statements for (a)-(e)? • Concern that not listing performance and scoring elements for each (a) to (e) means essential elements of the ability to control the degree of exploitation will be missed. 	<ul style="list-style-type: none"> • Conversely, without a clear statement of intent about (a) to (e), and particular guidance as to how these and other elements of Principle 3 should be structured within assessment trees, there is huge potential for overlap with the other Principles, potentially producing anomalous results. Or, as is already seen in assessments, completely different treatment of them in assessment hierarchies, such that some of (a) to (e) are placed high up in hierarchies and sub-divided into different scoring elements, or alternatively are the point at which scoring itself occurs – i.e., the actual performance indicator.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CA10 cont'd)**

- Concerns about significant overlaps in assessment trees between this criterion, its sub-elements and sub-criteria used under Principles 1 and 2, for example:
 - An assessment tree, under Principle 2, Criterion 1 has a sub-criterion that has scoring elements relating to “Strategies have been developed within the fisheries management system to effectively address and restrain any important impacts of the fishery on the ecosystem, habitats or non-target species.” It could be argued that the inclusion of scoring elements under Principle 2 and again under Principle 3 are redundant and might bias an outcome.
- Concerns that the precise wording in (a) to (e) can be interpreted too inflexibly and if applied too inflexibly that (a) to (e) might compromise the ‘scale and intensity’ and ‘cultural context’ criteria that enable small-scale, low intensity, community-based fisheries to apply for certification – i.e., to what extent does this criterion impose the ‘big management, big science’ paradigm on different fisheries.

If (a) to (e) require intent statements, the following may be relevant:

- (a) concern that “catch levels” imply the setting of TACs and use of output controls when many fisheries control exploitation with input controls.
- (b) concern expressed by some fishery clients that a narrow interpretation of intent about identifying appropriate fishing methods to minimise adverse impacts on habitat could permanently exclude methods like bottom trawling from ever being certified.
- (c) the management system needs to demonstrate a capacity to respond to potential stock depletions in an effective and timely manner. While Principle 1, Criterion 2 and Principle 2, Criterion 3 evaluate the adequacy of existing recovery plans to address current depletion, the system needs to demonstrate a capacity to implement such plans if future depletion issues are encountered, no matter what the cause. This might not mean having a recovery plan developed and ‘waiting on the shelf’ to implement, but could involve having:
 - a reasonable likelihood that the system will detect approaching depletion scenarios in a timely manner;
 - an explicit harvest strategy, set of control rules or decision-rules that will guide decisions under such scenarios;
 - effective mechanisms for quickly developing and implementing a recovery strategy.

(a) to (e) issues relating to intent continued:

- (d) seems self explanatory.
- Concerns that (e) can be taken too literally by some stakeholders, who might ignore the “where appropriate”, and demand that (e) be taken to mean “no-fishing by any method zones”, or should require the setting up of Marine Protected Areas.
- Suggestion that the intent for (e) should remind certification bodies, etc. that ‘no-take’ refers to the fishery and/or fishing method under assessment, that it is not a tool for recommending no-take zones in the fishery under assessment or for other fishing methods not under consideration, rather a measure or strategy that enhances the ability of the management system to ‘demonstrably control the degree of exploitation of the resource’ under assessment.

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A. Management System Criteria

<p>CA11: The management system shall: Contain appropriate procedures for effective compliance, monitoring, control, surveillance and enforcement which ensure that established limits to exploitation are not exceeded and specifies corrective actions to be taken in the event they are.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Focussing issues: that there are monitoring, control & surveillance (MCS) procedures in place, or an MCS system, appropriate to the scale and intensity of the fishery that protects the integrity and effectiveness of the fishery’s management system leading to acceptable outcomes under Principles 1 and 2. • Addresses the need for the appropriate monitoring and enforcement systems and activities to support the fishery management system, i.e., reliable and effective measures, procedures or system to ensure compliance with the management regime should be demonstrated. 	<ul style="list-style-type: none"> • The word “exploitation” should probably not be confined to mean only controlling catches, but also area based measures, habitat protection measures, the use of bycatch reduction devices and measures to appropriately protect other non-target/ecologically related species and/or habitats.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CA11 cont'd)**

(One page only)

MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB12: The fishing operation shall: Make use of fishing gear and practices to avoid the capture of non-target species (and non-target size, age, and/or sex of the target species); minimise mortality of this catch where it cannot be avoided, and reduce discards of what cannot be released alive.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • While the intent of this criterion appears to be clear as stated, this is another criterion that would benefit from clarity about whether Principle 3 is about inputs, rather than outcomes. Stakeholders and the MSC have noted that various performance indicators related to this criterion regularly appear both under Principle 3 and under Principle 2, Criterion 2 in assessment hierarchies. • The intent, consistent with Principle 3, might be to describe and understand the gears and practices that are in use, that there is some kind of explicit recognition in an operational context that the gear/practices are about the avoidance of non-target species, minimisation of mortality, and practices to reduce discards. 	<ul style="list-style-type: none"> • This would distinguish the intent of this criterion from the actual performance of the fishing gear and practices (the outcomes and impacts) that should be explicitly addressed under Principles 1 and 2. This would mean clearly stating that scoring elements under Principles 1 and 2 should not describe or address the type of gear and fishing practice in use in the fishery because it will be covered under Principle 3.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB12 cont'd)**

