



# SCOPE CRITERIA

## **Fisheries Standard Review Impact Assessment Report**

November 2021

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The views and opinions expressed in this report do not necessarily reflect the official policy or position of the Marine Stewardship Council. This is a working paper, it represents work in progress and is part of ongoing policy development. The language used in draft scoring requirements is intended to be illustrative only, and may undergo considerable refinement in later stages.

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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 Preferred options

It is proposed to remove 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 preferred option

The relocation of the two scope criteria into PI 3.1.1 has removed 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 generally 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, and feedback provided by outreach co-readers.

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

	Description	Business-as-usual	Preferred option
<b>Effectiveness</b>	<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	5 = Completely agree
<b>Acceptability</b>	<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 would likely be widely accepted
	<i>The option seems acceptable to stakeholders</i>	2 = Disagree	5 = Completely agree
<b>Feasibility</b>	<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	4 = Agree
	<i>The option seems affordable for fishery partners</i>	4 = Agree	4 = Agree

	Description	Business-as-usual	Preferred option
	<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>	4 = Agree	4 = 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	4 = Agree
	<i>The option seems accessible to currently certified fisheries</i>	4 = Agree	4 = 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	5 = Completely 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.

The STAC P3 WG was presented with the draft requirements on controversial unilateral exemptions and disputes in fisheries in September 2021. No feedback has been received.

There has been no public consultation for any of the topics in 2021.

## 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.

# 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.

## 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 2 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, and feedback provided by outreach co-readers.

Table 2: 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>	<p>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</p> <p>This is inconsistent with the intent of the CoC Standard, and the expectations of stakeholders</p>	<p>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</p> <p>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</p>
	<i>The option seems effective at resolving the issue(s) consistently and reliably</i>	2 = Disagree	4 = Agree

	Description	Business-as-usual	Preferred option
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	Note that acceptability of this option has not been consulted on publicly Likely that this option will be widely accepted; 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; these are generally accepted to be highly undesirable activities that are subject of international conventions Definition of 'serious' is also not expected to be controversial, as it is the same used in the UN Convention against Transnational Organised Crime; this also removed the need for subjective selection of IUU fishing activities that are or are not 'serious'
	<i>The option seems acceptable to stakeholders</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>
Feasibility	<i>Is the change feasible to fishery partners?</i>	The status quo is feasible	This option has no feasibility issues
	<i>The option seems technically feasible for fishery partners</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>
	<i>The option seems affordable for fishery partners</i>	<i>5 = Completely agree</i>	<i>5 = Completely 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>The option seems doable within 5 years for fishery partners</i>	<i>5 = Completely agree</i>	<i>5 = Completely agree</i>

	Description	Business-as-usual	Preferred option
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>	5 = Completely agree	5 = Completely agree
	<i>The option seems accessible to currently certified fisheries</i>	5 = Completely agree	5 = Completely agree
Simplification	<i>Does the change simplify the Standard?</i>	The status quo is not complex	This option adds a new scope criteria 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	There are some auditability considerations around certain key terms, e.g. 'serious crime', 'conviction', 'entities'; these 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)
	<i>The option seems to be auditable by CABs</i>	5 = Completely agree	5 = Completely 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.

There has been no public consultation on the proposed option.

## 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

# 4. Excluding entities which intentionally harass or intentionally kill marine mammals

## 4.1 Problem statement

Concern has been raised by multiple stakeholders in letters to the Board in 2016-2017 in relation to fisheries seeking MSC certification that set on pods of marine mammals. Although current scope requirements prohibit the assessment of target fisheries on marine mammals, this group of stakeholders believes fisheries that set on marine mammals while targeting other species should be excluded from scope. As there are a lack of scope requirements prohibiting encirclement, stakeholders have raised concerns that allowing fisheries that encircle marine mammals will cause unacceptable reputational risks to the MSC program. Some stakeholders have also suggested that this should be expanded to include reputational risks associated with intentional harassment or killing of marine mammals that takes place in the course of fishing activities.

During the governance meetings in December 2019 - January 2020, it was agreed that the Executive should develop a scope requirement in line with stakeholder views, specifically to prevent fisheries who intentionally harass or kill marine mammals 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 entities (from the UoA) which are determined to intentionally harass or intentionally kill marine mammals. The proposed requirement is included below:

#### Intentional harassment or intentional killing of marine mammals

- 1.1.2.3 The CAB shall confirm that the client or client group does not include any entity that intentionally harasses or intentionally kills marine mammals.
- a. The CAB shall interpret the term "intentionally" as 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 CAB shall interpret the term "harasses" in the context of 1.1.2.3. as 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.
  - c. If the CAB determines that an entity that belongs to a certified client group intentionally harasses or intentionally kills marine mammals, the CAB shall consider the entity as having become out of scope and shall withdraw it from the certificate or client group.
    - i. The CAB shall make a determination as per 1.1.2.3.c. based on information that has been independently verified.
    - ii. The CAB shall confirm that any entity directed to withdraw, as per 1.1.2.3.c., cannot be eligible for MSC certification for a period no less than 2 years from the determination made in the context of 1.1.2.3.c.
    - iii. The CAB shall interpret the period of ineligibility, as defined in 1.1.2.3.c. ii., to be a period of no less than 2 years from the date of certification, if information supporting the determination is provided to the CAB prior to certification.

