



Compliance and enforcement - best practice review, proposed revisions and impact assessments

Final Report to the Marine Stewardship Council

November 2020

Compliance and enforcement – best practice review, proposed revisions and impact assessments.

FINAL Report to the Marine Stewardship Council.

Geir Hønneland

November 2020.

The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy or position of the Marine Stewardship Council. The language used in draft scoring requirements is intended to be illustrative only and may undergo considerable refinement in later stages. This work is licensed under Creative Commons BY 4.0. To view a copy of this license, visit (<https://creativecommons.org/licenses/by/4.0>)

How to reference this report:

Hønneland, G (2020). Compliance and enforcement – best practice review, proposed revisions and impact assessments. Published by the Marine Stewardship Council [www.msc.org]. 60 pp

Table of contents

| | | |
|-------|--|----|
| 1 | Introduction | 4 |
| 1.1 | Background | 4 |
| 1.2 | The structure of the report | 5 |
| 2 | Challenges related to the current PI 3.2.3..... | 6 |
| 2.1 | The normative component (the structure of the PI)..... | 6 |
| 2.2 | The empirical component (scoring in practice)..... | 6 |
| 2.3 | Why revise?..... | 7 |
| 3 | Best practices in the design of compliance systems and documentation of compliance | 10 |
| 3.1 | Best practices in the design of compliance systems | 10 |
| 3.2 | Best practices in levels of compliance..... | 11 |
| 3.3 | Best practices in the documentation of compliance and MCS effectiveness | 12 |
| 4 | Proposed revisions of PI 3.2.3 | 13 |
| 4.1 | Alternative I: revisions without addition of new substantive elements | 13 |
| 4.2 | Alternative II: Revisions incorporating new substantive elements | 15 |
| 4.2.1 | New PI on enforcement | 15 |
| 4.2.2 | New PI on compliance..... | 18 |
| 4.2.3 | High-level version of the options presented for public consultation | 19 |
| 5 | Consultation feedback | 21 |
| 5.1 | The sample | 21 |
| 5.2 | The need for revision..... | 21 |
| 5.3 | The effectiveness of the proposed revisions..... | 22 |
| 5.4 | The feasibility of the proposed revisions..... | 24 |
| 5.5 | The affordability of the proposed revisions..... | 26 |
| 5.6 | The accessibility (new) of the proposed revisions..... | 27 |
| 5.7 | The accessibility (retention) of the proposed revisions | 28 |
| 5.8 | Acceptance of the proposed revisions | 29 |
| 5.9 | General comments | 29 |

| | | |
|-----|--|----|
| 6 | General assessment..... | 32 |
| 7 | High-level impact pre-assessment (I.A.0) | 37 |
| 7.1 | Impact pre-assessment (I.A.0)..... | 37 |
| 7.2 | Consultant's views | 44 |
| 8 | Revision of options to clarify the systematic non-compliance scoring issue (current SI 3.2.3d).. | 46 |
| 9 | Impact assessment (I.A.1) | 50 |
| 9.1 | Option A | 50 |
| 9.2 | Option B | 52 |
| 10 | Concluding remarks | 58 |

1 Introduction

1.1 Background

The report presents the results of two consultancies delivered in connection with the revision of MSC requirements on enforcement and compliance.

The main aim of the first consultancy, carried out in spring 2020, was to:

- propose revisions to the language of scoring issues and scoring guideposts within PI 3.2.3, including restructuring of the PI as necessary, to address shortcomings identified in an earlier consultancy report¹
- incorporate in the revisions of PI 3.2.3 compliance-related scoring issues currently under P1 and P2, in particular
 - PI 2.3.1 SIa. Compliance with national/international limits for endangered, threatened or protected (ETP) species
 - PI 2.4.2 SId. Compliance with management requirements to protect vulnerable marine ecosystems (VMEs)
 - PI 1.2.1 SIe, PI 2.1.2 SId, PI 2.2.2 SId. Compliance with MSC's organisational policy that shark finning shall not occur in MSC-certified fisheries [these should be combined into a single scoring issue]

In summer 2020, a public consultation was organised by the MSC. The consultation was an online survey where stakeholders were invited to provide their views on proposed revisions to PI 3.2.3.

The aim of the second consultancy, carried out in autumn 2020, was to:

- revise options to clarify the systematic non-compliance scoring issue (SI 3.2.3d)
- review the high-level impact pre-assessment (IA0) carried out internally at the MSC in summer 2020
- undertake qualitative analysis of consultation feedback

¹ Geir Hønneland, *Compliance scoring review*, consultancy report for the MSC, 2018. The report is based on analysis of Public Certification Reports (PCRs) from 40 MSC certified fisheries.

- carry out further impact assessment in detail (IA1)

Full terms of reference for the two consultancies are attached in Appendices 1 and 2 to this report.

1.2 The structure of the report

Chapter 2 briefly summarises challenges related to the current PI 3.2.3, based on the results of the earlier consultancy report mentioned above. Chapter 3 provides a short overview of best practices in the design of compliance systems and documentation of compliance, identified in the academic literature and based on practical experience with compliance issues. The proposed revisions of PI 3.2.3 are presented in Chapter 4, while the feedback of the consultation survey is analysed in Chapter 5. Chapter 6 provides a general appraisal of the proposed changes, in light of the survey response and the consultant's own experience as assessor and informal consultation with other P3 assessors. The high-level impact pre-assessment (I.A.0) of the proposed revisions performed by the MSC is found in Chapter 7, with comments from the consultant. Chapter 8 reviews the potential for revision of the systematic non-compliance scoring issue (SI_d in the current Standard), which was not covered by the initial round of proposed changes to the PI. The second impact assessment (I.A.1) is presented in Chapter 9, and a few concluding remarks are given in Chapter 10.

2 Challenges related to the current PI 3.2.3

There are two types of challenges with the current PI 3.2.3, related to the structure and contents of the PI (the normative component) on the one hand and how the PI is scored in practice (the empirical component) on the other hand.² There is a linkage between the normative and empirical components in that if ambiguities exist, it is all the more important to ensure consistent scoring practice.

2.1 The normative component (the structure of the PI)

- It is unclear whether compliance is to be scored only under SIc and SId, or throughout the PI.³
- The issue of compliance is treated as a yes/no question ('fishers comply [or not]') – there is no room for distinguishing between high and low levels of compliance in a fishery, nor between serious and less serious cases of non-compliance.⁴
- There is little guidance on what documentation is sufficient to conclude that 'fishers comply'.

2.2 The empirical component (scoring in practice)

- There is significant lack of consistency in how assessment teams score PI 3.2.3.⁵

² The empirical findings are taken from Geir Hønneland, *Compliance scoring review*, *op.cit.* note 1.

³ While it appears that the intention is to score the comprehensiveness of the enforcement system under SIa, the application of sanctions under SIb and the certainty of compliance under SIc and SId, the wording invites the scoring of compliance under all three PIs. This invites variable scoring, which may in fact also affect the outcome. If teams score compliance also under SIa and SIb (and not only under SIc and SId, where it is explicitly asked for), the scores for these SIs will be a function of the SIc and SId scores (provided compliance is actually scored here, as asked for). This implies, if the guideposts are logically applied, that a fishery cannot score better on SIa and SIb than allowed for by the SIc and SId scores. Under SIc, nearly half of the assessments score the level of compliance instead of the level of certainty (that fishers comply). In the remaining assessments, there is a mix of the two or, more common, the wording of the rationale is not sufficiently clear to decide which of the two is scored.

⁴ In practice, compliance is never full or zero in a fishery. The current SI only addresses the level of *confidence* that 'fishers comply' with no possibility to distinguish between different levels of compliance as such.

⁵ In less than half of the assessments is the wording of the guideposts followed. Compliance is scored 'haphazardly' across SIa, SIb and SIc. In 20-30 % of the assessments, only compliance is scored under SIa (not MCS implementation) and SIb (not sanctions). In 30-40 % of the assessments, only MCS implementation and sanctions are scored.

- Documentation of conclusions is weak.⁶
- Unlike most other PIs under P3, there are few conditions on PI 3.2.3.⁷

2.3 Why revise?

Problems associated with the above challenges include:

- Inconsistencies in scoring imply unfair treatment of fisheries.⁸
- Inconsistencies in the application of the Standard make it more difficult to harmonise among fisheries.
- Inconsistencies in the application of the Standard, especially in a highly profiled area as enforcement and compliance (which is associated with IUU fishing) may negatively affect the legitimacy of the Standard.
- The lack of conditions implies missed opportunities to lead to improvements in fisheries enforcement and compliance.

The lack of conditions is all the more important since PI 3.2.3 is the clearest outcome PI under P3. While all other PIs are largely procedure and information oriented – focusing on issues such as decision making, dispute resolution, objectives, consultation rights, access to information and review mechanisms – PI 3.2.3 deals with the ability of the management system to actually influence fisher behaviour, which is the ultimate goal of fisheries management. While there is the theoretical possibility that lack of conditions reflects lack of problems with enforcement and compliance in the world's fisheries, there is also a possibility

⁶ Except in the big, multilaterally managed tuna fisheries, where compliance is documented in reports from compliance committees set up under international agreement, only 20 % of the assessments have any reference to quantitative information, e.g. on inspections and infringements. Of these 20 %, only one assessment has statistics beyond stating the aggregate percentage of infringements in inspections over a period of time. In 50 % of the assessment, personal communication from enforcement authorities, stakeholders or clients is the only source for scoring compliance. In just a couple of fisheries are annual reports from enforcement authorities or lists of inspections provided. Only one assessment has reference to peer reviewed literature on compliance (a nearly two decades old journal article). This is conspicuous since peer reviewed literature is very much present in the rationales for scoring P1 and P2 in MSC assessments.

⁷ In the sample of 40 representative fisheries, there were no conditions on PI 3.2.3. Notably, there were a number of conditions on all other PIs under P3, except on PI 3.1.3 on the overall objectives in the fishery.

⁸ For instance, if compliance is assessed only under SIc and SId in one fishery but also under SIa and/or SIb in another fishery, the SIa and/or SIb scores of the latter fishery will be contingent on the SIc and SId scores, while those of the former fishery will not.

that the bar is set too low in the current PI, or that the PI is structured and worded in a way that makes it difficult for assessment teams to differentiate between fisheries with high and low levels of compliance. The proposed revisions presented in the next chapter were produced with the latter objective in mind, i.e. to clarify how compliance (and enforcement) should be assessed in order to differentiate between fisheries that follow best practice and those who do not, and document that in as rigorous and fair manner as possible. The proposed revisions are not intended to raise the bar for certification.

Table 2.1 The current PI 3.2.3

PI 3.2.3 – Compliance and enforcement

| PI 3.2.3 | | Monitoring, control and surveillance mechanisms ensure the management measures in the fishery are enforced and complied with | | |
|---------------|--------------------|--|---|---|
| Scoring Issue | | SG 60 | SG 80 | SG 100 |
| a | MCS implementation | | | |
| | Guide post | Monitoring, control and surveillance mechanisms exist, and are implemented in the fishery and there is a reasonable expectation that they are effective. | A monitoring, control and surveillance system has been implemented in the fishery and has demonstrated an ability to enforce relevant management measures, strategies and/or rules. | A comprehensive monitoring, control and surveillance system has been implemented in the fishery and has demonstrated a consistent ability to enforce relevant management measures, strategies and/or rules. |
| b | Sanctions | | | |
| | Guide post | Sanctions to deal with non-compliance exist and there is some evidence that they are applied. | Sanctions to deal with non-compliance exist, are consistently applied and thought to provide effective deterrence. | Sanctions to deal with non-compliance exist, are consistently applied and demonstrably provide effective deterrence. |
| c | Compliance | | | |
| | Guide post | Fishers are generally thought to comply with the management system for the fishery under assessment, including, when required, providing information of importance to the effective management of the fishery. | Some evidence exists to demonstrate fishers comply with the management system under assessment, including, when required, providing information of importance to the effective management of the fishery. | There is a high degree of confidence that fishers comply with the management system under assessment, including, providing information of importance to the effective management of the fishery. |

| | | | | |
|---|---------------------------|--|--|--|
| d | Systematic non-compliance | | | |
| | Guide post | | There is no evidence of systematic non-compliance. | |

3 Best practices in the design of compliance systems and documentation of compliance⁹

3.1 Best practices in the design of compliance systems

A compliance system in fisheries can be understood as a set of behavioural prescriptions and institutional arrangements aimed at ensuring a specific conduct among fishers. Fisher behaviour that conforms to the requirements of the behavioural prescriptions can be grouped into first-order and management-induced compliance. First-order compliance is fisher conduct that conforms to the behavioural prescriptions of the compliance system even in the absence of specific action by the management system. Fishers may choose to comply with rules and regulations by deliberate choice, e.g. because they think this is the right thing to do (morals as source of compliance) or because people in their surroundings expect them to (ranging from norms and social pressure to neighbour watch as sources of compliance). Or the preferred behaviour, e.g. economically speaking, simply happens to be in accordance with extant rules and regulations. Management-induced compliance is all compliance that is not first-order and is the result of deliberate actions by the authorities to influence fisher behaviour. Compliance mechanisms can be divided into coercive and discursive measures. Coercive measures imply deterrence (the threat of sanctions) and coercion (the actual use of sanctions), while discursive measures comprise attempts to influence fisher behaviour by other means than deterrence and coercion. The latter will normally be sought achieved in communication with the fishers and involve attempts to increase the legitimacy of rules and regulations, or the management system as such. This can take place at higher management levels, such as through consultation mechanisms with the fishing industry, or at compliance system level, such as communication with the fishing fleet at meetings and at sea (e.g. via radio or during inspection). To some extent, discursive measures aim at manipulating the sources of first-order compliance, such as morals or social norms in the fishing community. At the practical level, this involves guiding fishers on how to act in accordance with rules and regulations. In a coercion-based compliance system, inspectors act as *policemen*, while in a discursive-oriented system, they

⁹ This is just a brief review of some tendencies in the academic literature on compliance in fisheries. For overviews, see Stig Gezelius (2013), *Regulation and Compliance in the Atlantic Fisheries*, Dordrecht: Springer; Geir Hønneland (2013), *Making Fishery Agreements Work*, Cheltenham: Edward Elgar; Geir Hønneland (2014), *Coercive and Discursive Compliance Mechanisms in the Management of Natural Resources*, Dordrecht: Springer.

act more like *consultants*, not primarily out to detect violations but above all aimed at ensuring future compliance.

