



# MSC Fisheries Certification Process v2.2 Stakeholder Engagement Report

May 2020

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## Glossary of abbreviations and technical terms

ASI – Assurance Services International

BoT – MSC Board of Trustees

CAB – Conformity Assessment Body

FAD – Fish Aggregating Device

FNA – Fins Naturally Attached

SG60, SG80, SG100 – Scoring Guideposts (see [Fishery certification guide](#))

STAC – MSC Stakeholder Advisory Council

TAB – MSC Technical Advisory Board

UoA – Unit of Assessment

UoC – Unit of Certification

## Stakeholder Engagement Report

# MSC Fisheries Certification Process

The [MSC Fisheries Certification Process](#) is the instruction manual for Conformity Assessment Bodies (CABs). It sets out the processes for assessing a fishery against the [MSC Fisheries Standard](#). It also defines the criteria which determine whether a fishery is eligible for certification – these are called the scope requirements.

## MSC Fisheries Certification Process Review

The MSC Fisheries Certification Process is reviewed approximately every three years to ensure the assessment process remains efficient, effective and credible.

The MSC released an updated version, the MSC Fisheries Certification Process v2.2, in March 2020. The changes made are detailed in the [MSC Fisheries Certification Process v2.2 Summary of Changes](#), and were the result of a review that started in 2017.

This report details:

- a) key issues relating to each area that was reviewed;
- b) participation in consultation activities;
- c) stakeholder feedback from all consultation activities associated with the review;
- d) MSC response to feedback and how it was incorporated into the revision;
- e) subsequent changes to the Fisheries Certification Process.

Read more about the MSC's process for consultation in [Annex 1: Purpose and scope of this report](#).

### Participation and engagement

The MSC would like to thank everyone who participated in the consultation activities. The MSC considered **224 individual submissions** from public consultations. This included submissions from **108 respondents** on behalf of **80 organisations**.

The stakeholder groups that provided the most responses were NGOs (69), wild harvest fisheries (58) and seafood supply chain (45). A total of 24 countries were represented. Responses submitted by stakeholders located in Europe and North America were overrepresented, in particular respondents located in English-speaking countries, with the most responses being from respondents located in the UK (54) and USA (31), closely followed by Germany (27).

Full details of participation are available for every consultation activity in [Annex 2: Consultation activities](#).

Other consultation activities included: workshops with representatives from CABs and independent assessors; commissioned desk-based reviews by CABs and Assurance Services International (ASI); a

roundtable consultation with 40 participants to consult on options for the Unit of Assessment project; and consultations with the MSC Stakeholder Advisory Council (STAC) on selected projects.

## Scope of Review

The MSC consulted on six projects, detailed below, through several rounds of consultation:

- [Defining Units of Assessment \(UoA\)](#)
- [Strengthening the reporting of fishery improvements \(Conditions\)](#)
- [Improving the way stakeholders participate in fishery assessments \(Addressing persistent disagreement with the expert judgement applied in fishery assessments\)](#)
- [Improving criteria for expedited audits](#)
- [Introducing new shark finning scope requirements](#)
- [Creating a stand-alone Disputes Process](#)

# Unit of Assessment (UoA)

The Unit of Assessment (UoA) describes the scope of what is assessed against the Fisheries Standard and the Unit of Certification (UoC) describes what is certified to the Fisheries Standard.

In early 2017, the MSC initiated a review of its UoA requirements in response to stakeholder concerns that the definitions allowed a vessel to catch fish from the same stock using both certified and uncertified fishing practices or methods. Stakeholders were concerned this could be misleading to retailers and consumers as they may assume that all practices are certified rather than understanding that some practices can be certified, while others are not. There was also concern that it could increase the risk for mixing of certified and uncertified fish.

Following five rounds of consultation, the MSC is changing the way the UoA and UoC are defined. All changes made can be found in the [Summary of Changes](#) document.

## Stakeholder input and feedback

The MSC consulted on the UoA project through an initial roundtable consultation in [June 2017](#) followed by four rounds of public consultation in [September 2017](#), [March 2018](#), [March 2019](#) and [August 2019](#). In addition, CABs were consulted through workshops in [2017](#), [2018](#) and [2019](#), as well as a [desk-based auditability review](#) of the final proposal by a CAB and ASI. The proposal was also discussed by the STAC in [October 2019](#).

Respondents were not supportive of proposals in the earliest rounds of consultations, which included: improved recording and reporting; uncertified activity enters a Fishery Improvement Project and enters MSC full-assessment within five years; all activities by the certified vessel on a single trip be assessed; and a product eligibility criteria solution. These options were generally not regarded as fully addressing the issue.

In the March 2019 public consultation, the MSC received positive feedback on a proposal for changes to the UoA definition that defined the fishing activities assessed, and potentially certified, removing the term 'fishing practice' from the definition of the UoA requiring all practices/activities by gear-type to be included in the UoA(s). This proposal was subsequently taken forward and consulted on in September 2019. The MSC also added a separate requirement for CABs to report in which geographical area the UoA takes place, codifying already existing practice. Respondents were confused by the intent of this latter proposal.

## MSC response and changes to the Fisheries Certification Process

The MSC removed the terms 'fishing methods' and 'practices' from the definition of UoA and UoC. This means the UoA and UoC are now defined by the target stock(s), the fishing gear, and the fleets, vessels or individual fishing operators, but not the way the fishing gears are used. The assessment will consider the impacts of all individual fishing methods or practices using the same gear type. This will prevent a certified stock being targeted by certified and uncertified fishing activities. For example, a tuna purse seine fishery that fishes on both free schools and Fish Aggregating Devices (FADs) can no longer seek certification for the free school component of its catch without including its FAD component in the assessment.

### ***Geographical area***

The geographical area within which the fishery operates will be reported. This will ensure that the area in which fishery occurs will be specified, which should improve the traceability of certified products. In line with stakeholder feedback, the geographical area requirement was moved from being a requirement within the UoA definition to being a separate requirement for the CAB to report in which geographical area the UoA takes place.

### ***Implementation times***

Fisheries entering assessment for the first time from September 2020 onwards will have to use the new definition. Fisheries that are already certified (or in assessment) will have three years to adopt the new definition. This can be done during a surveillance audit or via a scope extension. The change to the definition of the UoA will require affected fisheries to assess an additional portion of the fishery against the Fisheries Standard, and it is consequently considered a Standard level change. This is the reason why existing fisheries in the MSC program will be given three years to adopt the definition, in line with the FAO Ecolabelling Guidelines, which the MSC commits to follow (see [Annex 1: Purpose and scope](#)).

See the MSC responses to the [June 2017](#), [September 2017](#), [March 2018](#) and [March 2019](#) consultations for how the proposals developed. See [Section 2.1.5.6](#) for the final MSC response and changes to the Fisheries Certification Process.

# Conditions

The Fisheries Standard is designed to reflect three levels of sustainability performance: minimum requirements, best practice and state of the art. To achieve certification fisheries must, on average, reach best practice in all [three Principles](#). Where a [Performance Indicator](#) scores less than best practice, the fishery must improve its performance to the best practice level over the course of the fishery's certification and usually within five years (unless there are exceptional circumstances).

These improvement requirements form what we call conditions. A fishery must demonstrate improvements towards best practice every year and achieve best practice within five years and before seeking recertification (unless there are exceptional circumstances). The fishery client has to prepare a Client Action Plan detailing how they plan to meet their conditions. CABs then report on a fishery's progress towards best practice (meeting their conditions) in annual Surveillance Reports, measuring the progress towards predefined 'milestones'.

In response to stakeholders raising concerns about the way conditions are set, monitored and closed, the MSC commissioned a review from ASI (see reports from [April 2018](#) and [January 2019](#), or a [summary](#)). ASI found that while the majority of conditions are closed in accordance with MSC's requirements, there are still opportunities for improvement.

The changes being made to the Fisheries Certification Process focus on improving the way CABs report on conditions, which will lead to increased transparency. All changes made can be found in the [Summary of Changes](#) document. The MSC is also working towards other improvements as part of the [MSC Assurance Review](#), which the Conditions project is part of.

## Stakeholder input and feedback

The Conditions project went through two rounds of public consultation, in [February 2019](#) and [August 2019](#). In addition, CABs were consulted through a workshop in [September 2019](#), as well as a [desk-based auditability review](#) of the final proposal by a CAB and ASI. The proposal was also discussed by the STAC in [October 2019](#).

### *Drafting milestones and Client Action Plans*

Most respondents in the first public consultation preferred the option to develop further guidance for CABs on drafting milestones that are effective but not prescriptive and develop guidance for fisheries on how to develop Client Action Plans that adequately address milestones as well as improving the 'MSC Reporting Template'. CABs highlighted a contradiction between what the requirements are instructing and what is permitted under ISO 17065. STAC identified ambiguity in the MSC's intent on setting conditions, milestones and Client Action Plans, and recommended further review.

### *Review and feedback on Surveillance Reports*

Feedback in the first public consultation was polarised with no clear preference for any proposed option, highlighting the trade-off between increased levels of review and input (which is equated with increased credibility) and surveillance audit costs and timeframes. Feedback from the [Peer Review College](#) identified that it would be logistically difficult to implement the peer review of Surveillance Reports.



### ***Conditions at reassessment and closing conditions in year five***

There was a slight preference in the first public consultation for introducing further improvements to the MSC Reporting Template so that all conditions from the previous certificate are listed with details on status, progress and closure. Some respondents requested clear consequences for not meeting conditions by the deadline.

## **MSC response and changes to the Fisheries Certification Process**

The MSC will continue to review conditions as part of the wider [MSC Assurance Review](#) on the [Fisheries Standard Review](#) timeline and will focus on firstly resolving the ambiguity in the MSC's intent with conditions and then operationalising the intent. Following STAC feedback, the MSC decided that the changes to Fisheries Certification Process v2.2 will focus on improving the way CABs report conditions, thereby increasing transparency, and minor clarifications to improve the understanding of the requirements.

### ***Drafting milestones and Client Action Plans***

The MSC decided to release an improved 'Reporting Template' to increase transparency and publish an online '[conditions log](#)' to make it easier for stakeholders to review conditions. In all assessment reports, CABs will clearly identify condition deadlines and whether condition deadlines are longer than the length of the certificate due to exceptional circumstances.

### ***Review and feedback on Surveillance Reports***

The MSC decided not to implement peer review of Surveillance Reports, due to [Peer Review College](#) feedback and unclear public consultation feedback. However, to improve transparency, CABs will have to clearly identify the progress of conditions and if a condition was closed during the surveillance audit in Surveillance Reports. CABs will identify if any new conditions have been set or if there have been any changes to condition milestones. The consequences for insufficient progress on meeting conditions have also been clarified.

### ***Conditions at reassessment and closing conditions in year five***

To improve transparency, CABs will clearly identify conditions that are being carried over from the previous certificate, conditions that had previously been closed and are being re-opened and conditions that are being rewritten in the reassessment report. Conditions can only be rewritten if they are being carried over and the reassessment is against a newer version of the Fisheries Standard.

