



SCOPE CRITERIA

Fisheries Standard Review
Impact Assessment

April 2022

Tim Davies, Shaun McLennan, Miki Takada & Karin Mundnich

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1. IMPACT ASSESSMENT FRAMEWORK

The aim of impact assessment is to provide clear information on the impacts of the options developed to sort out the policy issues identified in the project inception. It serves as a basis for comparing options against one another and against the business-as-usual scenario, and identify a preferred option if possible. It does not replace decision-making but is used as a tool to support the decision-making process and underpin evidenced based decision-making, increasing transparency, making trade-offs visible and reducing bias.

Impact assessment should help to:

- Specify how proposed options will tackle the identified issues and meet objectives
- Identify direct and indirect impacts, and how they occur
- Assess impacts in both qualitative and quantitative terms.
- Help find perverse or unintended consequences before they occur.
- Where possible, make risks and uncertainties known.

This is achieved by following MSC's Impact Assessment Framework that outlines when and how to undertake Impact Assessment. This ensures an efficient, systematic and consistent approach to policy development to underpin a responsive, robust and credible program. In particular, the Impact Assessment Framework defines the different types of impact (see below) and a suite of methodologies best suited to assessing each type.

The impact types used in the Impact Assessment are defined as follows:

1. **Effectiveness:** The extent to which the change is deemed likely to be successful in producing the desired results and resolving the issue(s) originally identified.
2. **Acceptability:** The extent that the change is considered tolerable or allowable, such that the MSC program is perceived as credible and legitimate by stakeholders.
3. **Feasibility:** The practicality of a proposed change and the extent to which a change is likely to be successfully implemented by fisheries within a given setting and time period.
4. **Accessibility & Retention:** The extent to which the change affects the ability of fisheries (both currently certified and those potentially entering assessment in the future) to achieve and maintain certification (i.e., changes in scores, conditions and pass rates).
5. **Simplification:** The extent to which the change simplifies and does not further complicate the Standard such that it can be easily and consistently understood and applied.
6. **Auditability:** The extent to which the change can objectively be assessed by Conformity Assessment Bodies (CABs) and Accreditation Services International (ASI) to determine whether the specified requirements are fulfilled, and CABs can provide scores.

The Impact Assessment report presents the results of this process, whereby each of the options for proposed changes to the Fisheries Standard are tested to understand their potential effects across the six defined impact types.

2. CONTROVERSIAL UNILATERAL EXEMPTIONS AND DISPUTES

2.1 Problem statement

The MSC Program has criteria that are designed to exclude fisheries implicated in major governance issues. However, two of these scope criteria – i) controversial unilateral exemptions to an international agreement; and ii) disputes in fisheries - are not fit for purpose. These criteria necessitate a difficult and subjective judgement by the CAB as to when the ability of the management system is compromised. Moreover, in the case controversial unilateral exemptions, part of the criterion is duplicated in Principle 3. This is confusing and inefficient. The review phase of the FSR concluded that these scope criteria are problematic in their current form.

2.2 Objectives

The specific objectives of the project are to determine if, and how, the scope criteria on controversial unilateral exemptions and disputes in fisheries should be revised.

2.3 Options

2.3.1 Business-as-usual

Controversial unilateral exemption to an international agreement

This scope criterion requires that “The fishery shall not be conducted under a controversial unilateral exemption to an international agreement” and goes on to define what this means and how it should be defined.

Disputes in fisheries

In this criterion, the CAB must consider “whether the fisheries management regime (national or international system or plan) includes a mechanism for resolving disputes”. It must also consider whether disputes overwhelm the fishery enough to prevent it from meeting the MSC Fisheries Standard.

2.3.2 Proposed revision

It is proposed to relocate both scope criteria and preserve their intent in PI 3.1.1 at the SG60 level. This is achieved by moving the language of the current scope criteria into the scoring requirements and guidance. Furthermore, the terminology used has been clarified in the guidance to help address auditability challenges.

2.4 Summary of impacts

2.4.1 Impacts of business-as-usual

Controversial unilateral exemption to an international agreement

This scope criterion necessitates a judgement by the CAB as to when a series of thresholds are breached: does an exemption pose a sustainability concern, is that action controversial, and did it arise unilaterally? These judgements may be very difficult in practice. For instance, it may be difficult to say when an exemption is unilateral, as opposed to bi- or multilateral, or if it is controversial depending on what perspective it is seen from. Furthermore, the intent of the scope requirements also appears to be mirrored in the P3 requirements at the SG80 level, which is confusing.

Disputes in fisheries

There is direct overlap between this criterion and PI 3.1.1, where the team must determine whether the management system incorporates to a mechanism for the resolution of legal disputes. This duplication is confusing and inefficient.

However, the additional consideration of whether disputes overwhelm the management system is not required at SG60 under PI 3.1.1. This part of the scope criterion is potentially useful.

2.5 Impacts of the proposed revision

The relocation of the two scope criteria into PI 3.1.1 removes duplication between scope and scoring, therefore eliminating the confusion that existed previously and bringing a small but welcome efficiency to the assessment process. Importantly, by moving the requirements to the SG60 level, the MSC's intent with respect to these issues is not changed, i.e., major unresolved governance issues within a fishery are not compatible with MSC certification.

Auditability is improved by a number of small clarifications in the guidance that help interpretation of key terms. This includes clearer thresholds to determine a 'controversial unilateral exemption', and to recognise when a fishery is overwhelmed by a dispute.

2.6 Impacts

2.6.1 Overview of impacts

The impact assessment presented in Table 1 below is based on feedback from pilot testing and auditability review, STAC and TAB, and expert judgement of the project and outreach leads, senior colleagues, feedback provided by outreach co-readers and public consultation.

Table 1: Impact assessment reporting table for the issue of controversial unilateral exemptions.