For a compliance system to be effective, it should include all the elements that are necessary to ensure deterrence and coercion, including measures to detect non-conformance. The specific measures needed will vary with the scale and intensity of the fishery, but will normally include reporting requirements, procedures within enforcement authorities to process and make use of the information provided by the fishers, procedures for physical inspection at sea and in port, preferably risk-based, and sanctions that are sufficiently severe to deter fisheries from a non-compliant behaviour. Also depending on the scale and intensity of the fishery, enforcement authorities should make use of the potential that lies in various discursive measures, such as guiding fishers on how to act in compliance with rules and regulations.

Schematically, the levels of ambition of a compliance system could be defined as follow (all to be assessed according to the scale and intensity of specific fisheries):

- **minimum requirements:** basic reporting requirements; some processing of reported information; some form of physical control of catches; sanctions believed to work
- **best practice:** detailed reporting requirements; systematic processing, review and use of submitted information; physical inspections both on land and at sea; sanctions documented to work; mechanisms in the *management* system to guide fishers on compliance; integration of the elements of the system
- **state of the art:** comprehensive reporting requirements; systematic processing, review and use of submitted information; risk-based, comprehensive physical inspections both on land and at sea; sanctions documented to work; mechanisms in the *compliance* system to guide fishers on compliance; comprehensive integration of the elements of the system

3.2 Best practices in levels of compliance

Compliance in a fishery is never full or zero; some level of non-compliance always exists. The question is what level of compliance is acceptable. Below is an example of how this can be categorized. The categories are very broad, and probably have to be to allow for a sufficient level of qualitative judgement of highly different fisheries – more specific information is provided in Section 4.2 below.

- **minimum requirements:** most important regulations¹⁰ largely complied with
- **best practice:** all important (and most other) regulations largely complied with
- **state of the art:** all important and (most) other regulations consistently complied with

‘Important’ can be taken to refer to regulations that have a direct, physical impact on the sustainability of the fishery, such as related to quota limits, gear restrictions and discards – too much or (potentially) too small fish is taken, or fish is being discarded if the rules are broken. As an example, if quota and gear restrictions in a fishery are largely complied with but a discard ban is not, SG 60 is met but not SG 80. ‘Other’ regulations could be those that do not affect fishing practices directly but are important components in the enforcement system, e.g. reporting requirements. Hence, a fishery might score 100 if quota limits, gear restrictions and discard bans are complied with, but not all reporting requirements.

3.3 Best practices in the documentation of compliance and MCS effectiveness

An example of different levels of requirements to documentation of compliance is provided below. It is acknowledged that information about compliance can come from other sources than enforcement agencies or other management bodies. The most obvious example is research data published in peer review journals, which would normally be far more comprehensive than any official reports from national authorities or international organisations. This approach also implies the opportunities for other actors to carry out or commission evaluations of compliance in a fishery, e.g. an MSC client that needs such information to meet a condition. A review by a renowned consultancy company may also provide a more thorough and/or transparent assessment of compliance than what enforcement authorities may offer.

- **minimum requirements:** qualitative appraisal (e.g. from enforcement agencies or other management bodies)
- **best practice:** aggregate inspection statistics (e.g. from enforcement agencies or compliance reports from RFMOs or international organisations, including the EU)
- **state of the art:** comprehensive and/or customised inspection statistics (e.g. from enforcement agencies or international compliance reports); peer reviewed literature

¹⁰ See footnotes to the proposed new scoring table for compliance (option B) below.

4 Proposed revisions of PI 3.2.3

In the following, two alternatives for revision of PI 3.2.3 are presented, one without adding new substantive elements and one incorporating new elements and moving elements from P1 and P2 to P3.¹¹ The first alternative retains one PI while the second alternative splits it into one PI on enforcement and one on compliance.

Explanations to the tables are provided in footnotes rather than in running text, for ease of reference to the specific elements of the guideposts.

4.1 Alternative I: revisions without addition of new substantive elements

The aim of this alternative is to i) provide a clear separation between the scoring of MCS implementation, sanctions and compliance; as well as to ii) split the assessment of compliance into one information and one outcome SI, addressing the knowledge base and level of compliance, respectively.

Table 4.1 Restructured PI 3.2.3 without the introduction of new substantive elements

¹¹ The revision options presented here are those that followed from the first consultancy in spring 2020 (see Section 1.1); hence, they have not been adjusted following public hearing and impact assessments.

| | SG 60 | SG 80 | SG 100 |
|--|--|--|--|
| a – MCS implementation ¹² | Monitoring, control and surveillance mechanisms exist in the fishery. ¹³ | A monitoring, control and surveillance system is in place for the fishery, including reporting requirements and physical monitoring. The different elements of the system work together to ensure compliance with regulations. ¹⁴ | A comprehensive, risk-based monitoring, control and surveillance system is in place for the fishery, including reporting requirements as well as physical inspections on shore and at sea. The different elements of the system are well integrated and work together to ensure compliance with regulations. |
| b – Sanctions | Sanctions to deal with non-compliance exist, and there is some evidence that they are applied. | Sanctions to deal with non-compliance exist, at a level of strictness considered sufficient to provide effective deterrence. There is clear evidence that they are applied. | Graduated sanctions to deal with different types of non-compliance exist, at levels of strictness considered sufficient to provide effective deterrence. ¹⁵ There is clear evidence that they are consistently applied. |
| c – Compliance (information) | Qualitative information exists about compliance in the fishery. ¹⁶ | Some quantitative information exists about compliance in the fishery. ¹⁷ | Comprehensive quantitative data exist about compliance in the fishery. ¹⁸ |
| d – Compliance (outcome) ¹⁹ | Most important regulations are largely complied with. | All important regulations are largely ²⁰ complied with. ²¹ | All important and other regulations are consistently complied with. |
| e – Systematic non-compliance | | There is no evidence of systematic non-compliance. | |

¹² The reference to expected/demonstrated ability to enforce regulations in the current SI 3.2.3a is removed in order to create a clear separation between enforcement and compliance. Instead, specific enforcement measures are listed under SG 80 and SG 100, as well as the ability of the different elements of the MCS system to work together to ensure compliance (see next footnote).

¹³ I have considered whether something like ‘appropriate for the scale and intensity of the fishery’ should be included here in order to take care of situations where the fishery is self-regulatory and enforcement not necessary. However, I decided against it for two reasons: i) Such cases are presumably extremely rare, and it could be solved by a note in the Guidance that in small-scale fisheries the requirements of physical inspection by independent enforcement bodies should be interpreted less strictly; ii) The situation for PI 3.2.3 is not completely different from that of other PIs in this regard: For instance, under SI 3.2.4b, should the requirements to external

4.2 Alternative II: Revisions incorporating new substantive elements

4.2.1 New PI on enforcement

Table 4.2 New PI on **enforcement**

| | SG 60 | SG 80 | SG 100 |
|----------------------------|---|--|--|
| a – Reporting requirements | Fishers are required to provide information about their fishing | Fishers are required to provide information about their fishing activities, with a | Fishers are required to provide comprehensive information about their fishing activities, with a |

reviews of the management system be softer for small- than large-scale fisheries? Hence, this is a general issue, not restricted to 3.2.3.

¹⁴ Note that the last requirement is ‘teleological’ rather than empirical. The elements of the system are structured to work together to ensure compliance, but unlike in the old Standard, there is no requirement that compliance is in fact achieved (which is now evaluated only under SIc). The ‘elements’ of the MCS system are typically various management and enforcement bodies, such as directorates of fisheries and coast guards and, for internationally managed fisheries, the enforcement bodies of different countries.

¹⁵ Hence, a more fine-meshed sanctioning system is required for SG 100 than for SG80, with different and clearly-defined sanctions to different types of infringements and, possibly, to first-time and repeated offences.

¹⁶ ‘Qualitative’ would typically be general statements about the general level of compliance made by the enforcement authorities.

¹⁷ ‘Quantitative’ would here refer to figures on general infringement rates, e.g. number of infringements per inspection over a year.

¹⁸ By ‘comprehensive quantitative data’ is meant inspection/infringement statistics broken down on entities such as fleets, species, geographical sub-regions and types of infringement. This could also include peer reviewed literature about compliance in the fishery.

¹⁹ There are two axes here: i) the types of regulations to be complied with (important and other), and ii) the degree of compliance (largely or consistently complied with). As noted in Section 3.2 above, ‘important’ can, for instance, be taken to refer to regulations that have a direct, physical impact on the sustainability of the fishery, such as related to quota limits, gear restrictions and discards – too much or (potentially) too small fish is taken, or fish is being discarded if the rules are broken. As an example, if quota and gear restrictions in a fishery are largely complied with but a discard ban is not, SG 60 is met but not SG 80. ‘Other’ regulations could be those that affect the sustainability of the fishery in a more indirect way, e.g. reporting requirements. Hence, a fishery might score 100 if quota limits, gear restrictions and discard bans are complied with, but not all reporting requirements.

²⁰ Or consistently.

²¹ For SG 80 to be met, there needs to be a general level of compliance (albeit not 100 %) with quota and gear limitations and, if applicable, discard bans.

| | | | |
|--|---|---|--|
| | activities on a regular basis. | frequency and in a format appropriate to the scale and intensity of the fishery. ²² This includes, as a minimum, information about catches, positions and fishing gear. | frequency and in a format appropriate to the scale and intensity of the fishery. This includes information about catch of ETP species, information relevant to the protection of VMEs and, where applicable, shark finning. |
| b – Management review of submitted information | The information submitted by fishers is used to assess compliance in the fishery. | There are mechanisms in place to systematically review the information submitted by fishers to assess compliance in the fishery. This information is integrated with information obtained through physical inspections to assess compliance in the fishery. ²³ | |
| c – Physical inspection | Mechanisms for physical inspections are in place for the fishery. | A system for monitoring of the fishery is in place, including physical inspections of the catch at sea and on shore. ²⁴ The different elements of the system work together to ensure compliance with regulations. ²⁵ | A comprehensive, risk-based system for physical monitoring of the fishery is in place at sea and on shore. Last-haul inspections are conducted to assess compliance with catch, gear, ETP species and VME-related regulations and, where applicable, regulations on shark finning. The different elements of the system are well integrated and work together to |

²² A large-scale fishery would typically require mandatory use of electronic logbooks and VMS, while this is less necessary in a small-scale fishery.

²³ This is arguably a threshold to pass without condition, so this should be the SG 80 requirement. At the same time, it is difficult to raise the bar even higher on this issue, so this SI stops at SG 80.

²⁴ As opposed to SG 60, there is an explicit requirement that the *catch* is inspected, not only documents like the catch log.

²⁵ Note that the last requirement is ‘teleological’ rather than empirical. The elements of the system are structured to work together to ensure compliance, but compliance as such is not scored under this PI, but under the new PI on compliance. The ‘elements’ here would typically be different bodies involved in inspections on shore and at sea, e.g. a directorate of fisheries and a coast guard, or different national enforcement bodies in an internationally managed fishery.

| | | | |
|--|--|---|--|
| | | | ensure compliance with regulations. ²⁶ |
| d – Sanctions | Sanctions to deal with non-compliance exist, and there is some evidence that they are applied. | Sanctions to deal with non-compliance exist, at a level of strictness considered sufficient to provide effective deterrence. There is clear evidence that they are applied. | Graduated sanctions to deal with different types of non-compliance exist, at levels of strictness considered sufficient to provide effective deterrence. ²⁷ There is clear evidence that they are consistently applied. |
| e – Guidance on compliance ²⁸ | | Mechanisms exist in the management system to guide fishers on how to avoid infringements. ²⁹ | Mechanisms exist within the enforcement bodies to guide fishers on how to avoid infringements. ³⁰ |

²⁶ See last note.