See [Section 2.2.1.3](#) for the MSC response to the February 2019 consultation and [Section 2.2.2.6](#) for the final MSC response and changes to the Fisheries Certification Process.

# Addressing persistent disagreement with the expert judgement applied in fishery assessments

The MSC assessment process includes multiple opportunities for stakeholders to provide input on fishery assessments. This ensures that the assessment of the fishery is well informed, comprehensive, and the issues important to stakeholders are taken into consideration. In addition, all assessments are peer-reviewed by members of the [Peer Review College](#). Stakeholder input and peer review are part of the MSC's assurance system which is intended to ensure high quality, objectivity and consistent delivery.

The role of the CAB is to review available evidence and use their auditing and scientific expertise to score a fishery against the Fisheries Standard, and make a determination on the final outcome. These determinations often require evaluation of probabilities or likelihoods in areas where evidence can be mixed, lack clarity, remain incomplete or where circumstances are rapidly changing. The Fisheries Standard requires CAB assessment teams to use their expert judgement to score most, if not all, [Performance Indicators](#).

Stakeholders have raised concerns about how disagreement with the expert judgement in fishery assessments is addressed, especially when it persists between assessors, peer reviewers and stakeholders, despite multiple rounds of comment and response.

All changes made can be found in the [Summary of Changes](#) document. Development of disputes resolution processes is ongoing as part of the wider [MSC Assurance Review](#) (see also [Disputes Process](#)).

## Stakeholder input and feedback

The MSC consulted on 'Addressing persistent disagreement with the expert judgement applied in fishery assessments' through two rounds of public consultation, in [February 2019](#) and [August 2019](#). In addition, CABs were consulted through a workshop in [September 2019](#), as well as a [desk-based auditability review](#) of the final proposal by a CAB and ASI. The proposal was also discussed by the STAC in [October 2019](#).

The first round of public consultation put forward three options. Feedback on these options was polarised. Respondents representing CABs and fisheries were in favour of no changes being made to the process for handling disagreement, while the majority of respondents (NGOs and seafood supply chain) were strongly opposed to this and wanted an arbitration mechanism. Some respondents preferred an option related to data capture and monitoring.

### *Definition of persistent disagreement*

Feedback from the public consultation was generally positive to the proposed definition of persistent disagreement. Feedback from ASI stated that this definition relates to MSC monitoring and evaluation and is not an instruction to CABs and would therefore be better situated outside of the Fisheries Certification Process.

### *Guidance on the precautionary approach*

Respondents in the February 2019 public consultation requested clear direction to CABs and additional oversight of CAB performance to ensure the precautionary approach is followed in the

actual practice of scoring Performance Indicators. CAB feedback indicated that codifying the precautionary approach within the Fisheries Certification Process would be ineffective.

## **MSC response and changes to the Fisheries Certification Process**

The MSC has made improvements to the 'MSC Template for Stakeholder Input into Fishery Assessments' so stakeholders can easily identify and understand how a CAB has responded to their comments. These reporting changes will help to identify where there is ongoing disagreement between stakeholders and CABs and the nature of that disagreement. Dispute resolution mechanisms has been captured as a further policy development project that will be addressed in the wider [MSC Assurance Review](#) (see [Disputes Process](#)).

### ***Definition of persistent disagreement***

The definition of persistent disagreement will be retained and used by the MSC internally, but not included in the Fisheries Certification Process, following ASI feedback.

### ***Guidance on the precautionary approach***

The MSC picked up the suggestion from the February 2019 public consultation and consulted on the option in the next round of consultation, but the additional guidance on the precautionary approach was not included in the Fisheries Certification Process v2.2, following CAB feedback. The precautionary approach to scoring is built into the Fisheries Standard and the Performance Indicator Scoring Guideposts and guidance already exists there. Issues relating to information adequacy, evidence and precaution will be addressed in the Fisheries Standard Review project on [improving fisheries management](#), as embedding a risk-based approach may be more effective than issuing further generic guidance.

See [Section 2.3.1.3](#) for the MSC response to the February 2019 consultation and [Section 2.3.2.6](#) for the final MSC response and changes to the Fisheries Certification Process.

# Expedited audits

When new information becomes available, or there are changes to a fishery that may change its certified status, the CAB conducts an audit to check if the fishery still meets the Fisheries Standard. The audit is conducted quickly and focuses on the potential impact of the changes to the fishery and/or the new information on the fishery's certification status. This is called an expedited audit.

For the Fisheries Certification Process v2.2, the MSC aimed to clarify when and why an expedited audit may be triggered, and the process of conducting an expedited audit. For the **expedited audit process**, The MSC was proposing to remove 'review of information' as an option for an expedited audit because it adds circularity to the process: the information is already reviewed prior to triggering the audit and any change in scoring requires an additional off-site or on-site audit. The MSC was also consulting on options for allowing for stakeholder input and peer review in the process. The MSC had identified ambiguity in and aimed to clarify the process for what to do with the results of an expedited audit when receiving **new information during the full (re)assessment process**. As stakeholders can make a CAB aware of new information or changes to the circumstances of a fishery at any point during the assessment and an expedited audit would be triggered when necessary, the MSC further consulted on removing the requirements for CABs to open for consultation if the 9-month deadline for publishing the Public Comment Draft Report after site visit expires (see [how to engage with a fishery assessment](#)). All changes made can be found in the [Summary of Changes](#) document.

## Stakeholder input and feedback

The Expedited audits project went through two rounds of public consultation, in [February 2019](#) and [August 2019](#). In addition, CABs were consulted through a workshop in [September 2019](#), as well as a [desk-based auditability review](#) of the final proposal by a CAB and ASI. The proposal was also discussed by the STAC in [October 2019](#).

### *Expedited audit process*

Respondents were generally positive to the proposal to remove 'review of information' as an audit type, as it adds circularity in the expedited audit process, whereas feedback was mixed on adding peer review to expedited audit reports and a period for stakeholder input, as there is a trade-off between increased peer review/input, and speed and cost. An option to move the surveillance audit forward to cover new information was suggested.

### *New information during the full (re)assessment process*

Feedback on the proposals relating to new information during the full (re)assessment process was polarised. Many respondents said that whether or not the MSC's proposals in this area achieved their aims depended on other unresolved issues, such as the question of whether or not there should be peer review/stakeholder input into expedited audits. Fishery respondents opposed changes to this and pointed out that the reassessment process in the Fisheries Certification Process v2.1 was designed to reduce the time lag between site visit and publication of Public Comment Draft Report.

## MSC response and changes to the Fisheries Certification Process

### *Expedited audit process*

Under the previous version of the Fisheries Certification Process, expedited audits could take place off-site, on-site or through the 'review of information' option. The MSC removed 'review of

information' as an audit type, in line with most stakeholder feedback, meaning that all expedited audits now will be off-site audits or on-site audits only.

In line with feedback from the CAB workshop and the STAC, the threshold for triggering an expedited audit was changed to be triggered only if changes to the fishery or new information indicates the status of a fishery certificate could change – either because the fishery no longer meets the requirements of the Fisheries Standard or there has been a change to the scope of the fishery. Where changes to the fishery or new information indicates a new condition may be needed, the CAB will consider this during the next scheduled annual surveillance audit. Additionally, a requirement was added to clarify that CABs can conduct a surveillance audit as an alternative to an expedited audit if it is announced within 30 days of the CAB becoming aware of the changes to the circumstances or new information, and the surveillance schedule can accommodate the change. The MSC did not include a separate stakeholder input and/or peer review stage: with the change to make all expedited audits off-site or on-site audits, CABs have to actively seek stakeholder input.

### ***New information during the full (re)assessment process***

The MSC removed the requirement to open a stakeholder input period if the time between announcement and publication of Public Comment Draft Report exceeds nine months, in line with most stakeholder feedback. Stakeholders can still provide input on the report after it is published. The cut-off date for information that is used by the assessment team to score a fishery against the Fisheries Standard will remain the last day of the site visit. If new information becomes available after this, it could trigger an expedited audit if it is likely to impact the fishery's conformance to the Fisheries Standard. The CAB will conduct the expedited audit alongside the (re)assessment. The fishery will be certified based on the information available at the site visit, but if the expedited audit shows that the fishery does not meet the Fisheries Standard anymore, the fishery will be suspended immediately upon certification. This approach is in line with feedback in the public consultation and means the fishery has the opportunity to address the issues identified and come back into the program by lifting their suspension rather than by having to commence a new assessment.

See [Section 2.4.1.3](#) for a full discussion of why certain proposals were not taken forward and [Section 2.4.2.6](#) for the full MSC response and final changes to the Fisheries Certification Process.

# Shark finning scope requirements

At its December 2011 meeting, the MSC Board of Trustees resolved that shark finning shall not be undertaken within MSC certified fisheries. The MSC recognised a need to review the requirements on shark finning to ensure that the intent is clear and being effectively delivered in MSC certified fisheries. There are currently requirements regarding shark finning in both Principle 1 and Principle 2 of the Fisheries Standard. Assessment teams must provide a score based on the level of certainty that shark finning is not taking place. Stakeholders have raised concerns that the intent of the Board of Trustees' decision is not clearly reflected and implemented in the MSC requirements.

The scope criteria in the Fisheries Certification Process are used to determine if a fishery is eligible for assessment and certification. In the Fisheries Certification Process v2.2, the MSC is introducing new scope criteria to help deliver the MSC's commitment that shark finning does not take place in MSC certified fisheries, while continuing the work on shark finning in the [Fisheries Standard Review shark finning project](#). All changes made can be found in the [Summary of Changes](#) document.

## Stakeholder input and feedback

The Shark Finning scope requirements project went through two rounds of public consultation, in [March 2019](#) and [August 2019](#). In addition, CABs were consulted through a workshop in [September 2019](#), as well as a [desk-based auditability review](#) of the final proposal by a CAB and ASI. The proposal was also discussed by the STAC in [October 2019](#).

The first round of consultation received mixed feedback but a slight preference for the option to introduce new scope requirements as part of the Fisheries Certification Process (with a six-month implementation timeframe) while reviewing shark finning requirements in the Fisheries Standard Review (with a three-year implementation timeframe after the release of the reviewed Fisheries Standard). Existing requirements would remain in place during the review.

In 2015, the MSC issued an [interpretation that no 'systematic' shark finning should occur](#) in MSC certified fisheries. In the spring 2019 public consultation, respondents identified this interpretation as a source of inconsistency and ambiguity in how the shark finning requirements are applied in MSC fisheries assessments, and proposed that the interpretation should be removed.

Stakeholders raised the concern that a policy where the whole shark needs to be landed, not just its fins, should be strengthened in the MSC's requirements. Many respondents regarded this Fins Naturally Attached (FNA) policy as best practice.