	Description	Business-as-usual	Preferred option
Effectiveness	<i>Is the change effective at meeting the MSC's intent?</i>	It can be difficult for CABs to make the judgement of whether a fishery violates scope or not; it is not clear when thresholds are met There is confusion between what is not eligible under scope, but appears to be allowed at the SG60 scoring level	Removing the scope criterion would put the focus solely on scoring in PI 3.1.1, which would remove confusion, allow for more transparent consideration of the issue and likely allow more effective application of MSC's intent This option still requires a judgement by CABs regarding whether key terms are met ('controversial', 'overwhelmed'), although this is improved from the status quo by improved guidance
	<i>The option seems effective at resolving the issue(s) consistently and reliably</i>	2 = Disagree	4 = Agree
Acceptability	<i>Is the change acceptable to stakeholders?</i>	This issue was raised internally and by the independent adjudicators, and the need for change been supported by governance bodies; the status quo would likely not be accepted, although the strength of feeling is uncertain	Governance bodies and the Board showed support for the proposed changes The improvements to clarity are accepted by stakeholders, based on the public consultation feedback The response from public consultation was generally very supportive
	<i>The option seems acceptable to stakeholders</i>	2 = Disagree	4 = Agree
Feasibility	<i>Is the change feasible to fishery partners?</i>	The status quo is feasible	No change to feasibility is expected
	<i>The option seems technically feasible for fishery partners</i>	4 = Agree	5 = Completely agree
	<i>The option seems affordable for fishery partners</i>	4 = Agree	5 = Completely agree

	Description	Business-as-usual	Preferred option
	<i>The option seems possible given the management contexts of fishery partners</i>	4 = Agree	5 = Completely agree
	<i>The option seems doable within 5 years for fishery partners</i>	4 = Agree	5 = Completely agree
Accessibility and retention	<i>Does the change affect the accessibility and retention of fisheries in the MSC Program?</i>	The status quo may have small negative impacts on accessibility but not retention	No difference to the status quo in practical terms
	<i>The option seems accessible to fisheries seeking certification in the future</i>	4 = Agree	5 = Completely agree
	<i>The option seems accessible to currently certified fisheries</i>	4 = Agree	5 = Completely agree
Simplification	<i>Does the change simplify the Standard?</i>	The status quo is inefficient	This option removes more complexity than it adds and so is a simplification of the Standard
	<i>The option seems to simplify the Standard</i>	2 = Disagree	4 = Agree
Auditability	<i>Is the change auditable by CABs?</i>	The auditability of the status quo is difficult, as it is not clear when threshold levels for controversial or unilateral are reached	This option mainly improves efficiency rather than auditability; however, better guidance may mitigate some of the auditability challenges
	<i>The option seems to be auditable by CABs</i>	2 = Disagree	4 = Agree

2.6.2 Pilot testing and auditability review

The preferred option went for pilot testing and auditability review in September 2021. There were no issues raised in relation to any of the impact types (e.g., auditability, feasibility, acceptability).

2.6.3 Consultations

In April-May 2021, MSC’s governance bodies considered the reputational risks associated with making changes to requirements on controversial unilateral exemptions, disputes in fisheries and serious maritime crimes and provided instruction regarding the direction for the project.

During February-April 2022, stakeholders were able to provide feedback on the proposed Standard and associated program documents through an online survey. The survey was open to all stakeholders for 60 days and sought feedback on the effectiveness of the proposal in addressing the issues outlined in the problem statement, and whether they found the proposed changes to the Standard to be acceptable. This public review was the most comprehensive opportunity for stakeholders to provide input into the development of the new Standard. All feedback was analysed and is summarised in the section below.

2.6.4 Analysis of public consultation (Feb-Apr 2022)

Stakeholders provided input to the public consultation in the form of a Likert response and written feedback. Responses were generally very supportive of the proposed revision to incorporate the scope criteria into PI 3.1.1 of Principle 3. Stakeholders generally considered the proposal to be effective and found the proposed revisions to the requirements to be acceptable (Figure 1).

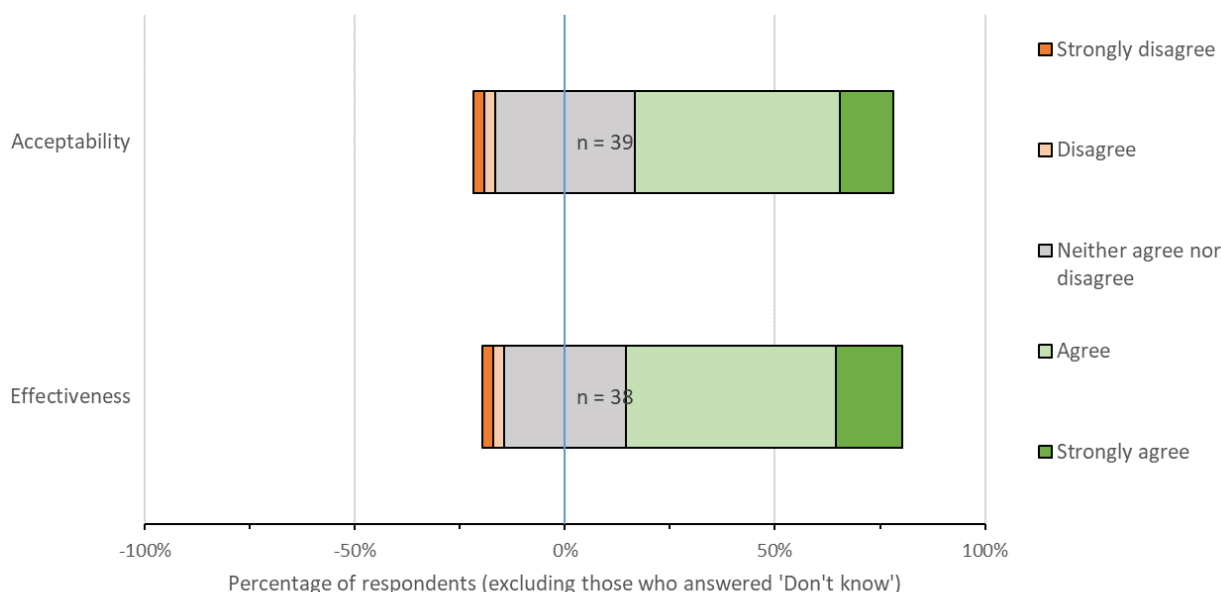


Figure 1 Proportion of responses to the public consultation on a five-point Likert scale with respect to controversial unilateral exemptions and disputes in fisheries. Respondents were asked whether they agreed with a statement regarding the effectiveness and the acceptability of the proposed revisions.