²⁷ Hence, a more fine-meshed sanctioning system is required for SG 100 than for SG80, with different and clearly-defined sanctions to different types of infringements and, possibly, to first-time and repeated offences.

²⁸ This is an element increasingly present in ‘modern’ MCS systems. Typically, inspectors are instructed to see themselves more as ‘consultants’ aiding fishers to avoid infringements than as ‘police’ aimed at detecting offences. Including this as a separate SI pays heed to contemporary theories on compliance and emerging practices in fisheries enforcement. Given the relative novelty of this phenomenon, it seems unfair to establish it as an absolute requirement for certification; hence there is no SG 60 for this SI. In order to drive improvement, however, the SI starts at SG 80, so that conditions can be invoked if no guidance is given to the fishing fleet on how to avoid infringements.

²⁹ This might be, e.g., in written communications, on websites and at consultative meetings, i.e. within the fishery at large.

³⁰ This is a more specific requirement than for SG 80 insofar as there must be mechanisms for guidance *within the enforcement bodies*. This would typically be in the form of guidance during inspection, or it could be at meetings or in dedicated written/electronic information from the enforcement bodies to the fishing fleet.

4.2.2 New PI on compliance

Table 4.3 New PI on **compliance**

| | SG 60 | SG 80 | SG 100 |
|---|---|--|---|
| a – Information | Qualitative information exists about compliance in the fishery. ³¹ | Some quantitative information exists about compliance in the fishery. ³² | Comprehensive quantitative data exist about compliance in the fishery. ³³ |
| b – Compliance with catch and gear restrictions ³⁴ | Most important regulations are largely complied with. ³⁵ | All important regulations are largely ³⁶ complied with. ³⁷ | All important and other regulations are consistently complied with. |
| c – Compliance with ETP, VME and shark finning regulations | Most important regulations are largely complied with. Shark finning does not take place. | All important regulations are largely complied with. Shark finning does not take place. | All important and other regulations are consistently ³⁸ complied with. Shark finning does not take place. |
| d – Systematic non-compliance | | There is no evidence of systematic non-compliance. | |

³¹ ‘Qualitative’ would typically be general statements about the general level of compliance made by the enforcement authorities.

³² ‘Quantitative’ would here refer to figures on general infringement rates, e.g. number of infringements per inspection over a year.

³³ By ‘comprehensive quantitative data’ is meant inspection/infringement statistics broken down on entities such as fleets, species, geographical sub-regions and types of infringement. This could also include peer reviewed literature about compliance in the fishery.

³⁴ There are two axes here: i) the types of regulations to be complied with (important and other), and ii) the degree of compliance (largely or consistently complied with).

³⁵ By ‘important’ is meant regulations that have a direct bearing on the sustainability of the fishery, such as those related to quota limits, gear restrictions and discards. As an example, if quota and gear restrictions in a fishery are largely complied with but a discard ban is not, SG 60 is achieved.

³⁶ Or consistently.

³⁷ For SG 80 to be met, there needs to be a general level of compliance (albeit not 100 %) with quota and gear limitations and, if applicable, discard bans.

³⁸ ‘Consistently’ should be changed to ‘largely’ if we acknowledge that compliance is never 100 % in a fishery, which is argued above. However, this might be seen as lowering the bar, so it will probably not be a good idea.

4.2.3 High-level version of the options presented for public consultation

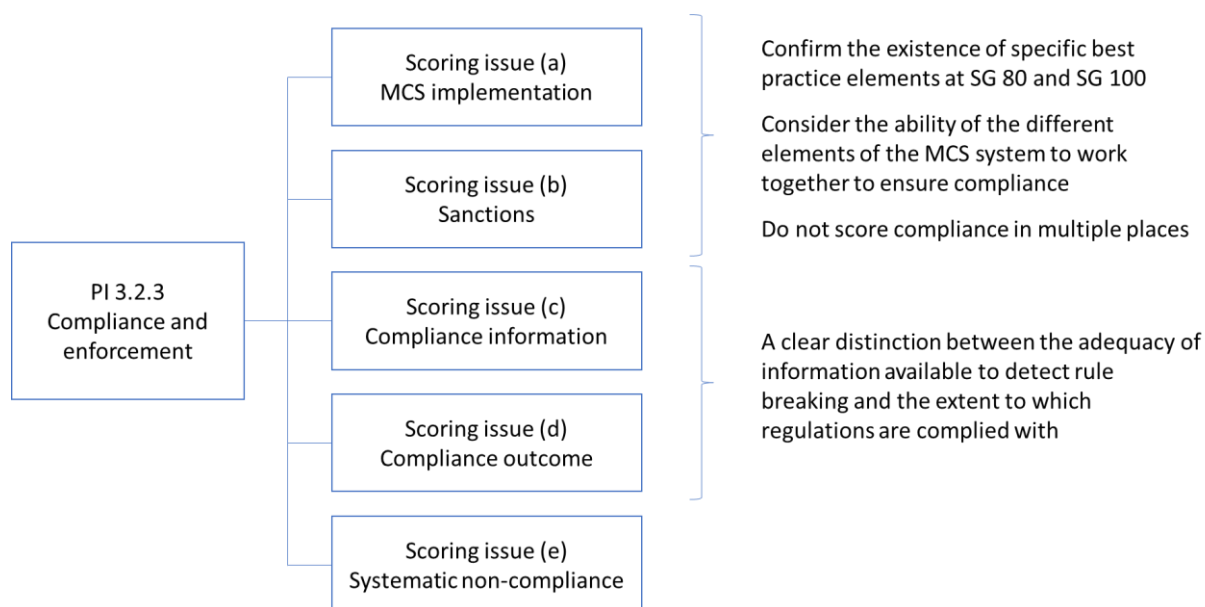
Below is the high-level version of the options for revision as they were presented at the public consultation (online survey).

Option 1: Single revised PI

This option would retain the existing structure of scoring issues under PI 3.2.3, but rewrite some of the scoring guideposts to ensure that assessment teams:

- Confirm the existence of specific best practice enforcement elements at SG 80 and SG 100;
- Consider the ability of the different elements of the MCS system to work together to ensure compliance;
- Do not score compliance in multiple places, e.g. not using compliance rates to determine the effectiveness of the MCS system; and
- Make a clear distinction when scoring compliance between the adequacy of information available to detect rule breaking, and the extent to which regulations are complied with.

Conceptual view of the proposed option:



Option 2: Two PIs

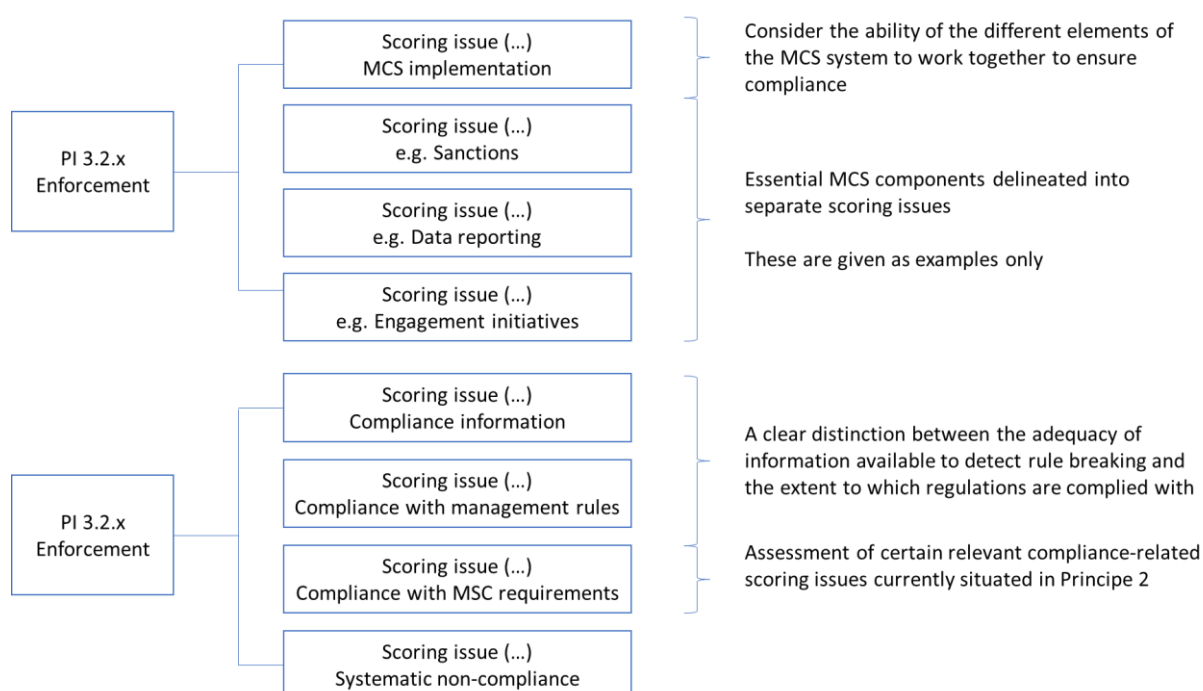
This option would create two separate performance indicators to assess the monitoring, control and surveillance system and compliance with management rules respectively. This

new structure would retain some of the existing scoring issues, and also include new ones to allow more detailed consideration of the design of monitoring control and surveillance systems.

Changes under this option would include all of the elements listed for Option 1, and also require that the essential components of monitoring, control and surveillance are considered in separate scoring issues. For instance, this could include separate scoring issues on surveillance activities, sanctions, engagement initiatives, data reporting and management review.

Furthermore, this option would require that compliance-related scoring issues currently situated in Principle 2 be assessed under Principle 3. This would include requirements on the prevention of shark finning, limits for endangered, threatened or protected (ETP) species and avoidance of vulnerable marine ecosystems (VMEs).

Conceptual view of the proposed option:



5 Consultation feedback

5.1 The sample

There were 29 respondents in the survey.³⁹ They identified their stakeholder categories as follows: non-governmental organisations (NGOs): 11; seafood supply chain: 7; academia/science: 3; conformity assessment/accreditation: 2; governance/management: 1; and others: 5. The geographical coverage was Europe: 21; North America: 4; Asia: 3; and Oceania: 1.

Hence, nearly two of three respondents came from either NGOs or the seafood supply chain, which are both vocal interest groups. Notably, there were no respondents from the harvesting industry and only three from academia/science, two from CABs and one from governance/management. The latter groups are the ones most involved in practical assessment work⁴⁰ – in that sense, ‘assessment practitioners’ are underrepresented in the sample.

5.2 The need for revision

Statement: ‘I think the MSC should make changes to its Principle 3 requirements, regardless of whether changes follow the approach described in Option (a) or Option (b).’

75 % of the respondents said they either agreed (29 %) or strongly agreed (46 %) to this.⁴¹ 12 % said they neither agreed nor disagreed and (4 %) or chose the option ‘don’t know’ (8 %), while the remaining 12 % either disagreed (8 %) or strongly disagreed (4 %). Hence, three of four respondents agreed that the P3 requirements should be revised; nearly every second respondent strongly agreed with this. Just above one in ten disagreed. The legitimacy for revision among the respondents is high.

About half of the respondents added a comment to their response, but rather than justifying their views, the majority of these just took the opportunity to suggest even stronger requirements, especially related to systematic non-compliance. Two of those who strongly agreed that revisions should be made, justified this as follows:

³⁹ 33 people registered, but only 29 completed the survey.

⁴⁰ CABs conduct assessments, and scientists, managers and the fishing (harvesting) industry are the stakeholders always interviewed at site visits (in addition to NGOs, if there are any that take an interest in the specific fishery, which there is not always).

⁴¹ Filtered response with duplicates removed.

The MSC standard and P3 specifically are weak with regards to MCS/control and enforcement, which ultimately is the principal means of verifying whether regulations and management controls are adhered to. Effective control and enforcement is crucial if fisheries are to be sustainable. The focus on P1 and P2 are undermined if P3 doesn't put equal focus on the management (and operational) aspect of fishing. (stakeholder category: 'other')

There are inconsistencies in the application of the standard and the current approach means it is likely that some great MCS measures being applied are not fully recognised and conversely, some deficiencies in MCS related to shark finning and interactions with ETP species and habitats are not being picked up resulting in the certification of components not demonstrating best practice. (stakeholder category: NGO)

While both the big (presumably 'opposing') interest groups – the NGOs and the seafood supply chain – agreed that revisions are necessary, the 'practitioners', the CABs, disagreed. The two CAB representatives responded as follows: 'Leave it alone. The current system is adequate. But add Risk analysis and add shark finning to compliance'; and 'If it's not broke don't waster precious resources that could be better used elsewhere fixing it.' A plausible interpretation of this is that the big interest groups welcome what they (presumably) see as making the Standard even more rigorous and/or fair, while CABs fear any revision will only increase their work burden (without increasing revenues).

5.3 The effectiveness of the proposed revisions

Statement: 'The option seems effective at resolving the identified issue(s) consistently and reliably.'