## MSC response and changes to the Fisheries Certification Process

Existing shark finning requirements remain in the Fisheries Standard, therefore shark finning will be assessed in two parts: the new scope criteria forms a first initial check where any instances of shark finning that have been prosecuted and convicted are not eligible to be MSC certified. Further to this, any instances of shark finning that have not been prosecuted resulting in convictions, would be addressed as part of the assessment of the fishery under the existing requirements in the Fisheries Standard. Following from the initial consultation on this topic, the MSC replaced the term 'successful prosecution' with the term 'conviction' as a result of feedback in order to improve clarity and auditability of requirements. Guidance has also been provided on what level of entity should be removed from the certificate and how to do that. The kind of checks required to confirm that a fishery

is within scope have also been clarified. A new requirement has also been added to ensure that the CAB considers the entity as out of scope until two years have passed since the date of the conviction.

The interpretation on 'systematic' shark finning will be removed as it does not work in parallel to the new scope criteria included in Fisheries Certification Process v2.2.

The possibility of strengthening the MSC's requirements with regards to FNA policy is being reviewed as part of the [Fisheries Standard Review shark finning project](#) and has not been the focus of the Fisheries Certification Process scope requirement work.

See [Section 2.5.1.3](#) for a full discussion of why certain proposals were not taken forward and [Section 2.5.2.6](#) for the full MSC response and final changes to the Fisheries Certification Process.

# Disputes Process

At the end of the assessment process, stakeholders have an opportunity to object to the CAB's decision. This is regulated by the Objection Procedure, which was an annex to the Fisheries Certification Process.

The MSC consulted on separating the Objection Procedure from the Fisheries Certification Process. All changes made can be found in the [Summary of Changes](#) document. A disputes resolution project is ongoing as part of the wider [MSC Assurance Review](#).

## Stakeholder input and feedback

As part of the [August 2019](#) public consultation on the proposed Fisheries Certification Process changes, the MSC welcomed stakeholders to comment on the proposed new document called the MSC Disputes Process. The MSC did not receive any feedback indicating that stakeholders disagreed with the proposal to separate the Objection Procedure from the Fisheries Certification Process and put it into this new stand-alone document.

## MSC response and changes to the Fisheries Certification Process

The MSC decided to separate the Objection Procedure from the Fisheries Certification Process and put it in a stand-alone document called the MSC Disputes Process. This will allow for making improvements to the Procedure outside of the review cycle of the Fisheries Certification Process.

See [Section 2.6.1.3](#) for the full MSC response and final changes to the Fisheries Certification Process.



# Next steps

## Unit of Assessment (UoA)

With the release of Fisheries Certification Process v2.2, the MSC has finalised work on the Unit of Assessment project. Fisheries entering assessment for the first time from September 2020 onwards will have to use the new definition for UoA. Fisheries that are already certified (or in assessment) as of September 2020 will have three years to adopt the new definition, in line with the FAO Ecolabelling Guidelines.

## Expedited audits

The work on the Expedited audits project is also finalised with the release of the Fisheries Certification Process v2.2. Any expedited audit triggered from September 2020 will have to use the revised requirements.

## Conditions

Work on conditions continues on the Fisheries Standard Review timeline as part of the wider [MSC Assurance Review](#). The work will focus on firstly resolving the ambiguity in the MSC's intent with conditions and then operationalising the intent.

## Addressing persistent disagreement with the expert judgement applied in fishery assessments

Work on addressing persistent disagreement with the expert judgement applied in fishery assessments continues as part of the wider [MSC Assurance Review](#). Dispute resolution mechanisms will be explored (see Disputes Process below). The MSC decided not to codify the precautionary approach in the Fisheries Certification Process or guidance, but issues relating to information adequacy, evidence and precaution will be addressed in the Fisheries Standard Review project on [improving fisheries management](#).

## Shark finning scope requirements

The MSC continues work on shark finning through the [Fisheries Standard Review shark finning project](#). The MSC is investigating if global best practice in regulation and management designed to prevent shark finning has evolved enough to warrant us revising the Fisheries Standard. The possibility of improving FNA policy in the requirements is being reviewed as part of the Fisheries Standard Review shark finning project.

## Disputes Process

With the Objection Procedure separated from the Fisheries Certification Process into a new document called the MSC Disputes Process, the review of dispute resolution mechanisms will continue as part of the [MSC Assurance Review](#). This work is exploring mechanisms for resolving disputes, and this includes reviewing the Objection Procedure. Any future changes will go through a process of public consultation and the results of this work will be incorporated into the MSC Disputes Process.

# 1. Annex 1: Purpose and scope of this report

In the lead up to the release of the MSC Fisheries Certification Process v2.1 in August 2018 it was apparent that substantive, unresolved issues persisted for some of the proposed changes. The MSC carried out additional rounds of consultation on the unresolved issues, leading to the release of the Fisheries Certification Process v2.2 and associated documents in March 2020.

This report details:

- a) key issues relating to each area that was reviewed;
- b) participation in consultation activities;
- c) stakeholder feedback from all consultation activities associated with the review;
- d) MSC response to feedback and how it was incorporated into the revision;
- e) subsequent changes to the Fisheries Certification Process.

While the report provides summaries of feedback from all the consultation activities, these summaries cannot reflect all the detailed views that were expressed.

It is the goal of MSC consultations to value authenticity, fairness and inclusiveness, secure strategic insight and build consensus and credibility, with a core principle that consultations should be useful to the MSC in achieving its mission and useful to the participants in seeing how their views are considered. To that end, the MSC's processes for consultation follow the [ISEAL Standard Setting Code of Good Practice](#) and the [FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries](#). ISEAL requires that participation is open to all stakeholders, and that the standard setter proactively seeks contributions from disadvantaged stakeholder groups, so that contributors represent a balance of interests in the subject matter and in the geographical scope to which the standard applies. This report documents the opportunities the MSC has provided for stakeholders to contribute to the revision of the Fisheries Certification Process v2.2, including multiple rounds of online consultation open to all.

## 1.1 Process for assessing feedback

All consultation feedback received followed the same process, irrespective of the number of individual submissions. This process involved:

Collation	The MSC Executive collates the feedback to see what feedback is coming from which stakeholder groups.
Publication	The MSC Executive publishes the raw feedback, redacting personal and sensitive information.
Verification	The MSC Executive checks the accuracy of the feedback given using literature, consultants and technical workshops where needed.
Application	The MSC Executive develops proposals based on what would give the best chance for realising the MSC Theory of Change and our charitable mission/vision.

Technical review	The MSC Technical Advisory Board (TAB) reviews the quality of the proposals.
Stakeholder review	The MSC Stakeholder Advisory Council (STAC) advises on stakeholders' likely responses to the <i>proposals</i> .
Decision	The MSC Board of Trustees (BoT) decides whether to accept the <i>proposals</i> .
Implementation	The MSC Executive implements the <i>proposals</i> signed off by the MSC Board, potentially by releasing a new version of a program document.
Reporting	The MSC Executive publishes a report on the major issues raised and how the MSC has addressed those concerns.

For more information see the [MSC Standard Setting Procedure v5.0](#).

If you have any questions about the release, please email [standards@msc.org](mailto:standards@msc.org).

## 1.2 Stakeholder groups

When participating in an MSC consultation, participants are asked to self-identify as representing a stakeholder group. The MSC identifies relevant stakeholder groups as consisting of:

Seafood supply chain	Includes trading, processing, packing/repacking, storage and transportation of seafood products as well as retailers and restaurants/other food companies.
Wild harvest fisheries	Involvement with harvesting wild stocks.
Aquaculture	Involvement with the husbandry of farmed stocks.
Conformity assessment	Involvement with testing or other activities that determine whether a process, product, or service complies with the requirements of a specification, technical standard, contract, or regulation.
Accreditation	Involvement with issuing credentials or certifying third parties against an official standard.
Standard setting	Developing, coordinating, promulgating, revising, amending, reissuing, interpreting, or otherwise producing technical standards.
Non-governmental organisation (NGO)	An organisation dedicated to effecting change according to their objectives, including but not limited, to environmental NGOs.

Academic/scientific	An intellectual/theoretical interest in the seafood sector.
Comms/media	Involvement with communications related to the seafood sector.
Consumer	A person who buys and uses a seafood product.
Cultural/recreational/artisanal	A lifestyle interest in the seafood sector.
Governance/management	Leadership and administration for the governance of the seafood sector.

Note that some of the above were not target stakeholder groups for the consultation activities included in this report and were not represented among the respondents.

## 2. Annex 2: Consultation activities

This annex includes the full list of consultation activities associated with each of the Fisheries Certification Process v2.2 projects. Summaries of participation, stakeholder feedback and the MSC response are provided for each consultation activity.

### 2.1 Unit of Assessment (UoA)

The Unit of Assessment (UoA) describes the scope of what is assessed against the Fisheries Standard and the Unit of Certification (UoC) describes what is certified to the Fisheries Standard.

In early 2017, the MSC initiated a review of its UoA requirements in response to stakeholder concerns that the definitions allowed a vessel to catch fish from the same stock using both certified and uncertified fishing practices or methods. Stakeholders were concerned this could be misleading to retailers and consumers, who may assume that all practices are certified rather than understanding that while some practices can be certified, others are not. There was also concern that it could increase the risk for mixing of certified and uncertified fish.

Following five rounds of consultation, the MSC is changing the way the UoA and UoC are defined.

#### 2.1.1 Roundtable consultation – June 2017

The MSC hosted a roundtable consultation in London on 6 and 7 June 2017 to review how the MSC program defined UoAs and UoCs in MSC certified fisheries, and to exchange views with respect to its application within MSC assessments. The aim of the roundtable consultation was to have an open discussion on the issue and look for possible solutions.

##### 2.1.1.1 Participation

There were 40 participants representing over 30 organisations taking part in the roundtable consultation. These included participants from multiple stakeholder groups (Table 1). Geographical data for the participants is not available for this particular consultation.

**Table 1: Numbers of individual participants representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of participants
NGO	14
Seafood supply chain	9
Wild harvest fisheries	9
Conformity assessment	6
Academic/scientific	3
Accreditation	1

##### 2.1.1.2 Feedback summary

A number of stakeholders shared their concern that allowing vessels to fish on certified and uncertified UoAs within the same trip raised practical and reputational risks for the MSC. Two categories of compartmentalisation occurring on the same vessel, during the same trip and with the same gear were identified: (1) compartmentalisation by geographical area where the vessels fish inside and outside the UoA on the same trip and (2) compartmentalisation by activity undertaken with a given gear where a subset of those activities are excluded from the UoA.

Participants suggested a range of options to address the concerns, including complete prohibition of any uncertified fishing activity on a single trip, a requirement that fisheries enter an improvement pathway for the fishing activity undertaken on single trips that is not certified, or that the assessment report include information on that activity and its performance against the Fisheries Standard.

### 2.1.1.3 MSC response

One of the main concerns for stakeholders was the underlying assumption (by consumers) that product carrying the ecolabel comes from a fishery that has only certified sustainable activities.

Given that this is not the case with purse seine tuna fisheries that set on both Fish Aggregating Devices (FADs) and free-schools, where only the free-school sets are certified, tuna carrying the ecolabel could potentially be misleading to consumers. The MSC agreed to further explore at-sea traceability as a solution to increase assurance that ecolabelled product came exclusively from certified activities.