Most respondents provided a further written response to justify their response to the statements on the effectiveness and acceptability of the proposed revisions. These mostly fell into two themes: respondents found the proposal to be acceptable but considered there was room for further clarification; and respondents approved of the proposal and raised no concerns. Regarding the former, it is noted several of the points raised by stakeholders were in relation to Principle 3 requirements and definitions more generally and not within the scope of this project. No explanations were provided by the respondents who disagreed with the proposal. Table 2

summarises the main themes of the consultation responses and describes what action was taken to address the feedback.

Table 2 Themes of the consultation responses and action taken to address the feedback in relation to controversial unilateral exemptions and disputes in fisheries. The illustrative responses are direct quotes or partial quotes from the written text, some of which have been abbreviated for brevity.

Response theme	Illustrative responses	Action taken
Acceptable but with room for additional clarification	<p>“This is acceptable, however the language around 'national' within the context of PI3.1.1 and the other PI3.1.x indicators still requires clarification....”</p> <p>“Unclear. There is no sufficient explanation as to what constitutes "a unilateral exemption or dispute"”</p> <p>“MSC has also conveniently not included a much stricter interpretation of 'effective'...”</p>	Reviewed the areas noted as needed clarification; no changes made as the requirements and definitions correctly convey the MSC’s intent
Approval with no concerns raised	<p>“A good decision. P3 should be used more broadly, including in relation to the proposals above....”</p> <p>“It has been redundant having this in two places. We prefer when things are in the scoring guideposts rather than scope because it provides an opportunity for transparent assessment.”</p> <p>“We see no apparent issues with this change.”</p>	Noted and no further action required

2.7 Discussion and conclusion

The MSC Program has scope criteria that are designed to exclude fisheries implicated in major governance issues. These criteria are currently subjective and difficult to apply in practice, making them unfit for purpose. This project has re-drafted the requirements in a way that resolves these issues in a way that is effective and acceptable to stakeholders.

3. EXCLUDING ENTITIES CONVICTED OF SERIOUS CRIME

3.1 Problem statement

The Fisheries Standard does not provide clear instruction on whether certain activities, including illegal, unreported and unregulated (IUU) fishing, are incompatible with MSC certification, and what these might be.

The Standard includes guidance on how illegal, unreported and unregulated (IUU) fishing should be considered when scoring compliance in Principle 3. The MSC's intention is that UoAs be harvested legally and that IUU fishing is non-existent, or where IUU fishing does exist it is at a minimum level such that fish stocks can be managed at sustainable levels. This is focused on the ability of the monitoring, control and surveillance system to detect and sanction unwanted and illegal activities. However, it is not always clear what this level is, given the sprawling definition of IUU fishing to include serious activities as well as relatively minor misdemeanours. Furthermore, the Standard is mostly silent on its approach to undesirable forms of IUU fishing and other activities related to serious crime (e.g., trafficking, corruption).

In this respect, there is an inconsistency between the Fisheries and Chain of Custody (CoC) Standards regarding the intent towards IUU fishing. The CoC Standard requires that "The organisation shall not knowingly ship or receive product transported on, or received from, vessels listed on Regional Fisheries Management Organisations (RFMO) blacklists", but there is no equivalent requirement in the Fisheries Standard. This apparent conflict between the Fisheries and CoC Standard is confusing.

3.2 Objectives

This project is exploring the use of a scope criterion to exclude entities involved in illegal, unreported and unregulated (IUU) fishing and other serious maritime crimes.

3.3 Options

3.3.1 Business-as-usual

The MSC's intent regarding IUU fishing remains as described in Box GSA2 as guidance to assessment teams, i.e., that UoAs be harvested legally and that IUU fishing is non-existent, or where IUU fishing does exist it is at a minimum level such that fish stocks can be managed at sustainable levels.

3.3.2 Preferred option

Introduction of a new scope criterion that excludes entities that have been convicted for a serious crime in the past 2 years. A definition of 'serious' is proposed, aligned with that used in the UN Convention against Transnational Organised Crime, along with a list of applicable crimes, e.g., illegal fishing, trafficking, piracy.

This approach is consistent with similar scope criteria for shark finning offences and forced and child labour offences.

Following public consultation, the proposal has been revised to confirm that the entity removed is any vessel that has been implicated in a serious crime.

3.4 Summary of impacts

3.4.1 Impacts of business-as-usual

The MSC's lack of formal approach to excluding certain IUU activities and other serious crimes may not be perceived as acceptable by fishery partners and stakeholders. Furthermore, the apparent conflict between the Fisheries and CoC Standard is confusing. Fisheries can be certified with IUU fishing known to have taken place. This may be legitimate from a Fisheries Standards perspective but is inconsistent with the CoC Standard in specific cases where such activity has resulted in a vessel being included on an RFMO list.

3.4.2 Impacts of the preferred option

This option strengthens MSC's policy position on serious crime by providing a mechanism to exclude entities convicted of the most egregious activities, including criminal cases of IUU, from the program. This is slightly different from, although not inconsistent with, the current intent of the Fisheries Standard, which ultimately pushes for the elimination of activities that undermine sustainable fisheries management.