(One page only)

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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB13: The fishing operation shall: Implement appropriate fishing methods designed to minimise impacts on habitat, especially in critical or sensitive zones such as spawning and nursery areas.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • While the intent of this criterion appears to be clear as stated, this is another criterion that would benefit from clarity about whether Principle 3 is about inputs, rather than outcomes. Stakeholders and the MSC have noted that variations on this criterion regularly appear both under Principle 3 and under Principle 2, Criterion 2 in assessment hierarchies. 	<ul style="list-style-type: none"> • Perhaps a similar distinction needs to be made to that suggested for the intent of P3, CB12: - Understanding habitats and understanding impact of gear should be Principle 2 elements. But describing and considering fishing methods (or practices) that are explicitly linked to minimising impacts on habitat etc, should be incorporated and evaluated under Principle 3 elements perhaps. Again the distinction between inputs (P3) versus outcomes (P2).
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB13 cont'd)**

(One page only)

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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB14: The fishing operation shall: Not use destructive fishing practices such as fishing with poisons or explosives.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • This criterion, similar to the two previous ones, is not intended to address the management or evaluation of the potential impacts of regularly authorised fishing gear, which would be evaluated under Principles 1 and 2 and other Principle 3 criteria such as A10, B12 or B13. • One way of describing intent might be that “Poisons and explosives are not allowed or acceptable and would preclude certification.” • There is a suggestion that it might be appropriate to treat this as a virtual ‘yes or no’ indicator, a ‘critical indicator’ of performance. If treated as a yes/no element, then a ‘no’ answer would subsequently exclude its scoring from an assessment tree, similar to the approach taken with depletion under Principles 1 and 2. This might require a TAB Directive to make its treatment mandatory. • How to deal with “such as”? Are there other destructive practices that could be listed in a guidance document. Concerns expressed by some fishery clients that bottom trawling might be include in such a list and prevent those fisheries from being considered based on their specific performance attributes. 	<ul style="list-style-type: none"> • It was noted by some stakeholder participants in South East Asia consultation workshops that ‘some destructive methods are considered traditional and might not be explicitly prohibited by law – e.g., use of cyanide. <p>Assessment Experience</p> <ul style="list-style-type: none"> • An example of a scoring element from a fishery assessment tree which might be relevant to intent of this criterion: <ul style="list-style-type: none"> ○ The management system affirmatively and comprehensively prohibits fishery or operational practices that damage or destroy natural geological, biological, or chemical features or characteristics of the aquatic area in which the fishery occurs, except those impacts that are physically unavoidable consequences of authorized uses of fishing gear.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB14 cont'd)**

(One page only)

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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB15: The fishing operation shall: Minimise operational waste such as lost fishing gear, oil spills, on-board spoilage of catch, etc.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • Describe mechanisms or rules in place to minimise operational waste. Perhaps describe fishing operations' consistency with MARPOL. • Concern that MARPOL might be ratified by many nations, but enforcement of compliance is problematic in an operational sense (lack of capacity, funding, etc). • Perhaps intent might suggest describing whether there are best practice codes of conduct, education or training initiatives, whether monitoring of compliance or evaluation of effectiveness occurs. 	<ul style="list-style-type: none"> • If appropriate, determined by the type of fishing gear used in the fishery, mechanisms, rules, etc, in place to minimise lost fishing gear (ghost fishing and fishing related pollution, etc). • Care needs to be taken to ensure not overlapping with Principle 2 issues, especially on ghost fishing issue. <p>Assessment Experience</p> <ul style="list-style-type: none"> • The following evaluation elements are examples from MSC fishery assessments: <ul style="list-style-type: none"> ○ Western rock lobster example – note was made of fishing related pollution washed up on beaches, e.g., bait straps. Measures introduced to ensure waste not dumped overboard, bring bait straps back to port to discard. ○ Measures in the Icefish fishery about food waste. ○ Measures/research in the Loch Torridon fishery about ghost fishing of lost creels (pots).
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB15 cont'd)**

(One page only)