A research project was also agreed and undertaken on MSC certified fisheries to determine whether there are uncertified activities in a single trip routinely undertaken by vessels (e.g. different areas or different gears/practices, and the specifics of the management areas, different gears or practices and their activity) and to determine what traceability/segregation systems are in place.

Following the roundtable consultation, the MSC developed three options that went to public consultation in September 2017 (see [Section 2.1.2](#) below).

## 2.1.2 Public consultation – September 2017

The MSC held a public consultation from 1 to 30 September 2017 informed by feedback from the roundtable consultation on this topic. The consultation aimed to gain feedback on the following three proposed policy options:

- **Option 1:** Improved recording and reporting in the certification report of activity outside of the UoA that takes place on a single trip.
- **Option 2:** Uncertified activity enters a Fishery Improvement Project and enters MSC full assessment within five years.
- **Option 3:** All activities (different gears, different practices, different stocks) by the certified vessels on a single trip be assessed.

Further background and the full list of proposed changes can be found in the [consultation document](#). The consultation feedback in its entirety can be found in the [feedback tables](#).

### 2.1.2.1 Participation

There were 48 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 2) in North America, Oceania, Europe, Africa and Asia (Table 3). Note that not all respondents commented on all issues nor answered all questions.

**Table 2: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Conformity assessment	5
Wild harvest fisheries	11
Governance/management	6
NGO	14
Seafood supply chain	12

**Table 3: Numbers of respondents self-reported as being located in each country.**

Country	Number of respondents
Australia	2
Austria	1
Canada	3
France	1
Germany	2
Greenland ( <i>Denmark</i> )	2
Marshall Islands	2
Netherlands	3
New Zealand	2
Singapore	1
South Africa	2
Spain	3
Sweden	1
Switzerland	1
UK	17
USA	5

Participation rates were high in this public consultation, which was announced through CAB and stakeholder mailing lists and on the MSC Program Improvements website. The sectoral representation covers a wide range of stakeholder groups, with the most well represented being stakeholders from NGOs, wild harvest fisheries and the seafood supply chain.

Concerning geographical representation, the majority of respondents were based in North America and Europe, but there were respondents from all continents with the exception of South America. Respondents from the UK were overrepresented compared to other countries. This could be explained by the fact that the issue was originally raised by a UK NGO that ran campaigns on the topic. Beyond this, the uneven geographical representation could be explained by several factors, including

language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 4) to be used in the public reporting.

**Table 4: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Organisation/Individual
L17UOA001	Wild harvest fisheries	Individual
L17UOA002	NGO	Organisation
L17UOA003	Seafood supply chain	Organisation
L17UOA004	Conformity assessment	Individual
L17UOA005	Seafood supply chain	Organisation
L17UOA006	Wild harvest fisheries	Organisation
L17UOA007	Wild harvest fisheries	Organisation
L17UOA008	Wild harvest fisheries	Organisation
L17UOA009	Seafood supply chain	Organisation
L17UOA010	NGO	Organisation
L17UOA011	Conformity assessment	Organisation
L17UOA012	Seafood supply chain	Individual
L17UOA013	Governance/management	Individual
L17UOA014	NGO	Organisation
L17UOA015	Governance/management	Organisation
L17UOA016	Wild harvest fisheries	Organisation
L17UOA017	Wild harvest fisheries	Organisation
L17UOA018	NGO	Organisation
L17UOA019	Conformity assessment	Individual
L17UOA020	NGO	Organisation
L17UOA021	Seafood supply chain	Organisation
L17UOA022	Governance/management	Individual
L17UOA023	Governance/management	Individual
L17UOA024	Seafood supply chain	Organisation
L17UOA025	Seafood supply chain	Organisation
L17UOA026	Seafood supply chain	Organisation
L17UOA027	Conformity assessment	Organisation
L17UOA028	Conformity assessment	Organisation
L17UOA029	Seafood supply chain	Organisation
L17UOA030	NGO	Organisation
L17UOA031	Seafood supply chain	Individual
L17UOA032	NGO	Organisation
L17UOA033	NGO	Organisation
L17UOA034	NGO	Organisation
L17UOA035	NGO	Organisation
L17UOA036	NGO	Individual



L17UOA037	Wild harvest fisheries	Organisation
L17UOA038	NGO	Organisation
L17UOA039	NGO	Organisation
L17UOA040	Wild harvest fisheries	Organisation
L17UOA041	NGO	Organisation
L17UOA042	Wild harvest fisheries	Organisation
L17UOA043	Governance/management	Organisation
L17UOA044	Wild harvest fisheries	Organisation
L17UOA045	Seafood supply chain	Organisation
L17UOA046	Seafood supply chain	Organisation
L17UOA047	Wild harvest fisheries	Organisation
L17UOA048	Governance/management	Organisation

### 2.1.2.2 Feedback summary

Feedback on the proposals was mixed, with no clear support for any option. Most respondents preferred a modification of Option 3 (whereby all activities by the certified vessels on a single trip are assessed) with a request that it be narrowed to allow for fishing on different stocks within a single trip. Some stakeholders preferred no change to the current approach.

#### *Status quo*

A few of the respondents supported the status quo and expressed that the Theory of Change would continue to be effective in these fisheries, and that departing from this as currently drafted in Option 3 would disincentivise improvements.

*“Status quo should be kept.”*

– Respondent L17UOA016

#### *Option 1: Improved recording and reporting*

Some respondents considered Option 1 to be useful.

*“Option would be the most practical from a fisheries management perspective. It is also the most effective in incentivising improvement in fisheries over a period of time.”*

– Respondent L17UOA017

CABs considered this option to provide significant challenges for assessment and auditing.

*“While I feel that neither of the options presented will provide a solution that both addresses stakeholder concerns and feasibility to implement in the fishery; Option 1 is closest to the best solution. In this option, stakeholders would potentially be provided with the additional information and transparency that they are looking for to support teams decisions, without too much additional impact on the fishery and fishery assessment. However, I do have concerns with Option 1 as it is written now, including confidentiality and value of the information collected.”*

– Respondent L17UOA027

### **Option 2: Fishery Improvement Project**

Few respondents considered Option 2 to be useful.

*“The second option requiring the fishery to enter a Fishery Improvement Project when fishing outside of the UoA would in part address the concerns but could take a long time to materialise and would depend on follow up by a third party”*

**– Respondent L17UOA036**

CABs considered this option to provide significant challenges for assessment and auditing.

### **Option 3: All activities assessed**

Option 3 had the most support among the respondents, including those that proposed an alternative option and indicated that in lieu of their alternative, their preference would be option 3.

*“Option 3 considers the health of the stocks and ensures that the MSC standard remains at the highest level of thoroughness.”*

**– Respondent L17UOA018**

Some stakeholders noted significant concerns about the breadth of this option’s proposed application.

*“As currently worded, Option would create real operational problems for many vessels fishing in areas where some stocks (fisheries) are MSC certified and others are not around the world.”*

**– Respondent L17UOA018**

A few stakeholders suggested that the MSC require all activities using the nominated gear be assessed, although there was not agreement on the temporal and spatial scale.

*“Require Option 2 or 3 but not keep it to fishing trips, but instead require that the full impact of all gears (all modes) used by that vessel, all species caught and all area fished be assessed and are required to meet the MSC standard.”*

**– Respondent L17UOA026**

The NGO authors of the initial stakeholder letters highlighting this issue regarded Option 3 as the only solution to what they perceived as a reputational risk to the MSC. However, they said that it *“should only be applied to fisheries where UoAs are separated by fishing mode only”* and were concerned that it should not apply to fisheries operating in different management areas.

*“To show good faith, Option 3 is the least unacceptable solution, although XXXX would like to stress that it should only apply to fisheries that are contrived on a fishing mode basis.”*

**– Respondent L17UOA038**

They also felt that the MSC proposal did not adequately address their concerns

*“Before responding to these questions, XXXX would like to note that the original UoA concerns raised alongside other stakeholders in our letter to the MSC in January are not adequately addressed in this broader UoA consultation. These concerns related specifically to those MSC-certified fisheries that have been, or could be, allowed to use essentially the same fishing gear within a fishery (i.e. same target species, stocks, same management region) but with modifications at different times, only some of which fall within the UoA.”*

– Respondent L17UOA034

### **Further feedback**

Many respondents were not supportive of any of the proposed options.

*“We do not believe that there is an adequate ‘one size fits all’ solution presented with these options.”*

– Respondent L17UOA035

On the question of whether any fisheries should receive exemptions, respondents were generally divided between wanting the requirements to apply to all fisheries or believing small-scale and artisanal fisheries should be exempt.

*“Small-scale and artisanal fisheries should always be viewed in a different light to ensure that access to markets is fair and equitable and that the MSC takes all the applicable instruments, such as the FAO’s Ecolabelling Guidelines, the FAO Code of Conduct for Responsible Fisheries, WTO Rules etc. into consideration when reviewing existing policies.”*

– Respondent L17UOA032

Most respondents thought the proposed definition of a ‘trip’ as *“all fishing activities between visits to landing sites, where landing sites includes ports and legal, monitored and documented transshipments subject to MSC Chain of Custody certification”* was correct. Some respondents however, said that this was incomplete, precluded small-scale fisheries, and there were requests to exclude transshipment.

### **2.1.2.3 Summary of feedback from CAB workshop – September 2017**

The MSC held its annual CAB workshop in the MSC HQ in London on 27 and 28 September 2017. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Eight CABs were represented by 14 individuals.

Feedback on proposals for changes to the UoA from the CAB participants included that:

Overall, CAB participants expressed concern about MSC’s perceived reactivity and the long-term consequences of such reactivity (e.g. setting expectations for stakeholders to increase demands, counter pressure for other stakeholders resulting from any changes). Frequent and rapid changes in the Fisheries Certification Process have implications for CABs who must adopt their internal processes, use multiple versions of the requirements and other complexities. Feedback specific to each option included:

- **Option 1** was seen to hold some value, but some saw costs as prohibitive. A note was made about the possibility of false negatives in using existing data from CABs.

- **Option 2** had no support because of its complexity, the quality assurance of Fishery Improvement Projects is too inconsistent, and five years was seen as an unrealistic timeframe.
- **Option 3** had the most support because it was the simplest to assess once a clear definition of trip is defined.

CAB participants noted an Option 4 would be to do nothing and allow time for the evidence of the Theory of Change working to be shown.

CABs thought the success of Option 3 would be dependent on the definition of ‘trip’. They identified a potential work-around where fisheries clients could amend activities so that all certifiable fishing occurred on one trip and uncertifiable activity would occur on a separate trip, negating any actual improvements in fisheries performance. Good cooperation with authorities would be needed to get the data necessary and viability of this should be investigated.