There is also improved consistency with the CoC Standard in cases where an IUU listing is also associated with a criminal conviction. However, potential for inconsistency remains where vessels are included on IUU lists for reason other than conviction, including where criminal prosecution has not been brought forward by a flag state. However, it is unlikely that such an inconsistency would arise in practice, as vessels included on IUU list would not typically be expected to be part of a client group looking to achieve MSC certification.

It is likely that this option will be widely accepted as it brings MSC policy closer to stakeholders' expectations on IUU fishing and serious crimes. The selection of applicable crimes is not expected to be controversial, as these are generally accepted to be highly undesirable activities that are subject of international conventions. Similarly, the definition of 'serious' is unlikely to be controversial, as it is the same used in the UN Convention against Transnational Organised Crime.

The use of this threshold for 'serious crime' has also removed the need for subjective selection of IUU fishing activities that are included on a list. In this proposal, any form of IUU fishing activity that results in the equivalent of imprisonment of four or more years is considered to be incompatible with MSC certification.

There are some auditability considerations around certain key terms, e.g., 'serious crime', 'conviction', 'entities'. These are mostly mitigated with clear definitions, and the language is consistent with existing scope criteria that perform a similar function for other activities (shark finning, forced and child labour). However, while the use of 'conviction' improves auditability, a trade-off is inconsistency in the global applicability the scope criterion. This stems from differences in whether certain serious crimes (but particularly IUU fishing) are dealt as criminal or civil offences in different legal jurisdiction, with the latter not typically resulting in conviction.

3.5 Impacts

3.5.1 Overview of impacts

The impact assessment presented in Table 3 below is based on feedback from pilot testing and auditability review, STAC and TAB, and expert judgement of the project and outreach leads, senior colleagues, feedback provided by outreach co-readers and public consultation.

Table 3: Impact assessment reporting table for the issue of controversial unilateral exemptions.

	Description	Business-as-usual	Preferred option
Effectiveness	<i>Is the change effective at meeting the MSC's intent?</i>	The status quo achieves the current intent of the Fisheries Standard, i.e., that a fishery can be certified if it has IUU fishing as long as it doesn't affect the sustainable management of the fishery This is inconsistent with the intent of the CoC Standard, and the expectations of stakeholders	Strengthens MSC's policy position by providing a mechanism to exclude entities convicted of serious crimes, including egregious cases of IUU, from the program; this is slightly different from, although not inconsistent with, the current intent of the Fisheries Standard Improved consistency with the CoC Standard in cases where an IUU listing is also associated with a criminal conviction; however, an inconsistency remains where this is not the case
	<i>The option seems effective at resolving the issue(s) consistently and reliably</i>	2 = Disagree	4 = Agree
Acceptability	<i>Is the change acceptable to stakeholders?</i>	There is confusion amongst stakeholders on how the Fisheries Standard treats IUU fishing, with an expectation that it is not allowed; this option does not address this confusion	Stakeholders are broadly supportive of the proposal; it brings MSC policy closer to stakeholders' expectations on IUU fishing and serious crimes Some stakeholders questioned the relevance of the crimes listed or whether the MSC is going beyond its remit with this proposal Definition of 'serious' was mostly considered to be acceptable, which is the same used in the UN Convention against Transnational Organised Crime; this also removes the need for subjective selection of IUU fishing activities that are or are not 'serious'

	Description	Business-as-usual	Preferred option
	<i>The option seems acceptable to stakeholders</i>	<i>5 = Completely agree</i>	<i>4 = Agree</i>
Feasibility	<i>Is the change feasible to fishery partners?</i>	The status quo is feasible	The proposal is broadly feasible, although clients will be required undertake additional administrative burden in order to confirm they meet the new scope criterion
	<i>The option seems technically feasible for fishery partners</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>4 = Agree</i>
	<i>The option seems possible given the management contexts of fishery partners</i>	<i>5 = Completely agree</i>	<i>4 = Agree</i>
	<i>The option seems doable within 5 years for fishery partners</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>
Accessibility and retention	<i>Does the change affect the accessibility and retention of fisheries in the MSC Program?</i>	There is no change to accessibility or retention	This is possibly a small increased risk to accessibility and retention compared to the status quo; this would only be where exclusion of one or more entities (i.e., vessels) from a certificate would affect the certification of the UoC overall Exclusion of an entity from the program would only be done where it is of benefit to the program overall; there may also be certain benefits to the remaining UoC, e.g., to scoring, conditions, public relations
	<i>The option seems accessible to fisheries seeking certification in the future</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>
	<i>The option seems accessible to currently certified fisheries</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>

	Description	Business-as-usual	Preferred option
Simplification	<i>Does the change simplify the Standard?</i>	The status quo is not complex	This option adds a new scope criterion that requires additional definitions and thresholds, which is adding complexity; however, this is relatively minor and should be considered as a necessary trade-off in strengthening the MSC's policy position on serious crime
	<i>The option seems to simplify the Standard</i>	5 = Completely agree	4 = Agree
Auditability	<i>Is the change auditable by CABs?</i>	The status quo has no known auditability issues	Potential auditability considerations around certain key terms are mitigated with clear definitions, and the language is consistent with existing scope criteria that perform a similar function for other activities (shark finning, forced and child labour) A new mechanism has been introduced to the FCP that will be used to confirm scope
	<i>The option seems to be auditable by CABs</i>	5 = Completely agree	4 = Agree

3.5.2 Pilot testing and auditability review

The preferred option went for auditability and legal review in November 2021. There were no substantive issues raised, and only feedback regarding minor auditability improvements.

3.5.3 Consultations

In April-May 2021, MSC's governance bodies considered the reputational risks associated with introducing, or not, a scope criterion for serious maritime crimes and provided instruction regarding the direction for the project.

During February-April 2022, stakeholders were able to provide feedback on the proposed Standard and associated program documents through an online survey. The survey was open to all stakeholders for 60 days and sought feedback on the effectiveness of the proposal in addressing the issues outlined in the problem statement, and whether they found the proposed changes to the Standard to be acceptable. This public review was the most comprehensive opportunity to date for stakeholders to provide input into the development of the new Standard. All feedback was analysed and is summarised in the section below.