For option A, 38 % of the respondents either agreed (25 %) or strongly agreed (13 %) to this, while 12 % neither agreed nor disagreed (8 %) or responded 'don't know' (4 %). 50 % either disagreed (42 %) or strongly disagreed (8 %) For option B, 30 % either agreed (13 %) or strongly agreed (17 %). 21 % had no particular opinion (13 % responded 'neither agree or disagree' and 8 % 'don't know') while 51 % either disagreed (13 %) or strongly disagreed (38 %).

Hence, half of the respondents do not find that the options for revision seem effective at resolving identified issues consistently and reliably (categorised as 'effectiveness' by the MSC). NGOs generally express concern that the original SI on systematic non-compliance is not proposed revised (e.g. by introducing SG 60 so that a fishery can fail on this SI), and fear that the transfer of compliance-related issues from P1 and P2 to P3 will lead to reduced attention to these issues. As one respondent puts it.

Several of the NGO representatives, in what appears to be a coordinated response, state that they disagree with the proposed revisions, but nevertheless say in the comment section that some of the proposed revisions make sense, like splitting the compliance SI into one information and one outcome SI.

Notably, the two CAB representatives were less sceptical to the two specific proposals for revision than they were to the idea of change in general (see above). One of them says he/she neither agrees nor disagrees with the proposed revisions and comments that the existence of risk-analysis processes in compliance administrations should be included. The other CAB representative strongly agrees that option A would make the Standard more effective, but strongly disagrees that this is the case with option B. He/she strongly opposes option B because ‘Two separate scoring indicators increases complexity when MSC is trying to reduce it elsewhere.’

While option A mostly attracted agree/disagree responses, option B largely attracted *strongly* agree/*strongly* disagree. Quite a few respondents report positively on the options, in particular option B:

Option A can be used but there are questions about how much positive change this would bring, however, Option B has greater potential to improve compliance against environmental impacts from P2 and overall compliance (stakeholder category: seafood supply chain; response: neither/agree⁴²).

Option B appears more robust because it has greater differentiation between the components of MCS systems, which can be individually good or bad. For example sanctions can be applied effectively, but the data collection system can be poor. Differentiation in the scoring of the components assists fisheries managers to target improvements (stakeholder category: other; response: disagree/agree).

Option B seems more thorough than A but crucial to assess ETPs also under P2, otherwise crucial information would be lost (stakeholder category: academic/scientific; disagree/neither).

The option (b) seems to be much [more] rigid for effective MSC management (stakeholder category: NGO; response: agree/strongly agree).

[Our organisation] supports both options but is more supportive of Option B in terms of resolving the current problem that the Standard does not reflect global best practice and may lead to inconsistent assessments (stakeholder category: NGO; response: agree/strongly agree).

⁴² I.e. ‘neither’ to option A and ‘agree’ to option B.

Apart from criticism that the proposed revisions do not go far enough, option A also receives generally positive comments:

Option A seems like the most effective option. In particular because it ensures that CABs (i) do not score compliance in multiple places; and (ii) make a clear distinction when scoring compliance between the adequacy of information available to detect rule breaking, and the extent to which regulations are complied with (stakeholder category: NGO; agree/disagree).

Hence, opposition to the proposed revisions appears significant at first sight, with half of the respondents stating that they do not believe the proposals will be effective. However, there is little criticism of the proposed revisions as alternatives to the existing PI 3.2.3 (corroborating the conclusion above that respondents generally welcome change); they are largely criticised for not being far-reaching enough. Some criticise the proposals for not being specific enough or lacking guidance (which was a deliberate choice at this stage), while some criticism was based on misunderstandings.⁴³ Apart from this, comments are generally positive – even some of those critical to both options say that they find some elements reasonable, such as separating compliance into an information and an outcome PI.

5.4 The feasibility of the proposed revisions

Statement: ‘The options seem possible to implement.’

63 % of the respondents say they agree (46 %) or strongly agree (17 %) with this statement as far as option A is concerned. 25 % have no particular opinion (17 % neither agree nor disagree, while 8 % ‘don’t know’), while 12 % disagree (4 %) or strongly disagree (8 %). As regards option B, 37 % either agree (33 %) or strongly agree (4 %). Again, there is a large portion with no clear opinion: 25 % – 4 % neither agree nor disagree, and 21 % ‘don’t know’. 38 % disagree (17 %) or strongly disagree (21 %) that this option is easy to implement.

Hence, compared to the question about effectiveness, discussed above, there is larger difference in the respondents’ views’ on the two option when it comes to their feasibility. They generally view option A as easy to implement – only 12 % disagree with that. Option B is more difficult to implement according to 38 % of the sample. Hence, there is a clear distinction between how respondents view the feasibility of the two options, but agreement is

⁴³ For instance, some NGO representatives state, again in what appears as a coordinated response, that the compliance outcome PI is missing in option 1, which is not correct. The same respondents express dissatisfaction with the fact that cumulative impacts on ETP species and VME habitats are not addressed in the proposals. These are not issues of enforcement/compliance and will still be treated under P2.

stronger that option A is easy to implement than that option B is difficult to implement. Here are a few representative quotes from the comments section:

Option a: The option seems possible to implement if careful wording for the scoring issues, associated SA clauses and associated guidance is developed. In principle, this is not a major change to the existing structure (i.e. adding a single scoring issue). [...] Option b: It would be impossible to combine the Principle 2 compliance related issues for shark finning (PI 2.1.2d, 2.2.2d), ETP limits (PI 2.3.1a) and VME protection (2.4.2d) into a single scoring issue (let alone a single PI) without lowering the bar. All of these scoring issues are complex and have multiple subclauses and extensive guidance. These are interconnected with the other ETP and Habitat PIs and these supporting connections have been implemented in previous standard reviews to encourage at least a minimum level of best practice. [...] The ETP and Habitat PIs potentially involve harmonisation with overlapping fisheries which could not be done effectively if combined into a single P3 scoring issue. This is especially relevant for assessing and scoring cumulative impacts for ETP species and VME habitat impacts. The current proposal does not take this into account (stakeholder category: NGO; response: agree/strongly disagree).

Given that both are focussed on making the logic of the Standard more coherent and on ensuring that best practice is reflected in MCS, we equally support both options in terms of possibility to implement (stakeholder category: NGO; response: agree/agree).

In theory both options could be implemented, but will be strongly reliant on the availability of information from the fisheries management bodies, and the experience of the assessor. We recently completed 2 evaluations of MCS systems in countries that are regarded as well advanced in MCS terms, but which in practice are not able to determine current compliance rates (arguably we can only really know non-compliance rates). Secondly, the evaluations point to MCS information collected by authorities often not being well designed to support analysis of compliance, as opposed to enabling day-to-day monitoring and control. There appears to be a greater amount of input required for option b, which will have time implications, but the result should be more robust. But how much time should be spent by auditors completing PIs when analysis and interpretation of available data is needed? It is almost certainly not going to be in the perfect format to support an audit (stakeholder category: other; response: agree/agree).

It could create a little more administration so may take longer to assess, but could potentially also save time by being clearer and less ambiguous for assessors (stakeholder category: NGO; response: strongly agree/strongly agree).

Notably, the CAB representatives generally agree that the options are possible to implement: ‘They are both possible but adding a PI will add complexity and cost (stakeholder category: conformity assessment/accreditation; response: agree/agree).

5.5 The affordability of the proposed revisions

Statement: ‘The option seems affordable for fisheries given the economic resources available to them.’

As regards option A, 41 % of respondents say they agree (33 %) or strongly agree (8 %). 54 % either do not agree or disagree (25 %) or do not know (29 %), while 4 % disagree and none disagree strongly. For option B, 33 % agree (29 %) or strongly agree (4 %). 62 % neither agree or disagree (29 %) or do not know (33 %). Also for this option, 4 % disagree and none disagree strongly.

Hence, more than half of the respondents have no opinion on this. The rest largely agree, and nearly nobody disagrees. Here are a few quotes from the sample:

There is no indication that either of the proposed options would entail extra costs for a fishery – the options simply clarify and/or reorganise existing requirements. Potential additional costs to fisheries may be incurred if the compliance or monitoring requirements are made more rigorous (e.g. requiring increased compliance monitoring), however without more detailed information on the wording of the scoring issues and associated guidance this cannot be determined. At any rate this should not be an issue for the MSC. There are a range of cost-effective options for fisheries to implement effective MCS systems and the MSC should focus on the outcome rather than the potential cost (stakeholder category: NGO; response: don’t know/neither).

Both options are affordable. Improving MCS systems needs to be a priority for all commercial fishing operators. MCS systems, especially tracking systems, are for the most part affordable and need to be mandatory for commercial fishing vessels. Where human observers don’t have a presence EM system should be used. Many organisations and governments offer funding to implement EMS and tracking systems (stakeholder category: seafood supply chain; response: agree/agree).

As MSC has not provided any wording for the proposed options we can’t evaluate the proposal and thus can’t determine whether or how much costs would be imposed on the fisheries to implement these; nevertheless we think that implementation of long overdue best practice on monitoring and surveillance should be prioritised to maintain credibility of the program (stakeholder category: NGO; response: agree/agree).

Both options will require more time in terms of the fishery needing to prepare, for the audit team to complete, possibly for implementing changes to improve scoring. This will have cost implications which, depending on the complexity of the fishery, will vary. A coastal fishery under the management control of a single jurisdiction will be easier to assess than a fishery targeting migratory pelagics through different jurisdictions. But as MCS is the primary means of verifying adherence to regulations (and certification conditions), increased costs in the short term shouldn’t be seen as a major obstacle. One challenge will be though how to account for the big differences

between MCS systems in different countries, and the potential cost of organising information to support an audit, and for CABs of completing an audit (stakeholder category: other; response: neither/neither).

Either option should not have a significant economic impact to fisheries entering MSC assessment (stakeholder category: NGO; response: agree/agree).

5.6 The accessibility (new) of the proposed revisions

Statement: ‘It seems that the option would not prevent new fisheries from joining the MSC program.’

54 % agree (50 %) or strongly agree (4 %) with this statement as far as option A is concerned. 37 % either do not agree or disagree (29 %) or do not know (8 %), while 8 % disagree and none disagree strongly. For option B, 42 % agree (38 %) or strongly agree (4 %). 50 % do not agree or disagree (33 %) or do not know (17 %). Again, 8 % disagree, and none disagree strongly.

The results are similar to those in the last section regarding affordability, but slightly more respondents agree that the accessibility of new entrants is not prevented by the proposed revisions, and slightly fewer respondents have no opinion. Nearly nobody disagrees. Here is what the respondents say:

Options (a) and (b) do not seem to indicate more stringent MCS requirements which would potentially prevent new fisheries to join the MSC programme (stakeholder category: NGO; response: neither/neither).

Neither of the proposed options would impact the accessibility of the program for fisheries unless new wording would require a higher bar for surveillance and monitoring which would impact assessments and scrutiny of assessors with regard to the compliance of a fishery (stakeholder category: NGO; response: neither/neither).

Neither of the proposed options potentially raises the MSC bar which may prevent new fisheries from joining the MSC program. That being said, Option a is a potential clarification which may result in more clarity among assessors in scoring compliance under SIc, thereby making it more difficult for fisheries with poor compliance to receive a higher score. If more conditions are set for some fisheries based on better clarity among assessors, this has potential to better drive improvements in compliance through effective conditions. However, the SG60 guidepost is sufficiently lenient (e.g. “Fishers are generally thought to comply...”) that few fisheries would be prevented from passing at SG60. P3 aggregate scores for most fisheries are relatively high so it is also very unlikely that this change would result in more P3 aggregate failures (stakeholder category: NGO; response: agree/agree).

Auditing MCS systems, particularly the effectiveness of the systems, will rapidly identify a number of systems that exist but don't work well. Many fishing operations are aware of this (as are some authorities) and they may be reluctant to join the MSC program if the perception is that MCS failures will be publicised. However, compliance and transparency in commercial fisheries are two of the management frontiers, this is a necessary area to improve (stakeholder category: other; response: disagree/disagree).

The use of more specific criteria does not necessarily need to make it harder to join the MSC program if the scoring is made proportionate to the scale of risk (stakeholder category: NGO; response: agree/agree).

Neither would seem to render it impossible for new fisheries to join, although conditions may need to be set that would incur additional costs for some fisheries (stakeholder category: NGO; response: agree/agree).

5.7 The accessibility (retention) of the proposed revisions

Statement: 'It seems that the option would not prevent current fisheries from staying in the MSC program.'

For option A, 54 % of respondents agree with this statement; nobody strongly agrees. 42 % either do not agree or disagree (29 %) or do not know (13 %), while 4 % disagree and none disagree strongly. For option B, 42 % agree, and none strongly agree. 54 % do not agree or disagree (29 %) or do not know (25 %). Again, 4 % disagree, and none disagree strongly.

The pattern is the same as for the two previous statements, on affordability and accessibility for new entrants: nearly nobody disagrees; around half of the respondents agree (slightly more for option A than for option B) and half have no particular opinion (slightly more for option B than for option A). There were fewer substantive comments to this statement, but here are two examples:

It is assumed that the changes asked for in option A would not be considerable enough to suspend certifications. Option B, may cause certifications to be suspended, however, implementing best practice in MCS, which may mean installing new systems, should be promoted. Operators should be able to prioritise MCS within the 3 years given to comply so that they keep the certification (stakeholder category: seafood supply chain; response: agree/disagree).