#### 2.1.2.4 MSC response

Feedback from stakeholders did not provide clear support for any of the options. Consequently, the MSC developed four modifications to the original three options, providing two fundamentally different solutions. Options 4a and 4b modified the requirements for defining a UoA, while options 5a and 5b preserved the UoA definition but altered the requirements for product eligibility:

- **Option 4a:** Requiring the assessment of all the activities (all the different gears/practices/activities) by the client vessels when fishing on the target stock(s).
- **Option 4b:** Requiring the assessment of all fishing activities directed on the target stock using a defined FAO fishing gear.
- **Option 5a:** Requiring the assessment of all the activities (gears/practices) by the client vessels directed on the target stock(s) on a single trip.
- **Option 5b:** Require the assessment of all the activities (different gears, different practices) by the client vessels in a defined management area on a single trip.

These options were presented to the TAB 27 (December 2017) meeting. The TAB recommended options 4b and 5a (with preference for 5a) to the MSC Board of Trustees and that the impacts of these options should be assessed against the status quo. At their meeting in January 2018, the MSC Board of Trustees adopted option 5a for further development.

### 2.1.3 Public consultation – March-April 2018

The MSC held a public consultation from 15 March to 15 April 2018. The purpose of this consultation was to update stakeholders on the UoA and UoC developments following the [September 2017 public consultation](#), including the four policy options above ([Section 2.1.2.4](#)), and to seek feedback on the proposed text for new requirements and guidance.

The MSC consulted on mechanisms for operationalising Option 5a. The proposed requirements introduced product eligibility criteria to ensure that the stock(s) identified in the UoA - i.e. only the Principle 1 (P1) target stock(s) - is/are eligible to enter certified supply chains as MSC certified when

all activities (fishing method(s), gear type(s) and practices) that are directed on that stock on a single trip are assessed and certified. If an uncertified activity targets the Principle 1 target stock(s) on the same trip, product from the UoC will not be eligible to be sold as MSC certified. This option relied heavily on demonstrably effective trip-based traceability systems to distinguish product eligibility.

Further background and the full list of proposed changes can be found in the [consultation document](#). The consultation feedback in its entirety can be found in the [feedback tables](#).

### 2.1.3.1 Participation

There were 21 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 5) from North America, Europe and Oceania (Table 6). Note that not all respondents commented on all issues nor answered all questions.

**Table 5: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Conformity assessment	2
Wild harvest fisheries	5
NGO	5
Seafood supply chain	9

**Table 6: Numbers of respondents self-reported as being located in each country.**

Country	Number of respondents
Canada	1
France	1
Germany	5
Marshall Islands	1
Netherlands	1
Norway	1
Spain	2
Switzerland	1
UK	7
USA	1

The consultation was announced through CAB and stakeholder mailing lists and on the MSC Program Improvements website. The sectoral representation covers a wide range of stakeholder groups, with the most well represented being stakeholders from seafood supply chain. This could be explained by the shift in policy direction towards product eligibility criteria, which would be relevant to these stakeholders.

Concerning geographical representation, the majority of respondents were based in North America and Europe, with only one respondent based outside these regions. The lack of geographical

representation could be explained by several factors, including language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 7) to be used in the public reporting.

**Table 7: Participation identification for the respondents, specifying whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E18UOA001	NGO	Organisation
E18UOA002	Seafood supply chain	Individual
E18UOA003	NGO	Organisation
E18UOA004	Wild harvest fisheries	Organisation
E18UOA005	Seafood supply chain	Organisation
E18UOA006	NGO	Organisation
E18UOA007	Seafood supply chain	Organisation
E18UOA008	Wild harvest fisheries	Organisation
E18UOA009	Conformity assessment	Individual
E18UOA010	Seafood supply chain	Organisation
E18UOA011	Seafood supply chain	Organisation
E18UOA012	Wild harvest fisheries	Organisation
E18UOA013	Seafood supply chain	Organisation
E18UOA014	Seafood supply chain	Organisation
E18UOA015	Seafood supply chain	Individual
E18UOA016	Conformity assessment	Organisation
E18UOA017	Wild harvest fisheries	Organisation
E18UOA018	NGO	Organisation
E18UOA019	NGO	Organisation
E18UOA020	Wild harvest fisheries	Organisation
E18UOA021	Seafood supply chain	Organisation

### 2.1.3.2 Feedback summary

Overall, respondents were not supportive of the MSC's proposals. While many multiple-choice responses stated 'partial support', they were supplemented with negative comments. Overall, the requirements and guidance were considered complex, and many questions were raised about their practical application.

Most respondents disagreed or only partially agreed that the proposed requirements captured the MSC's intent that all activities (fishing method(s), gear type(s) and practices) fishing on the P1 target stock(s) on a single trip must be certified for fish and fish products to be sold as MSC certified. The stakeholder groups who first raised the issue of the UoA definition were not supportive of option 5a, believing it did not address their concern.

*“The question assumes that the answer to the problem with UoAs is simply to ensure that all activities on a trip must be certified, but there is no consultation as to whether this is correct (and it plainly isn't).”*

**– Respondent E18UOA018**

Feedback included that vessels would still be able to use non-certified (and potentially unsustainable) fishing activities on the same trip as certified activities, allowing for compartmentalisation by trip to persist, even if the product could not carry the ecolabel.

*“Even if MSC adopts its current approach of limiting reform to particular trips, vessels will still be able to market the catch of targeted species as from a sustainable fishery even if they adopt unsustainable fishery practices on that same trip, provided those practices are not fishing on the target species (proposed FCR 7.5.6.2). This will allow unsustainable fishing to subsidise the catching of MSC-certified products.”*

**– Respondent E18UOA001**

*“Such an effect would be in contradiction to MSC’s theory of change as instead of addressing the negative environmental impacts of fishing operations, the separation of the UoA on a trip-by-trip basis will allow for such negative impacts to be compartmentalised, with no incentive to improve their impacts as they will fall outside of the UoA.”*

**– Respondent E18UOA018**

Some respondents thought that the proposed definition of ‘target species’ would allow for the continued catch of large volumes of P1 species by non-certified activities on the same trip.

*“Because of the “target species” definition, it will be still possible for MSC certified vessel to use unsustainable/uncertified gears during the same trip whilst catching large amounts of P1 species with the uncertified gear.”*

**– Respondent E18UOA003**

*“There are many fisheries that are multispecies and the target is not necessarily the stock most caught. We believe that MSC Standards should consider this fact and allow for more than one stock to be defined as the targets in fisheries directed at more than one stock.”*

**– Respondent E18UOA008**

The general view was that multi-species, multi-gear and small-scale fisheries would struggle to meet the requirements, thereby resulting in negative impacts on accessibility to the MSC Program.

*“I think the MSC's intent is misplaced and a knee jerk reaction to political/religious(?) pressure regarding a specific type of gear (purse seine) and resource (skipjack). To then apply this all fisheries is going to be problematic for small-scale multi-gear vessels.”*

**– Respondent E18UOA009**

Feedback included that requiring at-sea chain of custody would exclude many current fisheries from the program.

*“Approx 4900 MSC certified coastal vessels would disappear from the certificate, leaving approx 100 trawlers and offshore vessels that would be able to comply with at-sea CoC.”*

– Respondent E18UOA004

*“It is also not clear how the CAB is to determine in advance whether non-UoC practices are used on the same trip (proposed FCR 7.5.6.1), as presumably this will vary from trip to trip and may not be known in advance.”*

– Respondent E18UOA018

### **Defining ‘trip’**

Many respondents thought the proposed guidance was enough to allow CABs to define a ‘trip’, but the same number of respondents regarded the guidance as only partially sufficient. Feedback from this latter group was generally concerned with the definition not being sufficiently clear.

Some respondents did not agree with the proposed definition and their feedback included concerns for further compartmentalisation.

*“As with previous comments above it would be contrary to the MSC’s theory of change and the precautionary approach if fisheries are allowed to exclude certain trips, and the impacts associated with these, when targeting the same stock with the same fishing gear in the same areas, from the UoA.”*

– Respondent E18UOA001

### **Defining ‘target species’**

Feedback on whether guidance was sufficient for a CAB to determine the target species of a particular gear was mixed. Feedback from the respondents that thought the definition was either insufficient or only partially sufficient included that the guidance was too complex and open to interpretation, encouraged compartmentalisation, allowed non-certified gears catching P1 species and could give rise to unwanted effects.

## **2.1.3.3 MSC response**

Consultation feedback confirmed that the complexities of a traceability-based solution would make it resource intensive and possibly prohibit implementation in practice and would not necessarily resolve the original issue of certified and not-certified activities occurring on the same trip.

In June 2018, the MSC developed alternative options and undertook impact assessments of two options:

- **Option A:** Catch of the P1 stock(s) from the UoC can only be sold as MSC-certified product if any fishing activity that sets on FADs on a single trip is assessed and certified.
- **Option B:** Catch of the P1 stock(s) from the UoC can only be sold as MSC-certified product if any fishing activity that sets on FADs on a single trip is either assessed and certified, or engaged in an MSC-recognised credible Fishery Improvement Project.

The MSC collated definitions for FAD-set in order to identify best practice, investigated the development of mechanisms for credible Fishery Improvement Project verification, and explored the rationale for ring-fencing the development to FADs. Based on the results, the MSC solicited targeted feedback on these topic areas from the CABs at the CAB workshop in September 2018 (see [Section 2.1.3.4](#) below).



### 2.1.3.4 Summary of feedback from CAB workshop – September 2018

The MSC held its annual CAB workshop in the MSC HQ in London on 17 and 18 September 2018. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. 12 CABs were represented by 18 individuals, along with three representatives from accreditation, one independent assessor/auditor and one representative from the Aquaculture Stewardship Council (ASC).

Feedback on proposals for changes to the UoA from the CAB participants included that:

- Trip-level traceability was seen as possible, although expensive, as it requires good segregation systems and monitoring. This is possible for sophisticated industrial fisheries but maybe not for less well-resourced fisheries.
- The MSC could be more prescriptive in the UoA definition, such as including fishing area.
- Many tuna fisheries are already in Fishery Improvement Projects, but the MSC's 'In Transition to MSC' program has another layer as it is verified, not recognised. This was seen as complex.

As a result of this and other stakeholder feedback, the MSC moved away from traceability and product eligibility-based solutions, instead proposing options for modifying the definition of UoA. These proposals are set out in [Section 2.1.4](#) below.

## 2.1.4 Public consultation – March-April 2019

The MSC held a public consultation from 4 March to 4 April 2019. Respondents were asked to comment on two proposed changes to the UoA definition, a proposal for determining Principle 2 (P2) main and minor species under the new UoA definition and potential implementation timeframes for the new definition to become effective. The definition for UoA at the time included the target stock fishers, gear-type, fishing methods, fishing practices and vessels types. The proposed modifications to the UoA definition were:

- The removal of the term 'fishing practice' from the definition of the UoA requiring all practices/activities by gear-type to be included in the UoA(s);
- Defining the term 'fishing practice' elsewhere in the Fisheries Standard;
- Adding a requirement to define the geographical area as part of the UoA.

Further background and the full list of proposed changes can be found in the [consultation survey document](#). The consultation feedback in its entirety can be found in the [feedback tables](#).