3.5.4 Analysis of public consultation (Feb-Apr 2022)

Stakeholders provided input to the public consultation in the form of a Likert response and written feedback. In general, stakeholders were supportive of this proposal in terms of its effectiveness

and if they found it to be acceptable (Figure 2). Stakeholders from the seafood supply chain category appeared to be generally supportive of the proposal, while support appeared to be mixed for individuals that identified as belonging to the academic/scientific, commercial wild harvest fisheries, CAB and/or accreditation, or governance/management categories.

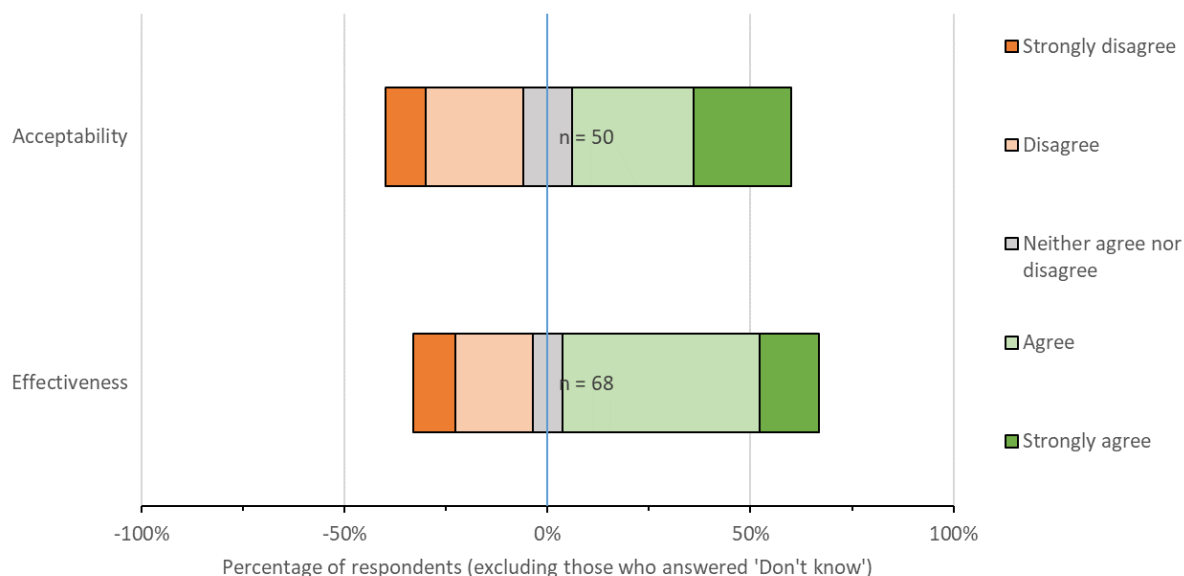


Figure 2 Proportion of responses to the public consultation on a five-point Likert scale with respect to serious crimes. Respondents were asked whether they agreed with a statement regarding the effectiveness and the acceptability of the proposed revisions.

Most respondents provided a further written response to justify their response to the statements on the effectiveness and acceptability of the proposed revisions. These were grouped into four main categories, presented in Table 4. Some stakeholders considered that the types of serious crime included in the proposal were arbitrary, or went beyond MSC’s remit. Similarly, some considered the two-year timeline for exclusion was not a sufficiently long period of time given the severity of the crimes listed. Other stakeholders noted there would be difficulties in implementing the requirement effectively without being clearer on the ‘entity’ that must be excluded from a certificate. A final group of responses were supportive, especially regarding the reference to IUU fishing, without raising any concerns.

Table 4 Themes of the consultation responses and action taken to address the feedback in relation to serious crimes. The illustrative responses are direct quotes or partial quotes from the written text, some of which have been abbreviated for brevity.

Response theme	Illustrative responses	Action taken
The serious crimes listed and the definition of ‘serious’ appears to be arbitrary	<p>“The “serious crimes” list seems arbitrary, particularly when linking to the length of a prison sentence for penalty”</p> <p>“The serious crimes” list is not a comprehensive catalogue for relevant serious crimes”</p>	No changes made to the proposal; the list of crimes is relevant to maritime activities, including fishing, and the timeframe is

	“A two-year exclusion is not acceptable for a gold standard ecolabel, given the severity of the crimes listed”	consistent with a relevant UN convention
The serious crimes listed are outside of the MSC’s remit	“Any list of offences should be limited to those offenses that are directly related to fishery management and labour issues only, in order to be consistent with the standard.” “Targeted steps to counter IUU fishing activity are consistent with the MSC's mission and should attract stakeholder support. The exclusion of entities from scope based on other criteria, however, raise significant questions about where to draw the line.”	No changes made to the proposal; the list of crimes reflects those that MSC intends to exclude from fishery certificates
There is a need to better define the entity to which the new criterion applies	“The term “entity” makes the scope of this requirement uncertain. For example, are all crew members entities?” “There is no clear definition of entity, currently the definition can capture any person employed by the entity that committed a crime....” “The guidance must be clear to avoid misunderstandings, especially when defining an entity.”	Agree with the need for clarification; the proposal has been updated to confirm that the entity removed is any vessel that has been implicated in a serious crime
Approval with no concerns raised	“Any vessel related with IUU should be removed from MSC”	Noted with not further action required

3.6 Discussion and conclusion

A new scope criterion will be introduced that focuses on illegal, unreported and unregulated (IUU) fishing and other serious maritime crimes. This will serve to exclude vessels that are subject to serious maritime crimes and the most egregious cases of IUU fishing, and so contribute the integrity of the program. The proposal was generally supported by stakeholders, pending some clarifications that have been addressed in a revised proposal.