Hopefully those fisheries that have been certified have reasonable MCS systems in place, but as per above comment, the reality of MCS effectiveness is that many fisheries are not very well enforced and there may be cases where fisheries fail on the MCS PIs (stakeholder category: other; response: neither/neither).

5.8 Acceptance of the proposed revisions

Statement: 'I would accept the option.'

42 % of respondents agree (29 %) or strongly agree (13 %) to this statement for Option A. 21 % neither agree nor disagree (13 %) or do not know (8 %). 38 % disagree (17 %) or strongly disagree (21 %). For option B, 50 % of respondents agree (33 %) or strongly agree (17 %) to this statement for Option A. 12 % neither agree nor disagree (4 %) or do not know (8 %). 33 % disagree (8 %) or strongly disagree (25 %).

As follows, more people accept the options than not. Not unexpectedly, the pattern here is somewhat similar to respondents' assessment of the effectiveness of the proposed revisions, but interestingly, far more respondents declared that they accept the options than those who believed them to be effective.⁴⁴ Notably also, there is more support for option B than for option A, and less scepticism and lack of opinion on that option.

5.9 General comments

Around half of the respondents provided input to the general comments section of the questionnaire. The most prevalent themes were that the bar should be further raised; that more elements should be included (for example transparency and the social/human dimension of fishing); and that in the assessment of compliance social drivers should be considered in addition to deterrence. Here are a few examples:

Best practice has evolved substantially since 2008 when this PI was last revised and MSC requirements for certification with regard to monitoring and surveillance do no longer present global best practice and the program lacks adequate minimum requirements which have to be met thereby ensuring a minimum level of compliance and this being scored consistently by CABs. In this context the MSC Standard also has to be more prescriptive and describe explicitly these minimum requirements for meeting SG60 and thereby accessing the program. It is critical that the revised requirements for PIs in the next MSC Standard clearly address technological advances in recent years such as Remote Electronic Monitoring (REM) which provide cost-effective and practical solutions to implement best practice for MCS. Several NGOs have already published reviews on available options and made recommendations how electronic monitoring should be

⁴⁴ One non-substantive reason for this discrepancy (and potential contradiction in opinion) might be that the question about effectiveness is the first in the questionnaire and the question about acceptability second last, (before the general question whether there is a need for revision). Potentially, respondents perceive the proposals (especially option B) as unacceptable at first glance, but become more positively disposed towards them as the survey progresses and they become more familiar with them.

implemented for all fishing operations including transshipment. Today camera systems are available at moderate costs and have demonstrated being effective for all fishing operations and at all scales; these are not only effective in generating confidence into fisheries' compliance but also in providing cost effective supplements and/or alternatives to traditional monitoring methods via human observers and port inspections. MSC must provide minimum requirements at SG60 and clear guidance at SG80 and SG100 for scoring of MCS system including but not limited to • Electronic vessel tracking systems (VMS, AIS) that are immediately accessible and have to remain switched on during all activities at all times • Electronic catch documentation – e-logbooks, and other reporting of catch and bycatch that is submitted electronically, and accessible by fisheries managers; • Electronic monitoring systems are in place and accessible by fisheries managers; • On-board observers; • Port inspection and verification of catch information • Enforcement and deterrent mechanisms, including sanctions are another key component of MCS (stakeholder category: NGO).

Improvements to MCS should be a priority for all commercial fisheries and the MSC can ensure that it leads with MCS best practices. MCS is key to ensuring real transparency and traceability of products and for human welfare. More and more fisheries management bodies, national and international, are starting to recognise this and are addressing improvements to MCS systems. The MSC should seek to drive further improvements and improve the standard to give national and international management bodies a concrete target to aim for (stakeholder category: seafood supply chain).

Scope of “best practice”: We would be keen to understand how much precise guidance will be given to assessors once PI 3.2 is revised (under either option) on what constitutes “best practice MCS”. Clearly the Standard must avoid being overly prescriptive given its global scope, but there is a multitude of ways of measuring/evidencing both the effectiveness of an MCS system and compliance with it (ranging from digital vessel footprints to key informant interviews). Broad definition of best practice to include social evidence: Should the guidance confirm this best practice scope, we would be keen to ensure the inclusion of the rich body of evidence relating to social drivers of compliance, especially in small-scale resource use systems. Much of this literature base relates to compliance with Marine Protected Area regulation rather than broader fishery regulation, but it is highly relevant. The extent to which MCS systems allow for participation (i.e. through “community-based” enforcement), consider the legitimacy of management authorities (i.e. “legitimacy-based” motivations to comply) and the connection to fishers’ “relational wellbeing” are just some of the compliance factors described in this evidence base (Read et al, 2011; Crawford et al, 2004; Lubchenco, et al., 2016; Hauck, 2009; Oyanadel et al, 2020). Some studies prove that more straightforward, easily measured concepts such as the presence of incentives and visible enforcement presence can drive compliance (Arias et al, 2015; Di Franco et al, 2016). While the consideration of such varied evidence types would, of course, place an additional burden on assessors, should the Standard wish to maintain its role as a global leader in sustainability frameworks, care should be taken to ensure that the compliance observed in certified fisheries is

beyond a “surface level” outcome (and therefore is likely to be a more sustainable improvement) (stakeholder category: NGO).

For both Options, but especially for Option A this review would be an excellent opportunity to provide clear and visible examples of what constitute best practice measures for different fisheries, especially with respect to bycatch reduction, monitoring etc. (stakeholder category: academic/scientific).

6 General assessment

The main takeaway from the survey appears to be the following:

- There is widespread support in the sample for revision of PI 3.2.3.
- Half of the respondents have doubts about the effectiveness of the proposed revisions. Many of these would have liked to see even stricter requirements, especially in the systematic non-compliance SI. Some also fear that the transfer of compliance-related issues under P1 and P2 to P3 will lower the bar for certification. Many of those who are sceptical to the effects of the proposed revisions, still agree that some elements of the proposals are reasonable, in particular separating the existing compliance SI into one information and one outcome SI.
- More than half of the sample view option A as easy to implement, while less than half say the same about option B. Around a quarter have no opinion on this.
- Around half of the respondents have no opinion on whether the proposed changes are affordable and accessible for new entrants and fisheries already in the programme. The rest largely agree, and nearly nobody disagrees.
- For affordability and accessibility, less people have an opinion on option B than on option A. Slightly more respondents find option A more attractive than option B.
- More people say they accept the proposed revisions than not. Acceptance is higher for option B than for option A.

It is somewhat unexpected for this consultant that support for revision of PI 3.2.3 is so widespread, and that scepticism largely relates to the revisions not being extensive enough. It is also unexpected that the difference in the respondents' views on the two alternatives are not even greater than they are, considering how far-reaching option B is. Respondents generally assess the impacts of introducing option A as less significant than those of option B, but the differences are not dramatic. The exception is the feasibility of the revisions – far more view option A as easy to implement than option B. However, even though a majority in the sample have doubts about the effectiveness of option B, more people say they accept option B than option A.

The survey gives backing to the MSC's ambitions to revise PI 3.2.3 – as we have seen, there is wide stakeholder support for this move. Implementing option A also seems rather uncontroversial – the most significant opposition to this alternative is that it is not far-reaching enough. Splitting the current SIc into an information and an outcome SI is generally

supported, as is the proposal to make the separation between the enforcement, sanction and compliance SIs more distinct (although this is less frequently commented on in the feedback). It is also my opinion that these are the most urgent challenges associated with the current PI 3.2.3. The results of the survey strengthen this argument.

The big question is whether the MSC should go for the relatively safe option A, or make the bolder move of implementing option B. As we have seen, there is slightly more scepticism among the respondents to option B than to option A when respondents are asked about effectiveness, affordability and accessibility, but nevertheless more people say they support option B than option A. Overall, people have stronger opinions about option B – less people are without a particular opinion, and more people say they *strongly* agree or disagree (than simply agree or disagree) to the statements provided. It is my clear opinion that option B would make the Standard more rigorous than it is today, and more rigorous than option A would. It would not raise the bar substantively speaking, but it would spell out the current requirements in clearer and more auditable terms. By implication, and contrary to one of the respondent quotes above, that would also make it easier to harmonise among fisheries – the wording and structure of the PI would become more detailed (without actually raising the bar) and more precise. The result would quite likely be that more conditions are introduced on this PI. But presumably this is not seen as an argument for not implementing changes to the Standard; one of the reasons for the initiative to revise PI 3.2.3 was that the current PI is not capable of promoting best practice due to the lack of improvement conditions.⁴⁵

On the other hand, there are challenges with the implementation of option B, recognised by both the respondents and by this consultant – as said, this option is a bold move in that it splits a present PI into two. However, the challenges should not be exaggerated. Above all, the revision implies that assessment teams are forced to ask more detailed questions – these are questions that they should ask also under the current PI but which evidence shows are not asked in practice (or the evidence is not used in the scoring rationales). This would force assessment teams to take P3 more seriously and collect evidence of the same quality as evidence normally required for scoring P1 and P2. As shown by one of the comments in section 5.7, there is a large body of peer-reviewed literature about enforcement and

⁴⁵ Beyond this, I will not speculate about MSC policy, which is clear outside my mandate. But if the ambition is that there are *not* more conditions on PI 3.2.3 in the future than there are today, the wording of the SG 80 guideposts must be scrutinised with this in mind. Similarly, this must be done with SG 60 insofar as there is an objective that no more fisheries than today shall fail assessment on PI 3.2.3.

compliance in fisheries – as mentioned above, none of this seems to be used in MSC assessments. Hence, option B does not raise any bar – more than anything, it assists the assessment teams in evaluating enforcement and compliance in such detail as is actually required also under the current Standard, but not spelled out specifically in the guideposts.

That said, there will be an implementation ‘cost’ in that more detailed guidance needs to be developed, and CABs, assessors and peer reviewers might have to be trained and get used to the new structure of the PI(s).

More importantly, we do not know to what extent the information needed to score the more detailed guideposts of option B will be available from enforcement agencies. In my own experience, there is great variation even within a culturally similar management context such as northern Europe. Some countries’ enforcement agencies do not even want to interact with the assessment team; some provide brief statements (such as, ‘there are no issues in this fishery’); some give more detailed qualitative assessments of compliance in the fishery; some provide (or even publish) aggregate quantitative data; and yet others (albeit very few) customise data to the assessment team (such as breaking down statistics into geographic area, gear or nationality). Enforcement agencies seldom, if ever, list burden of work as a reason for not providing information about enforcement activities and compliance.⁴⁶ Instead, they would inform the assessment team that such information is confidential, either for strategic or data protection reasons.

Lack of sufficiently detailed data will lead to lower scores, which may be seen as unfair by fishers who cannot instruct their enforcement authorities to take certain enforcement actions or provide certain types of information. However, that situation is not different from P1 and P2 (or other P3): there are requirements that are beyond the fishers’ control – the fishers alone cannot secure MSC certification. However, if we look at the new PI on enforcement in the proposed option B, it is possible for a fishery to reach SG 60 with generally available information, i.e. without much input from enforcement authorities. It must just be established that fishers are obliged to provide information about their fishing activities (SIa – this can be documented by legislation/regulations); that physical inspections take place (SIc – this can be documented by inspection sheets provided by the fishery clients, legislation/regulations or other public documents); and that sanctions exist and are applied (SId – this can be documented through more general public records or media reports). The scoring issue where

⁴⁶ The ‘burden’ is normally greater on scientific and general management personnel.

input from the enforcement agencies is most needed is SIc, which requires that catch information submitted by fishers are actually used to assess compliance. However, a simple ‘yes, we do’ from the enforcement authorities would be sufficient evidence here. In the few cases where enforcement agencies refuse to talk with assessment teams at all, the general fisheries management bodies (like ministries and directorates) will normally be able to provide the necessary confirmation.⁴⁷ Also for SG 80, it is mostly qualitative information, not very detailed at that, which is required from enforcement agencies. As for the new PI on compliance in option B, only qualitative information is asked for at SG 60 – again, this is information that can usually be provided by the general fisheries management authorities. This also goes for all SIs at SG 80, except SIa, which requires that some quantitative information about compliance exists, which can sometimes be documented by the ministries/directorates but will usually require input from enforcement agencies. So if these are not willing to confirm that the data exist, a condition may be invoked. But again, it should not be very challenging to get authorities – whether enforcement agencies or general management authorities – to confirm that this information exists. (Note that this is an information SI – the following outcome SIs do not explicitly require the existence of quantitative data, but the assessment team might decide that such data are necessary for documentation, depending on the scale and context of the fishery.)