### 2.1.4.1 Participation

There were 29 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 8) from Europe, North America, Asia, Oceania and Africa (Table 9). Note that not all respondents commented on all issues nor answered all questions.

**Table 8: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Academic/scientific	2
Conformity assessment	1
Wild harvest fisheries	9
Governance/management	1
NGO	6
Standard setter	2
Seafood supply chain	8

**Table 9: Numbers of individual respondents located in each country.**

Country	Number of respondents
Australia	3
Austria	1
Bangladesh	1
Canada	3
Germany	2
Honduras	1
Marshall Islands	1
Netherlands	1
Norway	1
Singapore	1
South Africa	1
Spain	1
Switzerland	1
Thailand	1
UK	4
USA	6

Participation was sought from respondents representing conformity assessment, NGOs, academic/scientific, wild harvest fisheries, supply chain companies and governance/management. The target for participation was set to 34 respondents, however noting that certain consortium of respondents counts for more than one, with many signatories to some responses. Taking this latter point into account, this target was met.

The sectoral representation covers a wide range of stakeholder groups, with the most well represented being stakeholders from the seafood supply chain, wild harvest fisheries and NGOs. Stakeholders from the seafood supply chain are represented above the defined target for participation, while those from conformity assessment, academic/scientific and governance/management are underrepresented. In addition to the defined target sectors, respondents included one representative from standard setting.

Concerning geographical representation, the majority of respondents were based in North America and Europe, but there was broad representation across continents, with the exception of South

America and with only one respondent based in Africa. The uneven geographical representation can be explained by several factors, including language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 10) to be used in the public reporting.

**Table 10: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E19UOA001	Seafood supply chain	Organisation
E19UOA002	NGO	Organisation
E19UOA003	Seafood supply chain	Organisation
E19UOA004	NGO	Organisation
E19UOA005	Seafood supply chain	Organisation
E19UOA006	NGO	Organisation
E19UOA007	Wild harvest fisheries	Organisation
E19UOA008	Wild harvest fisheries	Organisation
E19UOA009	Conformity assessment	Organisation
E19UOA010	NGO	Organisation
E19UOA011	NGO	Organisation
E19UOA012	Seafood supply chain	Organisation
E19UOA013	Seafood supply chain	Organisation
E19UOA014	Wild harvest fisheries	Individual
E19UOA015	Wild harvest fisheries	Organisation
E19UOA016	Academic/scientific	Individual
E19UOA017	Wild harvest fisheries	Organisation
E19UOA018	Standard setter	Organisation
E19UOA019	Seafood supply chain	Organisation
E19UOA020	NGO	Organisation
E19UOA021	Academic/scientific	Individual
E19UOA022	Seafood supply chain	Organisation
E19UOA023	Wild harvest fisheries	Organisation
E19UOA024	Standard setter	Organisation
E19UOA025	Wild harvest fisheries	Organisation
E19UOA026	Seafood supply chain	Individual
E19UOA027	Governance/management	Individual
E19UOA028	Wild harvest fisheries	Individual
E19UOA029	Wild harvest fisheries	Organisation

### 2.1.4.2 Feedback summary

A summary of key feedback to each of the major themes can be found below:

### **Removal of the term 'practices'**

Most respondents found it likely that the removal of the term 'practices' would clarify that the UoA must be defined at the gear level and not further subdivided by different behavioural uses of the same gear. Most respondents were in favour of the proposal.

*"We strongly recommend the MSC remove the term 'practices' from its definition of UoA and clarify that the impact of all fishing activities on the target stock will be taken into account in the assessment and certification process, applying a holistic approach."*

**– Respondent E19UOA004**

*"If a vessel targets the same species with a particular gear type during the same trip within the same geographic area they should not be allowed to break up their fishing operations into sub-components and then claim sustainability credentials for parts of their operations."*

**– Respondent E19UOA002**

### **Geographical area**

Feedback on the proposed addition of 'geographical area' to the UoA definition was mixed with slightly more respondents in favour.

*"The geographical area of a UoA is likely to influence the gear type used within a fishery and should be able to be evaluated from available fishery reported data to verify."*

**– Respondent E19UOA023**

Many respondents requested clarifications to the proposed requirement, and some expressed worry about its intent.

*"The current MSC consultation paper does not give sufficient background as to why "geographic area" is now included in the consultation and no definition of what constitutes the geographic area is given."*

**– Respondent E19UOA007**

*"Most importantly, we must ensure that this new definition is not used as another means to artificially compartmentalise a fishery that is targeting a stock or stock(s) with an FAO-defined fishing gear type but using different fishing practices and/or technical modifications in different geographical areas."*

**– Respondent E19UOA020**

Others found the inclusion redundant.

*"It is unclear how this adds to current Unit of Assessment requirements where geographical area is already specified (eg down to FAO Area or sub-area)."*

**– Respondent E19UOA013**

### **P2 main and minor species**

The majority of respondents agreed with the proposal for the thresholds for P2 main and minor species to be determined on the entirety of the catch data rather than catch data partitioned by set-type.

*“If the UoA definition is going to be updated in order to assess fisheries holistically, it is only logical to assess P2 species accordingly, that is, taking into account all fishing practices within a single trip.”*

**– Respondent E19UOA024**

However, those that did not agree had objections to the proposal on the grounds that this could lower the bar.

*“The appropriate determination of P2 species main and minor designations, as well as assessment of the impact of the UoA on the P2 species components (Primary, Secondary and ETP) cannot be done effectively without subdivision to set type. This is because catch composition is often significantly different in different set types.”*

**– Respondent E19UOA005**

### **Implementation time**

Three timeframes for implementation were proposed: six months consistent with process changes (i.e. Fisheries Certification Process), three years consistent with FAO requirements and five years consistent with a previous recommendation that if not certified, the non-certified practices (e.g. FAD-sets) portion must be in a Fishery Improvement Project. The consultation did not specify whether this was for all fisheries or only fisheries that already are in the program.

Respondents slightly favoured the six-months option to the three-year option, with the five-year option being considerably less favoured.

*“When an acceptable solution is proposed for changes to the definition of the UoA, changes should be implemented as fast as possible (i.e. on a six month timeline).”*

**– Respondent E19UOA006**

*“We consider that any changes to either the standard, or the Certification Process, that may affect the outcome of an assessment should be subject to standard FAO ecolabelling guidelines and should allow the stated three years to allow clients (and CABs) to adapt to these changes.”*

**– Respondent E19UOA017**

Some respondents considered fisheries to already have had a two-year implementation period, as they have known about the proposed changes since 2017.

*“Compartmentalised tuna fisheries have known for quite some time that the policy will be changing and have had ample opportunity to prepare themselves for such policy changes.”*

**– Respondent E19UOA002**

### 2.1.4.3 MSC Response

Options and associated feedback were presented to the TAB 29 (July 2019) meeting for the recommendations moving forward. TAB recommendations, and any required modifications, were subject to consultation, CAB and ASI review and a CAB policy workshop for feedback (see sections below).

## 2.1.5 Public consultation – August-September 2019

Following the TAB discussion, the MSC held a public consultation from 23 August to 23 September 2019. Following three rounds of public consultation, set out previously in this report, the MSC consulted on changing the definition of the UoA that defines the fishing activities assessed, and potentially certified, to the Fisheries Standard. The amended definition will mean that all individual fishing practices using the same gear type (e.g. purse seine fishing on free schools and FADs) will need to be assessed as part of the UoA.

For the implementation timeline, the MSC proposed three years for existing MSC fisheries (those that are already in the program as certified, in assessment or suspended), and six months for any new fisheries, just like the regular Fisheries Certification Process implementation timelines.

The MSC was seeking feedback on the clarity, auditability and applicability of the draft requirements and accompanying documents.

For further details, see the full draft program documents with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Fisheries Certification Process](#)
- [MSC Guidance to the Fisheries Certification Process](#)
- [MSC-MSCI Vocabulary](#)

Note that these documents contain proposed changes and feedback for multiple projects, not just UoA. See the [general consultation feedback](#) for additional feedback received on the consultation.

### 2.1.5.1 Participation

There were seven respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 11) across Europe, North America and Oceania (Table 12).

**Table 11: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
NGO	4
Academic/scientific	1
Governance/management	1

Wild harvest fisheries	1
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**Table 12: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of respondents
Australia	1
Bangladesh	1
Germany	1
Marshall Islands	1
UK	1
USA	1

The MSC had been through several rounds of public and targeted consultation on the topic, and this round specifically consulted on the clarity, auditability and applicability of the document text, not the policy direction. The target stakeholder groups were wild harvest fisheries, NGOs, CABs (conformity assessment), ASI (accreditation) and other stakeholders with an interest in the topic. The MSC commissioned a desk-based review by a CAB and ASI (feedback summary in [Section 2.1.5.3](#)) and held a CAB workshop (feedback summary in [Section 2.1.5.4](#)) in addition to the public consultation to ensure sufficient participation from these groups. The proposal was also presented to and discussed by STAC (feedback summary in [Section 2.1.5.5](#)).

In order to ensure respondents’ anonymity, all respondents were assigned a participant ID (Table 13) to be used in the public reporting.

**Table 13: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19UOA001	Academic/scientific	Individual
L19UOA002	NGO	Organisation
L19UOA003	Wild harvest fisheries	Organisation
L19UOA004	NGO	Organisation
L19UOA005	Governance/management	Organisation
L19UOA006	NGO	Organisation
L19UOA007	NGO	Organisation

## 2.1.5.2 Feedback summary

Feedback on the proposals was generally favourable, supporting the notion that a fishery should be certified more holistically as provided under the proposed definition of UoA.

*“XXXX agrees with the revised definition of UoA and UoC and acknowledges the benefits of a definition that considers the ecological footprint of the fishery operation as a whole rather than by fishing method or set type. Additionally, the new definition eliminates the risk of mixing catches from inside and outside the UoA, be it in terms of fishing method or set type, or in terms of geographical fishing area.”*

– Respondent L19UOA007

A summary of key feedback can be found below:

### **Geographical area**

The proposed change to include geographical area requirements in the UoA definition was seen to potentially add another dimension for compartmentalisation, although not the intention.

*“We welcome the proposed amendment such that compartmentalisation on the basis of fishing practice will no longer be permitted. However, it is concerning that a further potential loophole – the addition of ‘geographical area’ to the definition of the Unit of Assessment – is proposed to be added, without clear explanation of how this will be defined. This therefore opens an opportunity for a new form of compartmentalisation.”*

– Respondent L19UOA004

### **Fishing gear**

One respondent requested the use the definition of ‘fishing gear’ from ‘FAO. 2018. Report of the Technical Consultation on Marking of Fishing Gear’, which arguably defines FADs as fishing gear.

### **Set-type**

Respondents thought set-type should not be ‘defined’ post-hoc, but rather ‘confirmed’.