4. EXCLUDING VESSELS WHICH INTENTIONALLY HARASS OR INTENTIONALLY KILL MARINE MAMMALS

4.1 Problem statement

Concern was raised in 2016-2017 concerning fisheries seeking MSC certification that set on pods of marine mammals. Although current scope requirements do not allow the assessment of target fisheries on marine mammals, there is a lack of scope requirements that prevent fisheries from intentional harassment or killing of marine mammals that could take place in the course of fishing activities.

During the governance meetings in December 2019 - January 2020, the Board of Trustees agreed that the Executive should develop a scope requirement to prevent fisheries undertaking these kind of fishing operations from entering the MSC programme.

4.2 Objectives

The objective is to determine whether to introduce new scope requirements to exclude or prevent fisheries entering MSC programme which intentionally harass or kill marine mammals.

4.3 Options

4.3.1 Business-as-usual

The 'business-as-usual' scenario considered here would see no change to the Standard's requirements or guidance.

Scope requirements prohibit the assessment of target fisheries on marine mammals. This does not prevent fisheries that intentionally harass or kill marine mammals while targeting other species from entering the MSC programme. Fisheries that intentionally encircle marine mammals are eligible to be assessed and achieve MSC certification if the assessment team determine that the fishery impact meets Principle 2 of the Fisheries Standard.

4.3.2 Preferred option

A new scope requirement directing the exclusion of vessels from the UoA which are determined to intentionally harass or intentionally kill marine mammals. The proposed requirement is included below (MSC Fisheries Standard proposal, Section 1):

Intentional harassment or intentional killing of marine mammals

- 1.1.5 The client or client group shall not include any vessel that has been implicated in the intentional harassment or intentional killing of marine mammals whilst undertaking fishing operations in the last 2 years. ■
- a. The term “intentionally” means any action which is not deemed to be “incidental” to fishing operations.
 - i. The term “incidental” describes consequences or results which were neither intended nor anticipated.
 - b. The term “harassment” in the context of 1.1.5 means any act of pursuit, torment, or annoyance which:
 - i. has the potential to injure a marine mammal in the wild, or
 - ii. has the potential to disturb a marine mammal in the wild by causing disruption of behavioural patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
- 1.1.5.1 If a vessel has been implicated in the intentional harassment or intentional killing of marine mammals whilst undertaking fishing operations, the client or client group shall exclude the vessel from the UoA, UoC and the fishery certificate for 2 years.
- a. The client or client group shall inform their CAB immediately if a vessel has been excluded.
 - b. The client or client group shall provide all relevant information to their CAB to demonstrate that the vessel has been excluded. ■

This option has been recommended to the Board of Trustees, STAC and TAB. The option would address reputational risks to the MSC program by excluding fisheries that intentionally harass or kill marine mammals. This option would resolve issues beyond encirclement by also excluding fisheries that harass or kill marine mammals in other ways. The term “intentional” is used to differentiate from bycatch events assessed in the Standard. Since it can be difficult for CABs to clearly implement at the early stages of assessment, definitions on “intentional” and “harassment” have been included.

The most recent changes to this option are:

- The requirements of the new criterion clarify that they are focused to activities carried out during fishing operations. The relevant guidelines strengthen the intent by referring to activities whilst deploying fishing gears within the UoA. In addition, the requirement adds a 2-year timeline, seeking to maintain consistency with other similar scope criteria (serious crimes and shark finning).
- The requirements were also changed from "entities" to "vessels" to provide clarity on the intent of this scope criterion and to help simplify the confirmation process.
- The requirement to exclude a vessel from the UoA, UoC and certificate for 2 years when it has been involved in intentional harassment or intentional killing of marine mammals is in line with two other similar scope criteria (serious crimes and shark finning).
- Guidance clarifying what is not to be considered forms of intentional harassment and killing, including the unwanted catch of marine mammals as considered unanticipated and to be assessed against Principle 2 PIs.
- Guidance added on the intent of this scope criterion, to be applicable regardless of any allowances or permits granted.

- Process for information verification of scope criteria added to the proposed FCP (7.4) provides two sources of information for CABs to confirm the absence of vessels intentionally harassing or killing marine mammals.

The option was informed through two research reports:

- [MSC Report on marine mammal harassment scope criteria](#)
- [Marine Mammal Harassment Review](#)

4.4 Summary of impacts

4.4.1 Impacts of business-as-usual

The BAU will not meet the intent of preventing fisheries that intentionally harass (e.g., pursue and encircle marine mammals) from being certified. If further fisheries enter the programme which are understood to intentionally harass or kill marine mammals there will be continued reputational impact.

4.4.2 Impacts of the preferred option

The preferred approach reduces reputational risk. The policy approach is supported by MSC governance groups. Additionally, it will not significantly impact feasibility or accessibility given its narrow scope so will be acceptable to vast majority of fishery partners, although information to confirm the scope might increase administrative burden or result in additional costs.

Auditability reviews have confirmed that the option is auditable, although concerns were raised by CABs on interpretation of key concepts. Additional guidance has been added to clarify the intent of the requirement and MSC training/calibration will help with this in the longer term.

MSC Fisheries Certification Process proposal covers in sections 7.4 the process to be followed to confirm that the UoA is within scope, including the process for information verification. This address concerns raised during the most recent consultations about what kind of information or evidence should be considered to confirm the scope criteria.

4.5 Impacts

4.5.1 Overview of impacts

The impact assessment presented in Table 5 below is based on feedback from pilot testing, auditability review, BoT, STAC and TAB, and expert judgement of the project and outreach leads, senior colleagues, feedback provided by outreach co-readers, and feedback from public consultation.

Table 5: Impact assessment reporting table for the issue of intentional killing and intentional harassment.