As to the question whether the revisions would increase the burden on stakeholders (here: enforcement authorities), this is not so much a question of work burden as of openness, as mentioned above. If an enforcement agency is willing to say anything beyond ‘yes’/‘no’, all it requires to provide the information necessary for the assessment team is to meet the team for half an hour or spend a few minutes sending over some statistics or a brief qualitative assessment of compliance in the fishery. A far greater challenge is the different stance taken by different countries’ enforcement authorities concerning openness. But again, this situation is not qualitatively different from the general situation with the MSC Standard as such. Many conditions require the fishery clients to ‘work with the authorities’ in order to see regulatory change. In cases where such efforts are fruitless, it is sometimes possible for the clients to meet the milestones and close the condition by own efforts, or in cooperation with other competent actors such as fisheries associations, research institutes, consultancy companies, environmental NGOs or international organisations. For instance, if no public information is

⁴⁷ The intention with SG 60 here is to single out those fisheries where fishers are obliged to submit catch information, but where this information is obviously not used by the authorities.

available on compliance, the client can collect all inspection sheets from its vessels and have an independent consultant systematise and analyse the data, possibly in light of other qualitative information about compliance in the fishery. Such an analysis might not have the official stamp of a public report from an enforcement agency, but on the other hand it might provide more detailed and valid data as well as more rigorous assessment. The way the proposed new SIs are worded, there is no absolute requirement that MCS activities are carried out by public authorities, although it might be implied. (The situation is similar in the current PI.) There should be room for some further reflection on these issues.

Finally, one substantial challenge remains with option B: how to handle artisanal and other small-scale fisheries. In the proposed new PI on enforcement, both reporting requirements and physical inspections must be in place for the fishery to achieve SG 60, and obviously there are fisheries where this is not deemed necessary. The question is whether it is possible to handle this by guidance that instructs CABs to assess fisheries in the context of their scale and intensity. That said, the situation is not qualitatively different from the current PI, where an MCS system must exist for a fishery to achieve SG 80 and be ‘comprehensive’ to achieve SG 100. Again, there may be artisanal – and other – fisheries where a (comprehensive) MCS system is not necessary to ensure compliance; see discussion in Section 3.1.

7 High-level impact pre-assessment (I.A.0)

7.1 Impact pre-assessment (I.A.0)

| Problem statement |
|---|
| <p><i>What is the problem under consideration?</i></p> <p>Best practice in monitoring, control and surveillance is not precisely defined in the requirements of Principle 3. This generality has led to inconsistencies in how MCS is scored by assessment teams, which in turn may have resulted in missed opportunities for the MSC Program to drive improvement through conditions.</p> <p>There is also a need to clarify the intent and application of compliance requirements. This has led to inconsistencies and ambiguity in how compliance is scored in assessments.</p> <p>This project also provides an opportunity to consolidate all compliance related scoring issues into Principle 3.</p> <p><i>Why is intervention necessary?</i></p> <p>The requirements and structure of the Standard are not optimal for driving change in fisheries. Change is needed to ensure that best practice – both as it exists now and in the future – can be captured effectively in assessments. Change is also needed to improve consistency and efficiency in how the issues of MCS and compliance are assessed.</p> <p><i>What is the business-as-usual scenario?</i></p> <p>There is a single PI in Principle 3 focused on the MCS system and compliance.</p> <p>MCS is a fundamental part of effective fishery management yet is assessed under just two scoring issues: one focused very generally on the MSC mechanisms or system in place; the other on the use of sanctions. These SIs allow for wide scope in terms of what is assessed, meaning that assessment vary in what is considered and the level detail covered. This allows for best practices can be overlooked, as there is no requirements for assessors to consider the key functional elements and dynamics of MCS that are important in defining best practice.</p> <p>In many assessments the compliance requirements are not being applied properly. Assessors are frequently assessing the <i>extent</i> to which fishers comply, rather than the <i>level of confidence</i> that fishers comply. Furthermore, the existing scoring guideposts confound the ability of the MSC system, the effectiveness of sanctions and the compliance of fishers. A number of compliance related SIs also exist outside of P3 - namely, ETP species limits, protection of VMEs and shark finning requirements – which creates an inefficiency and an opportunity for incoherent scoring between these SIs and the compliance SIs in P3.</p> |
| Intent statement |
| <p><i>What are the objectives?</i></p> <ul style="list-style-type: none">• Best practice in MCS is able to be captured clearly and consistently in the scoring requirements• Compliance-related scoring issues is clear in terms of their intent and correct application <p><i>What are the intended effects?</i></p> <p>The intended effect in terms of the Theory of Change is to optimise the structure of the Fisheries Standard so that it more explicitly recognises, and therefore drives, best practice in MCS.</p> <p>The intended effect in terms of implementation of the Standard is to ensure the scoring requirements are applied correctly in line with MSC's intent, in particular those related to compliance.</p> |

| Options |
|---|
| <i>What options are being considered?</i> |
| <p>Option 0: Status quo</p> <p>Option 1: Single revised PI</p> <p>Option 2: Two PIs</p> <p>Options are described here</p> |

| Impact Types | Description | Option 0 Status quo | Option 1 Single revised PI | Option 2 Two PIs |
|---------------|---|---|--|---|
| Effectiveness | <i>Is the change effective at meeting the MSC's intent?</i> | <p>a. The current PI sets only very general requirements for the MCS measures or systems; these do not prompt assessors to consider best practice features or dynamics of MCS, resulting in inconsistency in how MCS is assessed and how best practice is reflected in scoring</p> <p>b. Compliance scoring issues are frequently scored incorrectly due to misunderstanding of intent; compliance is also confounded in scoring of other SIs of PI 3.2.3</p> | <p>a. Revised SI will ensure best practice elements are considered explicitly at SG80 and SG100</p> <p>b. Compliance will be split across three SIs, ensuring a clear distinction between the adequacy of information available to detect rule breaking, and the extent to which regulations are complied with, and whether there is systematic non-compliance</p> <p>c. Revised scoring guideposts will clarify intent regarding compliance, including for systematic non-compliance</p> <p>d. Compliance-related SIs will not be incorporated into P3, although their intent remains clear</p> | <p>a. MCS and compliance are scored under two distinct PIs, reducing the omission or confounding of issues</p> <p>b. The essential elements of MCS will be considered in separate scoring issues, allowing best practice in these elements to be assessed separately and more clearly</p> <p>c. Compliance will be split across four SIs, ensuring a clear distinction between the adequacy of information available to detect rule breaking, the extent to which regulations are complied with (including compliance-related SIs moved from P1/P2), compliance with MSC requirement (e.g. shark finning) and</p> |

| | | | | |
|----------------------|--|--|---|--|
| | | | | whether there is systematic non-compliance |
| | <i>The option seems effective at resolving the issue(s) consistently and reliably.</i> | <i>1 = Completely disagree</i> | <i>4 = Agree</i> | <i>4 = Agree</i> |
| Acceptability | <i>Is the change acceptable to stakeholders?</i> | a. General support amongst survey respondents for change | a. Mixed support for this option from the survey consultation, although slightly more positive than negative b. Compared similarly to the alternative option c. Many survey respondents were keen to see significant revision of the systematic compliance SI as part of the proposed changes | a. Same as option 1 |
| | <i>The option seems acceptable to stakeholders</i> | <i>2 = Disagree</i> | <i>4 = Agree</i> | <i>4 = Agree</i> |
| Feasibility | <i>Is the change feasible to fishery partners?</i> | a. The status quo doesn't have any feasibility issues | a. This is a relatively simple change to existing requirements and shouldn't face major feasibility issues b. The intent is not changed, so the bar | a. This adds complexity to the requirements but should not face major feasibility issues b. Similar to option 1 point b, but even greater |

| | | | | |
|--|--|-----------------------------|---|---|
| | | | <p>should not change for new or existing certificate holders; however, more extensive assessment of MCS systems may increase burden on management agencies in the assessment process</p> <p>c. Survey respondents generally agreed this option would be possible to implement</p> | <p>concern about administrative burden under this option</p> <p>c. Several survey respondents had concerns on the incorporation of P1/P2 compliance-related SIs into P3</p> |
| | <i>The option seems technically feasible for fishery partners</i> | <i>5 = Completely agree</i> | <i>5 = Completely agree</i> | <i>4 = Agree</i> |
| | <i>The option seems affordable for fishery partners</i> | <i>5 = Completely agree</i> | <i>5 = Completely agree</i> | <i>4 = Agree</i> |
| | <i>The option seems possible given the management contexts of fishery partners</i> | <i>5 = Completely agree</i> | <i>5 = Completely agree</i> | <i>3 = Neither agree nor disagree</i> |
| | <i>The option seems doable within 5 years for fishery partners</i> | <i>5 = Completely agree</i> | <i>5 = Completely agree</i> | <i>4 = Agree</i> |

| | | | | |
|------------------------------------|---|---|---|--|
| <p>Accessibility and retention</p> | <p><i>Does the change affect the accessibility and retention of fisheries in the MSC program?</i></p> | <p>a. The status quo doesn't current create a barrier to accessibility or retention</p> | <p>a. The intent is not changed, so in theory the bar should not change; however, in practice accessibility may be negatively affected where assessments can't allow as much 'wiggle room' in what is assessed and in how it factors into the scoring</p> <p>b. With more extensive assessment of MCS, a concern is that fisheries and/or management agencies will be reluctant to participate if MCS failures will be publicised</p> <p>c. Any increase in burden on management agencies in the assessment process may create a challenge to assessment, in particular in gathering information and in supporting conditions</p> <p>d. Cost of assessment or</p> | <p>a. Same comments as Option 1 in all respects – likely even more acute impacts in Option 2 given the additional complexity of the proposed requirements</p> <p>b. Greatest concern is on burden to authorities and how this might affect willingness to participate in assessments</p> |
|------------------------------------|---|---|---|--|

| | | | | |
|----------------|---|---|--|---|
| | | | audit is not expected to increase substantially | |
| | <i>The option seems accessible to fisheries seeking certification in the future</i> | 4 = Agree | 4 = Agree | 3 = Neither agree nor disagree |
| | <i>The option seems accessible to currently certified fisheries</i> | 4 = Agree | 4 = Agree | 3 = Neither agree nor disagree |
| Simplification | <i>Does the change simplify the Standard?</i> | a. Existing requirements aren't complex | a. No major change in complexity b. Clarification of compliance SIs may simply the requirements by avoiding confusion, despite the addition of a new SI | a. A new PI adds complexity, with additional SIs to assess b. The proposal has the advantage of bringing all compliance-related issues into one PI, and reduces the possibility of overlap and confounding between MCS- and compliance-related SIs c. It will be necessary to consider how this options affects the scoring of P3 overall |
| | <i>The option seems to simplify the Standard</i> | 4 = Agree | 4 = Agree | 2 = Disagree |

| | | | | |
|--------------|--|---|---|--|
| Auditability | <i>Is the change auditable by CABs?</i> | a. There are no outstanding auditing issues | a. Scoring language has not yet been developed for this option; however, It is not anticipated that the proposed revisions would create auditability issues | a. Scoring language has not yet been developed for this option; however, it is not anticipated that the proposed revisions would create auditability issues – that said, care would be needed in incorporating the compliance-related Sis from P1/P2 to ensure they remain auditable |
| | <i>The option seems to auditable by CABs</i> | 4 = Agree | 4 = Agree | 4 = Agree |

7.2 Consultant's views

I largely agree with the judgements of I.A.0.

Here are a few comments to the specific points of the review:

- **effectiveness:** No comments.
- **acceptability:** No comments.
- **feasibility:** It is correctly noted that several respondents expressed concern about the transfer of certain elements from P1 and P2 to P3, but I do not necessarily agree that this impacts the feasibility of option B. The respondents were more concerned that the bar for certification would be lowered. Also, it is not obvious that the revisions will lead to an increased administrative burden for management bodies. The main

challenge is confidentiality of inspection and compliance information and lack of openness of enforcement agencies – however, this situation is the same as today.

- **accessibility and retention:** It is correctly observed that assessment teams might be allowed less ‘wiggle room’ with more specific guideposts. I understand it might be assumed that this will slightly raise the bar for certification, but this will not necessarily be the case. The thresholds in the new SG 60 requirements are so low that the revisions will most likely not lead to more failures than today – they were deliberately set at this low level to ensure that the bar is not raised (although questions remain with regard to artisanal fisheries where enforcement/inspections are not considered necessary at all). The SG 80 requirements, however, might in their revised and more specific form lead to more conditions in fisheries.
- **simplification:** Option A adds one SI to the current PI and option B splits one PI into two; hence, the revision does not simplify the Standard in terms of reducing the number of SIs. However, it creates clearer lines in the structure of the PI and the wording of the guideposts and in that sense makes the Standard easier to handle for assessment teams. In turn, it also creates more predictability for fishery clients and stakeholders as it becomes clearer what is required to meet the guideposts of the PI.
- **auditability:** It can be argued that the revision will improve the auditability of the guideposts, as it is made clearer under which SI compliance is to be scored. It also creates a clear separation between information and outcome requirements. The distinction ‘most important’/‘all important’/‘all important and other’ (regulations), and ‘largely’/‘consistently’ (complied with) also helps assessment teams distinguish between different types of infringements, although guidance has to be provided to ensure consistent scoring.

I think all the ‘scores’ are acceptable, but I would consider raising the scores for auditability for both option A and option B to 5.