*“This is not entirely correct. Set types must always be able to be distinguished prior to deployment. Captains declare set type before making it. E.g. Free school sets are declared prior to deployment but their validity can be confirmed or denied post-hoc based on species composition of catch. The actual classification should not be declared post-hoc only based on species composition as there is a risk of gaming the system if done this way.”*

– Respondent L19UOA005

### **Vessel type**

It was pointed out that when the MSC removed terms like ‘fishing method’ and ‘fishing practice’ from the UoA definition, it highlighted the lack of a definition of ‘vessel type. Feedback pointed out that many UoAs do not include vessel types and this should consequently only be a requirement where applicable.

*“This requires the client to define the vessel types. This may or may not be useful and the client may or may not know what the ‘vessel types’ are or how vessel types are defined. May be better to go back to something like ‘(including vessel types where relevant)’”*

– Respondent L19UOA003

### **Implementation times**

Respondents requested clarifications on implementation times.

*“Does this mean that all compartmentalised fisheries can continue to be certified until 2023 according to the current requirements? Why will this not be mandatory at the latest starting with the effective date for Fisheries Certification Process v2.2 September 2020 as announced initially? The wording here is completely confusing and needs clarification as to from when on*



*will the new definition of UoC be mandatory for - New assessments? – March 2020? - Announced assessments? – September 2020? - Certified fisheries? – 2023?”*

– Respondent L19UOA002

### **2.1.5.3 Summary of feedback from CAB and ASI desk-based review – September 2019**

In parallel to the public consultation, the MSC commissioned desk-based reviews from one CAB and ASI.

Both the CAB and ASI commented that many fisheries are seasonal, and that the MSC should consider adding fishing season to the UoA definition.

The CAB asked whether including ‘vessel type’ was mandatory, as many UoAs do not include this.

### **2.1.5.4 Summary of feedback from CAB workshop – September 2019**

The MSC held its annual CAB workshop at the MSC HQ in London on 3 and 4 September 2019. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Six CABs were represented by 10 individuals, along with four independent assessors/auditors and one representative from ASI.

Feedback on proposals for changes to the UoA from the CAB participants included:

#### ***Geographical area***

The intent of this change was to formalise current status quo and clarity of traceability requirements as opposed to providing new criteria. Most participants did not expect the proposed edits to change their current practice of collecting geographical area information. However, it was noted that the proposed edit actually includes geographical area as one of four factors to define the ‘scope of assessment’, and this would limit the scope at which components are scored in Principle 2 or 3 (P3), and that is a significant change.

Other participants responded that the reporting templates all currently have geographical area as part of the UoC and that P1 relates to where the clients fish and report landings to, P2 relates to scoring elements, and P3 relates to management area. Some participants identified that having the geographical area under the UoA or UoC definition could create an additional dimension by which to compartmentalise fisheries. Participants agreed to add fishery footprint as a requirement and remove it from the UoA definition (and to keep it separate in the reporting templates).

Opinion was divided on standardising/defining geographical area to a higher resolution. It was seen as good for consistency but potentially too restrictive if further defined.

#### ***Definition of UoA***

Participants were supportive of removing fishing method and practices from the definition as a simpler approach. There was a discussion on “vessel type(s)” and agreement to amend to “if relevant, vessel type(s)”.

### ***New vocabulary***

'Set-type' can apply in many situations. It was suggested to replace '*generally applies to*' with '*for example*', provide other examples, and remove the last sentence about post-hoc classification. The use of 'FAD' was seen as generally acceptable. It was confirmed that a set type and (e.g.) FAD would not be accepted as a gear type and that it would be possible to differentiate between different types (sizes) of the same gear.

### ***Implementation times***

Participants were generally accepting but noted difficulty with different timelines, therefore recommending clear explanation from MSC as to why there were differences.

## **2.1.5.5 Summary of feedback from STAC meeting – October 2019**

The STAC met from 15 to 17 October 2019 at the MSC HQ in London.

The STAC endorsed the UoA proposals, noting that some STAC members expressed concern over the long implementation timeline.

## **2.1.5.6 MSC response and changes to the Fisheries Certification Process**

The MSC removed the terms 'fishing methods' and 'practices' from the definition of UoA and UoC. This means the UoA and UoC are now defined by the target stock(s), the fishing gear, and the fleets, vessels or individual fishing operators, but not the by the way the fishing gears are used. The assessment will consider the impacts of all individual fishing methods or practices using the same gear type. This will prevent a certified stock being targeted by a given gear type conducted with both certified and uncertified fishing activities.

For example, a tuna purse seine fishery that fishes on both free schools and FADs can no longer seek certification for the free school component of its catch without including its FAD component in the assessment.

### ***Geographical area***

The geographical area within which the fishery operates will be defined. This will improve the traceability of certified products.

It was not the MSC's intention to provide another dimension for compartmentalisation, but to specify explicitly the area in which fishing occurs. In line with stakeholder feedback, the geographical area requirement was moved from being a requirement within the UoA definition to being a separate requirement for the CAB to report in which geographical area the UoA takes place.

### ***Vessel type***

The MSC added a definition for vessel type, but let the definition read 'if relevant', in line with stakeholder feedback.

### ***Set-type***

The MSC removed the definition of set-type as it is not used in the normative requirements. This was a recommendation made by TAB31 (December 2019).

### ***Fishing gear***

For the purpose of MSC assessment, a FAD is not a type of fishing gear as it merely aggregates fish but does not capture them.

### ***Fishing season***

In the UoA definition in Fisheries Certification Process v2.1, the term fishing method can include fishing season. Removing the term has seemingly implied that fisheries cannot be defined by season moving forward. However, the term is retained in the vocabulary definition of UoA and in the guidance and can still be used as an explanatory value to define UoA, which was confirmed by TAB31 (December 2019).

### ***Implementation times***

Fisheries entering assessment for the first time from September 2020 onwards will have to use the new definition. Fisheries that are already certified (or in assessment) will have three years to adopt the new definition. This can be done during a surveillance audit or via a scope extension. The change to the definition of the UoA will require affected fisheries to assess an additional portion of the fishery against the Fisheries Standard, and it is consequently considered a Standard level change. This is the reason why existing fisheries in the MSC program will be given three years to adopt the definition, in line with the FAO Ecolabelling Guidelines, which the MSC commits to follow (see [Annex 1: Purpose and scope of the report](#)).

## 2.2 Conditions

The Fisheries Standard is designed to reflect three levels of sustainability performance: minimum requirements, best practice and state of the art. To achieve certification fisheries must, on average, reach best practice in all [three Principles](#). Where a [Performance Indicator](#) scores less than best practice, the fishery must improve its performance to the best practice level over the course of the fishery's certification and usually within five years (unless there are exceptional circumstances). These improvement requirements form what we call conditions. A fishery must demonstrate improvements towards best practice every year and achieve best practice within five years and before seeking recertification (unless there are exceptional circumstances). The fishery client has to prepare a Client Action Plan detailing how they plan to meet their conditions. CABs then report on a fishery's progress towards best practice (meeting their conditions) in annual Surveillance Reports, measuring the progress towards predefined 'milestones'.

In response to stakeholders raising concerns about the way conditions are set, monitored and closed, the MSC commissioned a review from ASI (see reports from [April 2018](#) and [January 2019](#), or a [summary](#)), which included a root cause analysis, focusing on carrying over and re-opening of conditions. ASI found that while the majority of conditions are closed in accordance with MSC's requirements, both reports make recommendations for improvements. These include recommendations to clarify and/or change existing process requirements, improve assessment reporting templates, review and revise internal MSC processes (e.g. variations and technical oversight), improve CAB training and calibration<sup>1</sup>, improve impact testing of proposed requirements and ensure audibility review of proposed requirements.

The policy development and consultations discussed in the following sections relate only to the recommendations relevant to the process requirements in the Fisheries Certification Process and accompanying documents (e.g. guidance and templates). The options developed and consulted on focus on the processes and requirements in the Fisheries Certification Process. The [MSC Assurance Review](#), which the Conditions project is part of, is addressing additional issues such as internal MSC processes, CAB training, stakeholder communications, and calibration.

### 2.2.1 Public consultation – February-April 2019

The MSC held a public consultation from 4 February to 4 April 2019. This consultation presented a range of options to address issues identified by ASI that were specific to the Fisheries Certification Process. The consultation topics included drafting of milestones and Client Action Plans, stakeholder and peer review of Surveillance Reports, and addressing unmet conditions at reassessment.

The consultation on conditions proposed options to resolve three issues:

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<sup>1</sup> Checking, by comparison against the intent of the MSC certification program, the accuracy and consistency of standard application by CABs. This may also include adjustment of the application to bring it into alignment with the MSC certification program.

- Drafting milestones and Client Action Plans
  - **Option 1** - Status quo: CABs draft conditions that specify milestones (Fisheries Certification Process v2.1 7.18.1.4); the Client Action Plan includes how the milestones will be addressed, the timeframes in which they will be addresses and how the CAB will assess milestones (Fisheries Certification Process v2.1 7.19.7); and the CAB verifies the Client Action Plan (Fisheries Certification Process v2.1 7.19.7). Client Action Plans are not binding.
  - **Option 2** - Minor improvements: Develop further guidance (in addition to G7.18) for CABs on drafting milestones that are effective but not prescriptive; Develop guidance for fisheries on how to develop Client Action Plans that adequately address milestones; and Improve Section 8.5 and 8.6 of the MSC Reporting Template v1.0
  - **Option 3** - Change to requirements: Amend requirements so that: CABs draft conditions that specify the requirements for milestones; the client drafts the milestones as part of the Client Action Plan; and the CAB verifies that the milestones are SMART and auditable as part of the Client Action Plan verification (Fisheries Certification Process v2.1 7.19.7)
- Review and feedback on Surveillance Reports
  - **Option 1** - Status quo: If stakeholders (including the MSC) have concerns that conditions have been closed without following the requirements in the Fisheries Certification Process, a complaint can be submitted to the CAB, or an incident can be reported to ASI.
  - **Option 2** - Change to requirements: Introduce requirements for a review of the Surveillance Report when conditions are closed.
  - **Option 3** - Change to requirements: Introduce requirements for a review of all Surveillance Reports.
- Conditions at reassessment and closing conditions in year five
  - **Option 1** - Status quo: This includes recent improvements to guidance in Section 8.5 of the 'MSC Reporting Template'.
  - **Option 2** - Minor improvements: Further improvements to the MSC Reporting Template so that all conditions from the previous certificate are listed with details on status, progress and closure.
  - **Option 3** - Change requirements: Introduce a requirement that all conditions are to be met by the 4<sup>th</sup> surveillance audit.
  - **Option 4** - Change requirements: Introduce requirements that strengthen the process for evaluating progress of conditions and closing conditions in year five while reassessment is also taking place.

Respondents were asked to rate and comment on the clarity, feasibility, acceptability, affordability, effectiveness, fairness and general preference for the proposed options. They were also invited to specify alternative options.

The full list of and further background to the proposed changes can be found in the [consultation document](#), and the consultation feedback in its entirety can be found in the [consultation feedback tables](#).