	Description	Business-as-usual. No change to requirements or guidance.	Preferred option. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations
Effectiveness	<i>Is the change effective at meeting the MSC's intent?</i>	<ul style="list-style-type: none"> - The BAU will not meet the intent of preventing fisheries that intentionally harass (e.g., pursue and encircle marine mammals) from being certified. - If further fisheries enter the programme which are understood to intentionally harass or kill marine mammals there will be continued reputational impact and likely further stakeholder campaigns advocating MSC act to address these concerns. - One STAC member noted MSC has suffered from reputational damage "to some extent already". 	<ul style="list-style-type: none"> + The change would reduce MSC reputational risk and address decision made by the Board. It may act to incentivise fisheries to stop intentionally killing or harassing marine mammals. - Based on feedback received from commercial fisheries, this option could incentivise purse seine tuna fisheries to shift from dolphin-sets to FADs-sets, thus raising the risk of incrementing yellowfin tuna juvenile catches and ETP species bycatch. - In the longer term this option may slightly impact the MSC vision and mission given that in an absolute sense it is limiting the total number of fisheries which are eligible for MSC certification and fisheries where improvements to practices could be made (through the proposed scope requirement).
	<i>The option seems effective at resolving the issue(s) consistently and reliably</i>	2 = Disagree	4 = Agree

	Description	Business-as-usual. No change to requirements or guidance.	Preferred option. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations
Acceptability	<i>Is the change acceptable to stakeholders?</i>	<ul style="list-style-type: none"> - NGOs who raised the issue may not find business-as-usual acceptable. - Retailers and consumers would likely be very concerned by business-as-usual. This is evidenced by stakeholder campaign emails on certification of a fishery that encircles marine mammals. + Tuna purse seine fisheries that undertake dolphin-sets defend this practice by arguing that this type of operation results in the capture of mostly adult tuna, high survival of dolphins and low bycatch of other species. - Staying in BAU, after having submitted the Preferred Option for public review, may be a major reputational risk for the MSC programme. 	<ul style="list-style-type: none"> + The vast majority of fisheries in the programme would not be impacted by the change. + Most NGOs expressed strong support for the option. - One certified fishery may lose their certification (and at least one more in pipeline would not be eligible) which will mean that current work on reducing marine mammal impact may stop. These fishery partners, along with relevant government and RFMO, have expressed their strong disagreement with this option.
	<i>The option seems acceptable to stakeholders</i>	4 = Agree	3 = Neither agree nor disagree

	Description	Business-as-usual. No change to requirements or guidance.	Preferred option. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations
Feasibility	<i>Is the change feasible to fishery partners?</i>	+ The BAU would not represent any change so would be acceptable to most fishery partners	+ A vast majority of MSC fisheries in the programme will find this change feasible. - However, the information to be provided and confirmed may place a considerable administrative burden on fisheries and CABs. - Considering that one of the information options to confirm this criterion involves independent reporting by a competent third party, this could mean additional costs for fisheries.
	<i>The option seems technically feasible for fishery partners</i>	5 = Completely agree	4=Agree
	<i>The option seems affordable for fishery partners</i>	4=Agree	3 = Neither agree nor disagree
	<i>The option seems possible given the management contexts of fishery partners</i>	4 = Agree	4 = Agree
	<i>The option seems doable within 5 years for fishery partners</i>	5 = Completely agree	4 = Agree

	Description	Business-as-usual. No change to requirements or guidance.	Preferred option. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations
Accessibility and retention	Does the change affect the accessibility and retention of fisheries in the MSC Program?	+ Business-as-usual does not affect current accessibility and retention of fisheries in the MSC program.	+ The limited scope of requirements will not have significant impacts in absolute terms for retention. - Analysis confirms that at least one certified fishery will be impacted and at least one engaged fishery will be impacted. - As far as accessibility is concerned there will be an impact on fisheries looking to enter which currently intentionally encircle/pursue marine mammals however this number is thought to be relatively low in the context of pipeline fisheries (1 fishery currently)
	The option seems accessible to fisheries seeking certification in the future	5 = Completely agree	4 = Agree
	The option seems accessible to currently certified fisheries	5 = Completely agree	4 = Agree
Simplification	Does the change simplify the Standard?	+ Business-as-usual would mean no added requirements.	- Addition of new scope requirements and steps that fisheries and CABs have to follow would not simplify the Standard.
	The option seems to simplify the Standard	5 = Completely agree	2 = Disagree
Auditability	Is the change auditable by CABs?	+ Auditable by CABs.	+ Potential auditability considerations around certain key terms are mitigated with guidance. + A new mechanism has been introduced to the FCP that will be used to confirm scope, including processes for information verification.

Description	Business-as-usual. No change to requirements or guidance.	Preferred option. A new scope requirement excluding vessels from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals whilst undertaking fishing operations
<i>The option seems to be auditable by CABs</i>	5 = Completely agree	4 = Agree

4.5.2 Pilot testing and auditability review

The preferred option went for auditability review in November 2021. There were no substantive issues raised, and only feedback regarding minor auditability improvements.

During pilot testing undertaken in February 2022, concerns were raised about auditability of key concepts (e.g., intentional, anticipated, harassment, entities) as well as the required information or evidence to confirm the scope. These definitions have been clarified in guidance and process to confirm scope criteria is now detailed in FCP, including the required information.

4.5.3 Consultations

Whilst there have been discussions internally and consultation with MSC governance groups and the MSC BoT there has been no public consultation on the proposed option.

During February-April 2022, stakeholders were able to provide feedback on the proposed Standard and associated program documents through an online survey. The survey was open to all stakeholders for 60 days and sought feedback on the effectiveness of the proposal in addressing the issues outlined in the problem statement, and whether they found the proposed changes to the Standard to be acceptable. This public review was the most comprehensive opportunity for stakeholders to provide input into the development of the new Standard. All feedback was analysed and is summarised in the section below.

3.5.4 Analysis of public consultation (Feb-Apr 2022)

Stakeholders provided input to the public consultation in the form of a Likert response and written feedback. In general, several stakeholders were not supportive of this proposal in terms of its acceptability (Figure 3), mainly those that identified as representatives from commercial fisheries, government/management and CABs. Stakeholder from supply chain showed divided support. NGOs were the single group that expressed strong support to the proposal. In terms of effectiveness, both commercial fisheries and supply chain express divided visions ranging the whole Likert scale. CABs appeared to be more inclined to disagreeing with the effectiveness of the proposal, while NGOs are inclined to agreeing with it.