- iv. The CAB shall interpret the period of ineligibility, as defined in 1.1.2.3.c.ii., to be a period of no less than 2 years from the date of publication of the relevant surveillance report/expedited report, if information supporting the determination is provided to the CAB following certification.

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 added.

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 and likely further stakeholder campaigns advocating MSC act to address these concerns.

### 4.4.2 Impacts of the preferred option

The preferred approach reduces reputational risk and addresses concerns of stakeholders so will be acceptable. 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. Whilst auditability reviews have confirmed that the option is auditable, CABs may be challenged to identify appropriate types of evidence to confirm scope criteria are met but MSC training/calibration will help with this in the longer term.

## 4.5 Impacts

### 4.5.1 Overview of impacts

The impact assessment presented in Table 3 below is based on feedback from the auditability review, feedback from BoT, STAC and TAB, expert judgement, feedback from outreach leads and senior colleagues.



Table 3: 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 entities from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals
Effectiveness	Is the change effective at meeting the MSC's intent?	<ul style="list-style-type: none"> <li>- The BAU will not meet the intent of preventing fisheries that intentionally harass (e.g. pursue and encircle marine mammals) from being certified.</li> <li>- 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.</li> <li>- One STAC member noted MSC has suffered from reputational damage "to some extent already"</li> </ul>	<ul style="list-style-type: none"> <li>+ The change would reduce MSC reputational risk and address stakeholder concerns. It may act to incentivise fisheries to stop intentionally killing or harassing marine mammals</li> <li>- However, in the longer term this option may slightly impact the MSC vision and mission given that in an absolute sense its 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)</li> </ul>
	The option seems effective at resolving the issue(s) consistently and reliably	2 = Disagree	4 = Agree
Acceptability	Is the change acceptable to stakeholders?	<ul style="list-style-type: none"> <li>- NGOs who raised the issue may not find business-as-usual acceptable.</li> <li>- 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.</li> </ul>	<ul style="list-style-type: none"> <li>+ The vast majority of fisheries in the programme would not be impacted by the change so stakeholders in general will find this acceptable.</li> <li>+ Most NGOs would find the change acceptable due to MSC addressing an area of reputational risk.</li> <li>- 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 are understood to be against this proposal.</li> </ul>
	The option seems acceptable to stakeholders	4 = Agree	3 = Neither agree nor disagree

	<b>Description</b>	<b>Business-as-usual.</b> No change to requirements or guidance.	<b>Preferred option.</b> A new scope requirement excluding entities from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals
<b>Feasibility</b>	<i>Is the change feasible to fishery partners?</i>	4 = Agree Yes, the BAU would not represent any change so would be acceptable to most fishery partners	4 = Agree Yes, the vast majority of MSC fisheries in the programme and in the pipeline will find this change feasible.
	<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	4=Agree* The proposal may impact fisheries (at least 1) understood to intentionally harass and kill marine mammals. For these fisheries changing of fishing practices may not come with an insignificant cost
	<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
<b>Accessibility and retention</b>	<i>Does the change affect the accessibility and retention of fisheries in the MSC Program?</i>	+ 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)

	<b>Description</b>	<b>Business-as-usual.</b> No change to requirements or guidance.	<b>Preferred option.</b> A new scope requirement excluding entities from within the UoA which are determined to have intentionally harassed or intentionally killed marine mammals
	<i>The option seems accessible to fisheries seeking certification in the future</i>	5 = Completely agree	4 = Agree
	<i>The option seems accessible to currently certified fisheries</i>	5 = Completely agree	4 = Agree
<b>Simplification</b>	<i>Does the change simplify the Standard?</i>	+ Business-as-usual would mean no added requirements.	- Addition of new scope requirements and steps that CABs have to follow would not simplify the Standard.
	<i>The option seems to simplify the Standard</i>	5 = Completely agree	2 = Disagree
<b>Auditability</b>	<i>Is the change auditable by CABs?</i>	+ Auditable by CABs	+ The extensive work (e.g., multiple research reports) informing the development and drafting of the scope criteria will ensure that the requirements will be clear and iterative. The auditability review undertaken by ASI has confirmed Auditability of the clauses.  - The clause may challenge auditors as the types and forms of evidence which may need to be appraised to verify that harassment episodes have happened are not always publicly available or appropriately validated.
	<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.

#### 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.

## 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 and be largely acceptable to stakeholders, fishery partners and wider supply chain. The preferred approach has been built on substantive research, is auditable and will not have major feasibility or accessibility impacts.