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<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB16: The fishing operation shall: Be conducted in compliance with the fishery management system and all legal and administrative requirements.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • The distinction here is about fishing operations, not the context of the management system (i.e., not about the system being consistent with, or respecting laws) • Overlap perhaps with P3, CA11 about MCS systems. Maybe the distinction is about whether evaluation of compliance actually occurs – not that there is a MCS system, but whether fishery managers actually know compliance levels (or non-compliance levels) in the fishery itself. • This might be one instance under Principle 3 that requires an evaluation of an outcome, i.e., compliance – do fishers comply with some, but not all, requirements; are they fully compliant and can this be verified? 	<ul style="list-style-type: none"> • Additionally, it might involve checking whether fishery participants are aware of management system, legal and administrative requirements, how well they are kept up to date on developments/changes or whether they have codes of conduct agreed to / signed up to by fishers.
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB16 cont'd)**

(One page only)

**MSC Principles and Criteria for Sustainable Fishing - Narrative Intent Worksheet
January 2007 Workshop Discussion Document**

<p>P3: The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.</p>	<p>Intent of Principle 3 The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.</p>
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B. Operational Criteria

<p>CB17: The fishing operation shall: Assist and co-operate with management authorities in the collection of catch, discard, and other information of importance to effective management of the resources and the fishery.</p>	<p><i>See draft intent statement</i></p>
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Questions/Observations, Existing Guidance, Experience, and Other Comments

<p>Questions/Observations</p> <ul style="list-style-type: none"> • An effective management system would be demonstrated by the willingness and active support by fishery participants. This might involve, for example, ensuring that there is effective collection of essential information from participants, cooperation to validate fishery performance (e.g., facilitating at-sea observations), participating in research, and potentially supporting the costs of management. 	<p>Assessment Experience</p> <ul style="list-style-type: none"> • Scoring elements in some fishery assessments have only focussed on the collection of catch, discard or “other relevant data”. This might be too narrow – are there other relevant data that might be specified in the context of intent?
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**Questions/Observations, Existing Guidance, Experience, and Other Comments
(P3CB17 cont'd)**

(One page only)

Annex: Suggested provisions for a precautionary management approach aimed at conserving renewable resources subject to regime shifts.

Some suggested provisions for a precautionary approach that takes the regime shift scenario into account, are suggested here for consideration by the MSC. They may be useful as a starting point when the occasion arises to reinterpret and possibly qualify, the criteria used in deciding on the sustainability of marine resources subject to regime shifts. The main points are as follows:

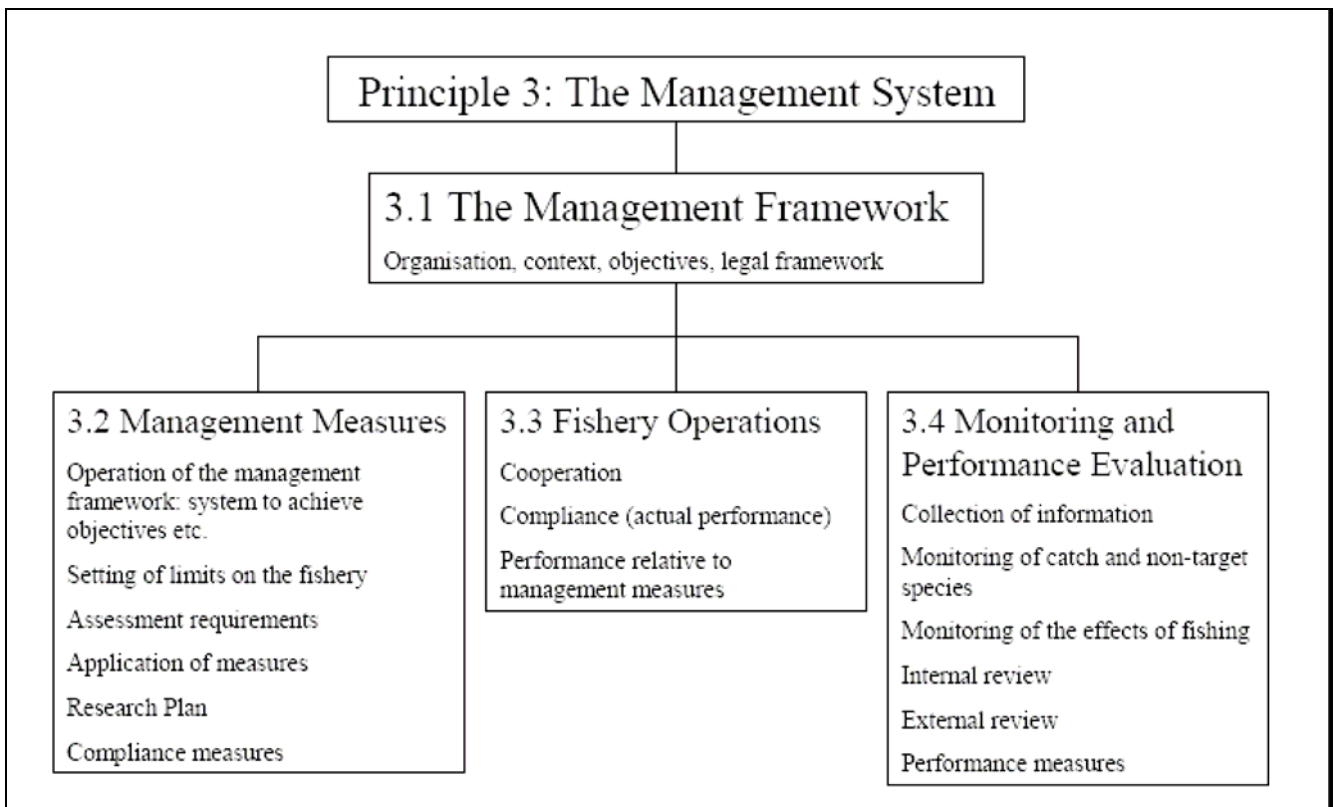
- (1) If consistent declines in fishery productivity recur despite low levels of exploitation, it may be supposed that a regime change is underway. At this point, the FAO Code of Conduct warns that appropriate management measures should be taken, irrespective of whether this decline is due to harvesting or natural factors. In the latter case, declines in productivity may be linked to poor environmental conditions, a change in species dominance, or a change in hydrographic regime leading to poor recruitment. This situation should lead to a harvesting policy being agreed to with the fishing industry that takes into account the precarious nature of the resource at a low point in the productivity cycle. If so, the following considerations should be given due weight in the management framework:

- This situation may be recognized by a consistent reduction in recruitment over time, a decline in stock distribution area, and/or a change in age composition of survivors showing that recruitment is not occurring at the same level as in the past.
- Recognize that the natural low point in resource abundance, even in the absence of fishing, constitutes a period of stress for the target species and for other species dependent on it in partly or wholly for their trophic requirements.
- If resource productivity continues to decline or remain low despite a reduction of the exploitation rate to below that due to natural causes such as predation, it is important to ensure that a lower limit to biomass be decided upon. When this has been reached, a moratorium on fishing or equivalent emergency measures protecting the source population should be applied.
- These last-mentioned measures have the objective of ensuring that the spawning potential of the resource remains adequate to avoid compensatory effects, and that stock rebuilding will be possible when environmental conditions improve.
- Management measures during the nadir of the production cycle should allow for the dietary requirements of dependent and charismatic species, or those that are of particular ecological importance, and will depend on protection of source populations of the target species.
- As it becomes evident that a consistent decline in abundance is occurring despite significant constraints on fishing exploitation, a recovery plan should be agreed upon with stakeholders, and introduced into the fisheries legislation in advance. This recovery plan will inevitably have

socio-economic implications requiring it to be discussed with the fishing industry involved.

- (2) With respect to the reference points to be applied to resources subject to regime shifts, while these should be similar in form and objective to those for more 'stable' resources, the management framework should incorporate tiered provisions for management that reflect the current status of the resource, such that management provisions are more stringent as the resource approaches its nadir.
- (3) The use of reference points for biomass in the control rule may be adjusted to take into account the current level of productivity as measured by recruitment trends, and should vary with resource productivity. However, there will be a risk in allowing a constant proportion of the biomass to be harvested throughout the production cycle. It would be preferable to set a minimum biomass level as a fraction of the overall average productivity, below which a moratorium on fishing should be introduced.

ANNEX 2: An example of how Principle 3 has been structured in a recent fishery assessment.



Extract from “MSC ASSESSMENT REPORT THE AUSTRALIAN ANTARCTIC MACKEREL ICEFISH FISHERY AT HEARD AND MACDONALD ISLANDS” (September 2005) by SCS.

This diagram is shown to provide a visual reference for discussion about issues suggested in relation to Principles 1 and 2 being about measuring actual outcomes (arguably actual performance), whereas Principle 3 might be about the inputs to the management process itself, thus not measuring performance. Other assessments have taken a different approach. This fishery is only presented as a stimulus for discussion, not to highlight any deficiency in the approach or outcome of the assessment.

Issue – In terms of consistency of outcomes from two dozen or more assessment trees being developed, the treatment of Principle 3 is the most challenging to analyse because of the different approaches and structures applied by certification bodies. The potential for overlap, redundancy and anomalous results could be prevented by first clarifying the intent about A. Management System Criteria and B. Operational Criteria, then intent of each criterion, and finally guidance about structure of trees.

Issue – The above example, suggests that Operational Criteria (as identified by 3.3 above) would have scoring elements relating to actual performance against management measures and actual performance in terms of compliance. Thus contradicting the idea that Principle 3 should be about assessing the management inputs and processes, not outcomes. Principle 3, Criterion B16 being a particular case in point (compliance – actual performance).