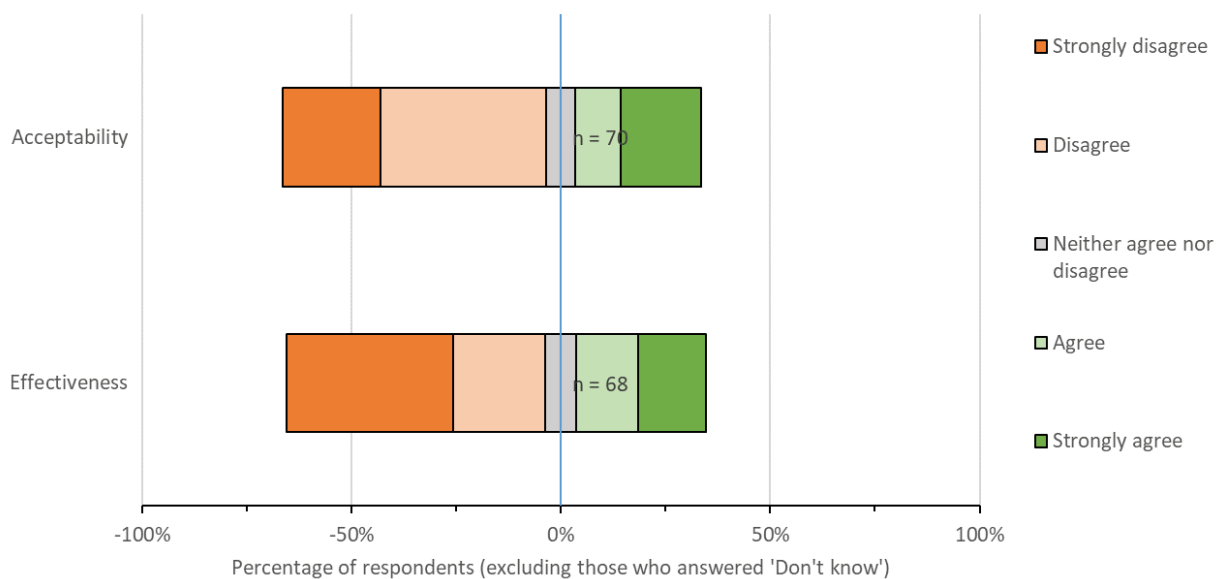


Figure 3 Proportion of responses to the public consultation on a five-point Likert scale with respect to intentional harassment or intentional killing of marine mammals. Respondents were asked whether they agreed with a statement regarding the acceptability and the effectiveness of the proposed revisions.

Along with the survey responses, 20 letters were received addressing this new proposed scope criterion, from representatives of commercial wild harvest fisheries associations or consultants, national or regional governance/management, non-governmental associations, and seafood supply chain. Seven of the letters expressed support to the proposed change and/or agree with intent, while other seven letters strongly reject the proposed change and/or request not to adopt it. The remaining five letter raised mainly to specific concerns, without expressing a clear support or rejection. The main categories are presented in Table 6.

Table 6. Themes of the consultation responses and action taken to address the feedback in relation to intentional harassment or killing of marine mammals. The illustrative responses are direct quotes or partial quotes from the written text, some of which have been abbreviated for brevity.

Response theme	Illustrative responses	Action taken
Strong rejection of the proposal and request not to adopt it	<p>“The proposed scope criterion is likely to cause harm MSC’s goals for more sustainable and well-managed fisheries, as well as to its reputation as a science- and process-driven standard holder”.</p> <p>“Likely ecosystems effects due to incentive to move from dolphins-sets to FADs-sets”.</p> <p>“Best available scientific evidence supports the assumption that purse-seine fishery is not having significant adverse impact on any of the dolphin stocks in the Eastern Pacific Ocean”.</p>	<p>No changes made to the proposal. It follows the decision taken MSC governance bodies in December 2019 and January 2020 to develop a scope requirement specifically to prevent fisheries who intentionally harass or kill marine mammals from entering the MSC programme.</p>

<p>Concern on interpretation of key concepts, potential auditability issues</p>	<p>Problems of application or interpretation of to concepts of harassment, intentional and anticipated. “Some interactions may be anticipated but are not intended”. “Many fisheries have deterrence equipment or hazing protocols designed to avoid lethal outcomes for chance interactions with marine mammals. However, while the fisheries do not intentionally seek these interactions, at least some interactions are anticipated which would remove such fisheries from MSC scope according to the definition” “Harassment/killing of marine mammals is incidental and are not to be considered an intentional harassment”.</p>	<p>Fisheries Standard requirement and guidance provide now further clarification on interpretation and intent of these key concepts (see section 4.3.2).</p>
<p>Entities to be confirmed within scope</p>	<p>“Asks for definition of entities”.</p>	<p>The subject has now change to vessels and confirmation of the scope refers to activities undertaken within the UoA.</p>
<p>Clarification on the process and required information to confirm the scope.</p>	<p>“Clarification is needed regarding the information or evidence to confirm scope”.</p>	<p>FCP contains now a clear process to confirm the scope criteria, including relevant information to be verified.</p>

4.6 Discussion and conclusion

A new scope requirement precluding fisheries from MSC certification on the basis that they intentionally harass or intentionally kill marine mammals will ultimately reduce reputational risk of MSC. The preferred approach has been built on substantive research. Although it was expected that the option would have been largely acceptable to stakeholders, fishery partners and wider supply chain, the most recent public consultation shows that some stakeholder groups express lack of support for the proposal or neutrality towards it, while others, mainly represented by NGOs, express strong support.

Auditability concern has been addressed by clarification of key concepts and adding a procedure to be followed, including information to be provided by fisheries and verified by CABs.