8 Revision of options to clarify the systematic non-compliance scoring issue (current SI 3.2.3d)

The current SI_d only exists at SG 80, and the guidepost reads as follows: ‘There is no evidence of systematic non-compliance in the fishery.’

As seen in Chapter 4, the most common criticism by survey respondents of the proposed options for revision was that no changes were suggested for the systematic non-compliance SI. However, it is a clear instruction from the MSC for the present consultancy (cf. ToR 4/9/2020) that SI_d shall continue to be scored at only SG 80, so this option will not be further explored.

Two questions are pertinent:

- Can the guidepost be rephrased to avoid the double negative?
- Whether the guidepost is rephrased or not, should further guidance be provided?

First, we can ask whether there is need for a separate SI on systematic non-compliance at all. In the current PI 3.2.3, it makes sense to have that since SI_c, by its wording, is not intended to score the level of compliance, only the level of certainty (that fishers comply). In fact, SI_d is the only place in the existing PI where the level of compliance can be addressed, although it only contains two ‘alternatives’: systematic non-compliance or no systematic non-compliance.

In Section 3.2, we suggested the following benchmarks for scoring compliance:

- **minimum requirements:** most important regulations are largely complied with
- **best practice:** all important (and most other) regulations are largely complied with
- **state of the art:** all important and other regulations are largely (or consistently) complied with

This is also the logic behind the outcome SI in the new option A scoring table, and the new outcome SIs in option B, which are thematically more fine-meshed than option A. ‘Important’ can, for instance, be taken to refer to regulations that have a direct, physical impact on the sustainability of the fishery, such as related to quota limits, gear restrictions and discards – too much or (potentially) too small fish is taken, or fish is being discarded if the rules are broken. As an example, if quota and gear restrictions in a fishery are largely complied with but a

discard ban is not, SG 60 is met but not SG 80. ‘Other’ regulations could be those that affect the sustainability of the fishery in a more indirect way, e.g. reporting requirements. Hence, a fishery might score 100 if quota limits, gear restrictions and discard bans are complied with, but not all reporting requirements.

The introduction of an outcome SI on compliance which includes at least broad categories for assessing levels of compliance (‘important/other’, ‘most/all’, ‘largely/consistently’) to a large extent captures those instances that the current SI_d is intended to cover, i.e. non-compliance that does not threaten the sustainability of the fishery but nevertheless is perceived as problematic since it is systematic. That could, e.g., be non-compliance with one specific reporting requirement (i.e. not all reporting requirements). Notably, this situation would lead to an 80 score on the new outcome SI, while it should lead to SG 80 not being met in the current SI_b. Hence, the bar could be raised for the new outcome SI, e.g. to ‘all important **and other** (i.e. all other) regulations largely complied with’, so that the difference between SG 80 and SG 100 is reduced to ‘largely’ vs. ‘consistently’ complied with.

Another option is to keep the systematic non-compliance SI. First, we can then also keep the proposed new outcome SI without further modification. Second, it would arguably have been ‘politically’ difficult to remove the systematic non-compliance SI, as stakeholders like environmental NGOs would most likely have seen this as potentially lowering the bar. The next question then is whether the double-negative should be kept or rephrased into the positive.

But what is the ‘positive’ variant of ‘there is no systematic non-compliance in the fishery’? Would it be ‘there is systematic compliance in the fishery’? ‘Fishers systematically comply’? Arguably, this becomes too similar to the new general outcome SI – what is the difference between ‘fishers largely comply...’ and ‘fishers systematically comply...’? Hence, it becomes difficult to understand why this extra SI is necessary. It actually seems more comprehensible in the context when phrased in the negative, and importantly, it also captures those instances of non-compliance that might potentially escape scrutiny under the new general outcome SI. So, if we accept to keep the existing guidepost, the question remains whether new guidance should be added. There is currently no guidance on the scoring of this SI, while there is one interpretation:

The intent behind the phrase no evidence of systematic non-compliance is that there is simultaneously adequate evidence to assess the compliance of the fishery and no evidence of infringements that occur regularly.

The interpretation states that in order to qualify for a ‘yes’ on this SI, there must be i) adequate information to assess compliance in the fishery; and ii) no evidence of infringements that occur regularly. Hence, what the interpretation basically does is to state that SI_d should be regarded as both an information and an outcome SI.⁴⁸ However, it does not provide any guidance on how ‘systematic’ should be understood, beyond that it should refer to infringements that ‘occur regularly’.

In order to provide any added value as compared to the new general outcome SI, guidance has to be provided to legitimate a separate SI on systematic non-compliance, but it cannot be very specific. Here is a suggestion, which links the observed non-compliance to the inability of enforcement bodies to deal with the situation (which might make sense or not):

For systematic non-compliance to exist in a fishery, there must be clear indications that a specific regulation is not complied with by a large number of fishers on a regular basis without the MCS system being able to halt the practice.

In addition to the concepts ‘a large number of fishers’ and ‘on a regular basis’, the keyword here is ‘a specific regulation’, which implies that the systematic non-compliance can be with any regulation, whether ‘important’ or ‘other’. (Alternatively, this could be phrased as ‘one or several regulations’.)

Figure 7: The proposed new compliance outcome SIs (option A)

| | | | |
|--|---|--|---|
| d – Compliance (outcome) ⁴⁹ | Most important regulations are largely complied with. | All important regulations are largely complied with. | All important and other regulations are consistently complied with. |
|--|---|--|---|

⁴⁸ This will be superfluous in the new PI structure as the general compliance SI is split into an information and an outcome SI.

⁴⁹ There are two axes here: i) the types of regulations to be complied with (important and other), and ii) the degree of compliance (largely or consistently complied with). ‘Important’ can, for instance, be taken to refer to regulations that have a direct, physical impact on the sustainability of the fishery, such as related to quota limits, gear restrictions and discards – too much or (potentially) too small fish is taken, or fish is being discarded if the rules are broken. As an example, if quota and gear restrictions in a fishery are largely complied with but a discard ban is not, SG 60 is met but not SG 80. ‘Other’ regulations could be those that affect the sustainability of the fishery in a more indirect way, e.g. reporting requirements. Hence, a fishery might score 100 if quota limits, gear restrictions and discard bans are complied with, but not all reporting requirements.

| | | | |
|---|--|---|--|
| e – Systematic non- compliance | | There is no evidence of systematic non- compliance. | |
|---|--|---|--|

Importantly, the systematic non-compliance SI will capture situations that ‘lie between’ SG 60 and SG 80 on the general outcome SI. To pass assessment on that SI, *most important* regulations have to be largely complied with, and to pass without condition, *all important* regulations must be complied with. To use the same example as above,

- A fishery where quota limits and gear restrictions are complied with, but a discard ban *not*, might achieve SG 60.
- A fishery where quota limits and gear restrictions *and* the discard ban are complied with, might achieve SG 80.⁵⁰
- However, a fishery where at least one ‘*non-important*’ regulation, e.g. a specific reporting requirement, is not complied with by a large number of fishers on a regular basis without the MCS system being able to halt the practice (while *all important* regulations are complied with), *will achieve SG 80 on SI_d (the general outcome SI) but not on SI_e (the systematic non-compliance SI).*

Hence, the systematic non-compliance SI becomes *a mechanism to capture regular non-compliance with regulations that do have a function in the overall management system, but do not directly threaten the sustainability of the fishery when not complied with.*⁵¹

⁵⁰ While not the issue here, SG 100 will be achieved if also all other regulations, including all reporting requirements, are complied with.

⁵¹ It must be noted that this is presumably not different from how the SI has been used by assessment teams up till now, but its function has not been explicitly defined in the Standard, Guidance or interpretations.

9 Impact assessment (I.A.1)

9.1 Option A

| Impact type | Risk (expected negative impacts) | Benefit (Expected positive impacts) |
|---------------|---|--|
| Effectiveness | No clear risks have been identified regarding the effectiveness of this option. | <p>A clear separation is made between the SIs, in that enforcement is scored under SIa, sanctions under SIb and compliance under SIc and SId. The revised version will enable more consistent scoring, which will lead to more fairness among fisheries and a better basis for harmonisation. The bar for certification is not raised, but opportunities for improvement might previously have been missed due to the unclear wording and structure of the existing PI. The new structure is intended to prevent that.</p> <p>A separation is made between an information and an outcome SI. The current PI does not have a dedicated place to score compliance outcome (i.e. the level of compliance in the fishery), except for SId (which only distinguishes between 'systematic non-compliance' and 'no systematic non-compliance'). The current SIc is by its wording a pure information SI as it asks for what documentation about compliance exists in the fishery (the level of certainty). As a result, assessment teams currently score the level of compliance (which they apparently see necessary to score even though it is not explicitly asked for in the current PI) 'haphazardly' across SIs a-d. The new structure ensures clear separation and for the first time creates a dedicated outcome SI on compliance.</p> <p>The bar for certification has not been raised, which is reflected in the wording of the SG 60 guideposts. However, the requirements to achieve SG 80 have been specified to capture situations where previously opportunities for improvement have been missed. As regards information, some quantitative information about compliance in the fishery must exist. As regards outcome, all important regulations must be largely complied with. While this seems to be approximately at the same</p> |

| | | |
|-----------------------|---|--|
| | | level of expectation as under the current PI, the revision makes it harder for assessment teams to escape one of these requirements and hence miss an opportunity for improvement in the fishery. Also, requirements regarding documentation are introduced where previously there were none. |
| Acceptability | Opposition to the revision is likely to be more related to differences in expectations to change in general than the contents of this specific revision. The extension of the PI with one additional SI might be perceived by CABs and assessors as 'more work' (reflected in the public hearing response) and by the fishing industry as 'more hurdles' (not reflected in the public hearing). Environmental NGOs might welcome the specific revision but nevertheless criticise the revision for not going far enough (reflected in the public hearing response). | Acceptance is believed to be relatively high as regards the contents of the revision as it does not involve any material change to the requirements for certification. |
| Feasibility | There are no specific risks to the implementation of this option. The only practical change is that it is now made explicit where information about compliance (information PI), and the level of compliance (outcome PI), are to be scored. | The revision can be easily and swiftly implemented. It does not require any changes in the fishery or in the burden on stakeholders. The required changes in the practice of CABs and assessment teams are minimal. |
| Accessibility | As the revision does not involve any material change in the requirements for certification, nor in the work burden of assessment teams or stakeholders, it is not believed to affect accessibility for new fisheries. | As the revision does not involve any material change in the requirements for certification, nor in the work burden of assessment teams or stakeholders, it is not believed to affect accessibility for new fisheries. There will be no increase in costs as a result of the revision. |
| Retention | As the revision does not involve any material change in the requirements for certification, nor in the work burden of assessment teams or stakeholders, it is not believed to affect the retention of existing fisheries in the programme. | As the revision does not involve any material change in the requirements for certification, nor in the work burden of assessment teams or stakeholders, it is not believed to affect the retention of existing fisheries in the programme. There will be no increase in costs as a result of the revision. |
| Simplification | The revision adds one SI to the current PI, which might be perceived by some | The revision adds one SI to the current PI and hence does not simplify the Standard |

| | | |
|---------------------|--|--|
| | stakeholders as making the Standard more complicated (see on 'acceptability' above). | in terms of reducing the number of SIs. However, it creates clearer lines in the structure of the PI and the wording of the guideposts and in that sense makes the Standard easier to handle for assessment teams. In turn, it also creates more predictability for fishery clients and stakeholders as it becomes clearer what is actually required to meet the guideposts of the PI. |
| Auditability | The revision will not negatively impact the auditability of the PI. | The revision will significantly improve the auditability of the guideposts under the PI, as it is made clearer under which SI compliance is to be scored. It also creates a clear separation between information and outcome requirements. The distinction 'most important'/'all important'/'all important and other' (regulations), and 'largely'/'consistently' (complied with) also helps assessment teams distinguish between different types of infringements, although guidance has to be provided to ensure consistent scoring. |

9.2 Option B

| Impact type | Risk (expected negative impacts) | Benefit (Expected positive impacts) |
|----------------------|---|--|
| Effectiveness | This option does not raise the bar for certification, but it will require more thorough and systematic review from assessment teams. No negative impacts related to effectiveness are expected. | The challenge with the <i>current</i> PI is that it poses rather strict overall requirements to enforcement and compliance, but it is not specific. Hence, scoring is inconsistent and opportunities for improvement are lost. The proposed revisions are not intended to raise the bar for certification, but they will introduce more specific requirements. While previously assessment teams could pick and choose between various indicators of enforcement and compliance, they are now required to consider more concrete indicators more systematically. In order to pass the new enforcement PI, fishers must be required to provide catch information, and this information must be used to assess compliance in the fishery – there must also be mechanisms for physical inspection in place. To pass without condition, reporting must have a level of detail, and there must be |

| | | |
|---------------|--|---|
| | | <p>inspections both on land and at sea. Further, a new requirement is introduced on guidance of fishers on how to avoid non-compliance.</p> <p>Under the new SI on compliance, the same changes apply as for option A, but in addition compliance with more specific rules previously under P1 and P2 are assessed. Requirements regarding documentation are introduced where previously there were none.</p> <p>In sum, this option significantly increases the effectiveness of the Standard if properly implemented. This is done without raising the bar for certification as such, but more thorough and systematic review will be required from the assessment team.</p> |
| Acceptability | <p>[same as for 'benefit'] Although the intent of the revision is not to raise the bar for certification – and the option will most likely not do that in practice either – it will probably be perceived among fishery clients and CABs/assessors as doing so. Similarly, environmental NGOs may see it as an improvement in terms of introducing stricter requirements. However, the results of the public consultation indicate that this is not the case. NGOs acknowledge that some changes are warranted, but generally take the opportunity to criticise the revisions for not being far-reaching enough. There is scepticism that moving certain elements from P1 and P2 will lower the bar for certification. This potentially reflects a view that P3 is less important or easier to pass than P1 and P2, which should not be the case.</p> <p>Notably, while respondents in the survey in general expressed a certain reluctance to drastic revisions, more people said they found option B acceptable than option A.</p> | <p>[same as for 'risk'] Although the intent of the revision is not to raise the bar for certification – and the option will most likely not do that in practice either – it will probably be perceived among fishery clients and CABs/assessors as doing so. Similarly, environmental NGOs may see it as an improvement in terms of introducing stricter requirements. However, the results of the public consultation indicate that this is not the case. NGOs acknowledge that some changes are warranted, but generally take the opportunity to criticise the revisions for not being far-reaching enough. There is scepticism that moving certain elements from P1 and P2 will lower the bar for certification. This potentially reflects a view that P3 is less important or easier to pass than P1 and P2, which should not be the case.</p> <p>Notably, while respondents in the survey in general expressed a certain reluctance to drastic revisions, more people said they found option B acceptable than option A.</p> |
| Feasibility | No new substantive requirements, except 'Guidance on compliance', are | This option involves splitting an existing PI into two, providing a higher number of |

| | | |
|-----------------------------|--|--|
| | <p>introduced and no new burden laid upon stakeholders, except those following from the new 'Guidance on compliance' SI. This SI exists only at SG 80 and SG 100, so it will not require any new action by authorities for fisheries to pass certification. The SG 80 requirement, which will lead to the introduction of a condition if not met, is that guidance on compliance must take place <i>somewhere</i> in the management system. For most fisheries, this requirement is met through general consultation mechanisms. The new PI will primarily reward those fisheries (with an SG 100 score) where guidance on compliance is provided by the enforcement agencies. In sum, this will hardly affect the feasibility of the option.</p> <p>CABs and assessors might initially see the revision as an extra burden and potentially challenging.</p> | <p>slightly more detailed SIs in the new PIs than in the old one. However, no new substantive requirements (except 'Guidance on compliance') are introduced, and no new burden laid upon stakeholders, except those following from the new 'Guidance on compliance' SI. This SI exists only at SG 80 and SG 100, so it will not require any new action by authorities for fisheries to pass certification. The SG 80 requirement, which will lead to the introduction of a condition if not met, is that guidance on compliance must take place <i>somewhere</i> in the management system. For most fisheries, this requirement is met through general consultation mechanisms. The new PI will primarily reward those fisheries (with an SG 100 score) where guidance on compliance is provided by the enforcement agencies. In sum, this will hardly affect the feasibility of the option.</p> |
| <p>Accessibility</p> | <p>The revisions specify requirements that were previously to a larger or lesser extent implicated by assessment teams. (There is one exception, the new 'Guidance on compliance' SI, but as stated under 'Feasibility' above, the bar is not set very high for this SI.) While little guidance existed on which indicators of effective enforcement and compliance should be taken into account (which led to inconsistent scoring), care must be taken to ensure that also the new requirements are assessed in the context of the scale and intensity of the specific fishery. For example, it is proposed as a requirement for unconditional pass that there are inspections both on land and at sea in the fishery. While this is a reasonable requirement in most fisheries, there might be small-scale fisheries where, e.g., inspections at sea are not considered necessary, or there are clearly no resources available. It can be argued that some level of external control with what goes on at sea is in fact a reasonable requirement</p> | <p>The revisions are not intended to make the MSC programme more accessible, i.e. to lower the bar for certification. The question is whether there is a risk that it will become more difficult for new entrants to access the MSC programme (see left column). The challenge is to maintain an appropriate level of flexibility, especially for small-scale fisheries. With proper guidance, that should be achievable.</p> |

| | | |
|-----------|--|--|
| | <p>in all fisheries. But this does not necessarily require the existence of a Coast Guard; in a small-scale fishery with no perceived compliance issues, it may be sufficient that a manager or researcher comes along on an occasional daily fishing trip to get a general impression of circumstances in the fishery. The point is, here as elsewhere, that a balance must be struck between general requirements and qualitative judgement. When the requirements become more specific (if not stricter), an appropriate level of flexibility must be maintained to ensure that the programme remains accessible to new entrants.</p> <p>The main risk with this option is that we do not know how challenging it will be to ensure such flexibility for small-scale fisheries.</p> | |
| Retention | <p>While the bar for certification is not raised, the revisions specify requirements that were previously to a larger or lesser extent implicated by assessment teams. While little guidance existed on which indicators of effective enforcement and compliance should be taken into account (which led to inconsistent scoring), care must be taken to ensure that also the new requirements are assessed in the context of the scale and intensity of the specific fishery. For example, it is proposed as a requirement for unconditional pass that there are inspections both on land and at sea in the fishery. While this is a reasonable requirement in most fisheries, there might be small-scale fisheries where, e.g., inspections at sea are not considered necessary, or there are clearly no resources available. It can be argued that some level of external control with what goes on at sea is in fact a reasonable requirement in all fisheries. But this does not necessarily require the existence of a Coast Guard; in a small-scale fishery with no perceived compliance issues, it</p> | <p>The revisions are not intended to make the MSC programme more accessible, i.e. to lower the bar for certification. The question is whether there is a risk that it will become more difficult for existing fisheries to remain in the MSC programme (see left column). The challenge is to maintain an appropriate level of flexibility, especially for small-scale fisheries. With proper guidance, that should be no problem.</p> |

| | | |
|-----------------------|--|---|
| | <p>may be sufficient that a manager or researcher comes along on an occasional daily fishing trip to get a general impression of circumstances in the fishery. The point is, here as elsewhere, that a balance must be struck between general requirements and qualitative judgement. When the requirements become more specific (if not stricter), an appropriate level of flexibility must be maintained to ensure that existing fisheries will remain in the programme.</p> <p>The main risk with this option is that we do not know how challenging it will be to ensure such flexibility for small-scale fisheries.</p> | |
| Simplification | <p>The revision splits one current PI into two, which might be perceived by some stakeholders as making the Standard more complicated (see on 'acceptability' above).</p> | <p>The revision splits one current PI into two and hence does not simplify the Standard in terms of reducing the number of PIs or SIs. However, it creates clearer lines in the structure and wording of requirements to enforcement and compliance. In that sense, it makes the Standard easier to handle for assessment teams, which in turn also creates more predictability for fishery clients and stakeholders as it becomes clearer what is actually required to meet the requirements related to enforcement and compliance.</p> |
| Auditability | <p>The revision will not impact the auditability of the PI negatively. While the more specific requirements found in the proposed new PIs must also be interpreted in the context of the specific fishery, the proposed revisions go a long way in making the old PI 3.2.3 guideposts more specific and auditable.</p> | <p>The revision will improve the auditability of the guideposts under the current PI, as a clearer separation is made between which SIs relate to enforcement and which to compliance. As for option A, it also creates a clear separation between <i>information</i> and <i>outcome</i> requirements. The distinction 'most important'/'all important'/'all important and other' (regulations), and 'largely'/'consistently' (complied with) also helps assessment teams distinguish between different types of infringements, although guidance has to be provided to ensure consistent scoring. Beyond the revisions that are proposed in option A as well, a number of more specific requirements are introduced for both enforcement and compliance in option B. While all specific requirements must also</p> |

| | | |
|--|--|--|
| | | be interpreted in the context of the specific fishery, the proposed revisions go a long way in making the old PI 3.2.3 guideposts more specific and auditable. |
|--|--|--|

10 Concluding remarks

The public hearing shows that the revision of PI 3.2.3 has general backing among stakeholders. Overall, there is less criticism towards option A, but more people say they support option B. Criticism seems to largely reflect either a more general opposition to change, especially if it increases the number of PIs or SIs in the Standard, or disappointment that stricter requirements were not proposed.

The proposed revisions are not intended to either raise or lower the bar for certification. The new SG 60 guideposts are worded to reflect the general lower standard for certification applied by assessment teams. The more specific SG 80 guideposts, and the requirement to assessment teams to review them all systematically, might capture instances where opportunities for improvement (i.e. conditions) were missed.

Option A takes care of the immediate needs and will significantly improve PI 3.2.3. Option B is a bolder move, which I also endorse. The MSC might fear giving the impression that the Standard is expanding, but it should be remembered that in the last revision of the Standard, the number of PIs under P3 were reduced from nine to seven. The most drastic change will now bring it back to eight.

That said, there is one major challenge with option B, namely to ensure flexibility for artisanal and ‘self-regulatory’ fisheries in general, where some of the required actions in the proposed new enforcement PI are not deemed necessary to maintain an acceptable level of compliance in the fishery. The challenge is not exclusive to this PI, as both the existing PI and the option A variant also require specific enforcement action, but it becomes even more apparent with one single PI devoted to enforcement exclusively.

It is possible to combine the two options in case option B is considered too drastic. One variant is to use option A with the new ‘Guidance on compliance’ SI (from option B) added. Including this SI would reflect trends in modern theories on compliance (see Chapter 3), as well as recent developments in some of the more advanced compliance systems.⁵² It would be

⁵² In Denmark, for instance, fishery inspectors are trained to look for areas of improvement during inspection, more than for infringements to be punished. This is in line with modern compliance/enforcement theories’ conception of inspectors more as ‘consultants’ than as ‘policemen’; cf. Section 3.1 above.

a progressive move by the MSC, showing the ecolabel as ‘in front’ and in line with recent trends in both literature and management practice.⁵³

Including the ‘Guidance on compliance’ SI in option A will lead to a total of six SIs under PI 3.2.3 (a-f). If this is considered too much, an alternative is to split the PI into two PIs, but without including the P1 and P2 elements that are in option B. That would give the following structure:

PI on enforcement:

- a – MCS implementation
- b – sanctions
- c – guidance on compliance

PI on compliance:

- a – information
- b – outcome
- c – systematic non-compliance

A general point to be kept in mind is to what extent the guideposts shall require action and/or information from enforcement agencies, and whether it would be allowable to replace this with action/information from other sources. This is particularly pertinent given the general trend (perceived by many assessors) that enforcement agencies are increasingly referring to confidentiality when asked for inspection and compliance information. As noted in the conclusion of Chapter 6 above, many conditions require fishery clients to ‘work with the authorities’ in order to see regulatory change. In cases where such efforts are fruitless, it is sometimes considered possible for the clients to meet the milestones and close the condition by own efforts, e.g. in cooperation with other competent actors such as fisheries associations, research institutes, consultancy companies, environmental NGOs or international organisations. This should be considered for enforcement and compliance as well, and

⁵³ This SI exists only at SG 80 and SG 100, so it will not require any new action by authorities for fisheries to pass certification. The SG 80 requirement, which will lead to the introduction of a condition if not met, is that guidance on compliance must take place *somewhere* in the management system. For most fisheries, this requirement is met through general consultation mechanisms. The new PI will primarily reward those fisheries (with an SG 100 score) where guidance on compliance is provided by the enforcement agencies.

possibly reflected in guidance. For example, if public information about compliance in the fishery is not available, the client can engage an independent consultant to systematise whatever information the client has, like inspection sheets, and analyse it in view of other qualitative information about compliance in the fishery. While such an analysis does not have the official stamp of a public report from an enforcement agency, it might actually provide more detailed and valid data as well as more rigorous assessment. The same is true for (social science) research on compliance in fisheries, which largely comprises empirical studies of compliance in specific fisheries around the world but is hardly (if at all) used at all in MSC assessments. A search for ‘compliance fisheries’ in the authoritative Web of Knowledge scientific article database yields 739 hits (as per 1 November 2020), and the number is increasing. While up until 2005 there was only a one-digit number of new articles, the average for the last decade is just above 50 – and increasing. In addition come articles from all the less prestigious journals not listed on the Web of Knowledge, and the grey literature, which is hardly ever used in MSC assessments either.

While relevant peer reviewed literature is not available for all MSC fisheries, far more documentation is available than currently used to score fisheries, and there is potential to require clients to collect more information as part of improvement conditions, as they often do under P1 and P2 conditions. In any event, taking into account that fisher behaviour is the ultimate outcome of fisheries management, ‘interviews during site visit’ (which is often cited as sole documentation under PI 3.2.3, often unspecified at that) is not satisfactory documentation. Far more evidence is required for the most important outcome indicators under P1 and P2, and it is time to take the documentation requirements for the most important outcome indicator under P3 more seriously as well.