### 2.2.1.1 Participation

There were 31 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online

survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 14) across Europe and North America and from Australia and South Africa (Table 15). Note that not all respondents commented on all issues nor answered all questions.

**Table 14: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Academic/scientific	1
Conformity assessment	7
Wild harvest fisheries	7
Governance/management	1
NGO	9
Seafood supply chain	3
Unspecified	3

**Table 15: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of Respondents
Australia	2
Austria	1
Canada	3
Germany	6
Iceland	1
Netherlands	2
Norway	1
South Africa	1
UK	8
USA	3

Participation was sought from stakeholders representing conformity assessment, NGOs and wild harvest fisheries. In addition to this, participation was sought from MSC peer reviewers (working for the Peer Review College) and members of the STAC.

The sectoral representation primarily consists of respondents from wild harvest fisheries, which slightly underperformed compared to the participation target, and NGOs, which surpassed the participation target. Stakeholders from conformity assessment are underrepresented in comparison with to the target for participation. In addition to the defined target sectors, respondents included representatives from seafood supply chain, academic/scientific and governance/management, as well as one unspecified. Three STAC members and three peer reviewers were among the respondents. They are, however, identified in Table 14 as representing their primary stakeholder group rather than as peer reviewers or STAC members.

Concerning geographical representation, the majority of respondents were based in North America and Europe, with the respondents from Australia and South Africa being the only exceptions. The lack of geographical representation might be explained through a number of factors, including language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 16) to be used in the public reporting.

**Table 16: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E19CON001	Seafood supply chain	Organisation
E19CON002	NGO	Organisation
E19CON003	NGO	Organisation
E19CON004	NGO	Organisation
E19CON005	NGO	Organisation
E19CON006	Seafood supply chain	Organisation
E19CON007	NGO	Organisation
E19CON008	Wild harvest fisheries	Organisation
E19CON009	Conformity assessment	Organisation
E19CON010	NGO	Organisation
E19CON011	NGO	Organisation
E19CON012	Conformity assessment	Individual
E19CON013	NGO	Organisation
E19CON014	Unspecified	Individual
E19CON015	Wild harvest fisheries	Organisation
E19CON016	Conformity assessment	Organisation
E19CON017	Wild harvest fisheries	Individual
E19CON018	Wild harvest fisheries	Organisation
E19CON019	Wild harvest fisheries	Organisation
E19CON020	Seafood supply chain	Organisation
E19CON021	NGO	Organisation
E19CON022	Academic/scientific	Individual
E19CON023	Conformity assessment	Individual
E19CON024	Wild harvest fisheries	Organisation
E19CON025	Conformity assessment	Individual
E19CON026	Unspecified	Organisation
E19CON027	Wild harvest fisheries	Individual
E19CON028	Unspecified	Organisation
E19CON029	Governance/management	Organisation
E19CON030	Wild harvest fisheries	Organisation
E19CON031	Conformity assessment	Organisation

### 2.2.1.2 Feedback summary

Feedback was extensive and polarised. Respondents representing NGOs wanted significant changes, more opportunities for input and additional checks and balances by ASI and MSC. Respondents representing fishery clients wanted minimal change and more support. Respondents representing CABs wanted clarity but did not regard the issue as significant.

Key feedback was that a lack of transparency and clarity is leading to stakeholder misunderstanding, and there were requests for more guidance, additional processes, checks and balances, and oversight by ASI and MSC.

### **Drafting milestones and Client Action Plans**

Most respondents found this issue to be urgent and important to resolve. Feedback on the clarity of the current requirements was mixed. There was a clear preference for Option 2, although feedback on the proposed options was mixed.

Many respondents expressed the view that the status quo is vague and ineffective and thereby undermining the credibility of, and trust in, the MSC program. There was a reported lack of transparency around conditions which confuses some stakeholders, and a call for more guidance to ensure rigour, consistency and transparency.

*“Client Action Plans are an area which often holds up assessments. Clients don't understand what they need to do, and as the CAB we can't tell them. I think it would be helpful for the MSC to include more information for fisheries on what is being asked of them, and examples.”*

**– Respondent E19CON009**

Others were in favour of having either non-binding or no milestones, allowing for more flexibility in how fisheries meet their conditions.

*“[the MSC should consider the option] that CABs set conditions without milestones, but assess the work that has been done against the Client Action Plan year on year to see if they are on target.”*

**– Respondent E19CON009**

Some CAB respondents thought fisheries should be involved in or solely responsible for drafting their own milestones.

*“I think milestones are an integral part of an action plan and should be developed by clients. I.e. what will you have done and by when and how can we as CABs check it?”*

**– Respondent E19CON016**

Most respondents representing NGOs requested more oversight of the process by the MSC.

*“CABs are setting vague conditions and evidence of compliant Client Action Plans is scant. Additional oversight of this process is needed.”*

**– Respondent E19CON007**

Most respondents representing fisheries clients thought that additional processes, checks and balances would likely lead to additional costs, longer assessment and audit timeframes, more complexity and additional burden.

*“From my point of view the current standard is well applicable. Minor changes could improve the general understanding. But Option 3 would lead to unnecessary effort.”*



– Respondent E19CON024

**Review of feedback on surveillance reports**

Feedback was polarised on this issue, with no clear preference for any of the three proposed options. A slight majority of respondents thought resolving this issue was urgent and important. The polarised feedback highlights the trade-off between increased levels of review and input (which is equated with increased credibility) and surveillance audit costs and timeframes.

Many NGO respondents considered the status quo a credibility risk and called for additional oversight of surveillance audits and surveillance reports by MSC and ASI and opportunities for stakeholders to comment and raise objections.

*“The inability for stakeholders to comment on the CAB's decision on condition closure is a serious threat to the credibility of the feedback process, as there is often little indication that a condition may be closed before the surveillance report is released, at which point it is too late to provide information or comments.”*

– Respondent E19CON013

*“More MSC oversight is needed, as well as an opportunity for stakeholder objection.”*

– Respondent E19CON005

Fisheries clients and CABs highlighted that introducing additional stakeholder and/or peer review stages into the surveillance audit process would lead to increased costs to the fishery clients, increased audit timeframes, and logistical and administrative challenges for the Peer Review College and CABs.

*“I would worry that allowing stakeholders to respond to surveillance reports gives another complexity to the system.”*

– Respondent E19CON009

*“It is suspected that most surveillance audits (and indeed reassessments) do not attract any stakeholder interest beyond managers/scientists. This would therefore introduce a lot of wholly unnecessary costs for most clients.”*

– Respondent E19CON018

*“It would be very difficult for the Peer Review College to arrange a peer review of every surveillance audit, or only for those that propose closure of conditions.”*

– Respondent E19CON031

Respondents acknowledged existing mechanisms for addressing stakeholder concerns with surveillance activities, but expressed frustration with the timeframes associated with these processes.

*“It is evident from our experience of going all the way through to a complaint that stakeholder comments on the surveillance process don't hold any weight - CABs are able to ignore these*

*and carry on. It was only through complaint process (which took five months and hasn't been fully resolved) that we got any traction, but not without significant involvement.”*

**– Respondent E19CON021**

Respondents noted that stakeholder comment on and/or peer review of Surveillance Reports would need to be accompanied by a mechanism with which to resolve disagreement in expert judgement.

*“Peer review and opportunity for stakeholder comment in Option 3 would need to be supplemented by a process for dealing with unresolved comments otherwise there is no apparent accountability for processing this additional feedback loop.”*

**– Respondent E19CON002**

### **Conditions at reassessment and closing conditions in year five**

Most respondents considered resolving this issue to be ‘urgent’ and ‘important’ and found the current requirements on unmet conditions at reassessment to be ‘unclear’. There was near consensus amongst the stakeholders that participated in the consultation that requirements need to be clearer and guidance needs to be improved. Feedback on proposed options was mixed, with a slight preference for Option 2.

More clarification and guidance were requested. This related both to how CABs should determine if progress against conditions is adequate and what should happen in instances where progress is inadequate.

*“It's possible that some areas with unclear requirements have been exploited as loopholes for some fisheries, leading to an uneven playing field.”*

**– Respondent E19CON013**

*“Missing from the considerations presented is how CABs should determine if progress against conditions is adequate. In addition, more guidance and clarity are needed for instances where progress is inadequate, including well-thought-out consequences if progress is not made.”*

**– Respondent E19CON007**

Respondents representing fishery clients emphasised the importance of consequences for not meeting conditions being made clear to the fishery during the surveillance reports.

*“There is jeopardy for all participants in engaging in the time and cost of a reassessment if carried-over conditions cannot be met. CABs and clients should be clear on this at the time of deciding to announce a reassessment (i.e. post Announcement Comment Draft Report).”*

**– Respondent E19CON030**

Some respondents wanted to avoid the introduction of more cost and administration, stating that MSC should not change this approach and should wait to see how the recent changes to the Fisheries Certification Process v2.1 would affect practice.

*“Need to avoid introduction of more cost and administration if a more simple solution is available.”*

– Respondent E19CON012

*“We would wish to see the recently introduced changes fully evaluated before further changes take place.”*

– Respondent E19CON030

### 2.2.1.3 MSC response

#### *Drafting milestones and Client Action Plans*

The MSC decided to pursue Option 2 as the public consultation results identified a clear preference for this option and because improvements to the reporting template would lead to increased transparency.

The MSC did not pursue Option 1 (status quo) because it recognised that improvements were necessary. The MSC dismissed Option 3 as it was not clearly supported by fisheries and CABs that participated in the public consultation.

There were additional comments from respondents that focused on the Client Action Plan and whether it should be binding. The consultation paper stated that the issue of whether Client Action Plans should be binding was subject to previous consultation in September 2017 and “the favoured option was that they should not be binding”. As such, the MSC does not propose to revisit this issue, and it was not the purpose of this consultation.

#### *Review and feedback on Surveillance Reports*

The MSC decided to pursue Option 1. In addition, the MSC recognised that improvements to the MSC Surveillance Announcement Template would increase the transparency of the information that the assessment team will review during the surveillance audit and what will be assessed.

The MSC decided not to pursue options 2 and 3. Feedback from Peer Review College identified that it would be logistically difficult to implement the peer review of surveillance reports. Furthermore, peer review and stakeholder input on Surveillance Reports would significantly increase the length of the surveillance audit and therefore costs.

#### *Conditions at reassessment and closing conditions in year five*

The MSC decided to pursue both Option 2 and Option 4. The public consultation indicated a preference for these options. Option 3 was not pursued as it was not supported by those who participated in the public consultation.

The MSC took on board comments that related to flexibility, increased transparency, increased clarity of the requirements and increased oversight and sought to address these in the ongoing policy development work.

## 2.2.2 Public consultation – August-September 2019

The MSC held a public consultation from 23 August to 23 September 2019. The MSC consulted on clarified and strengthened requirements to ensure that CABs set, evaluate and close conditions in a consistent manner and that information on conditions is transparent. Clarifications included:

- **Setting conditions:** Changes to the Fisheries Certification Process 7.18 – requirements on setting conditions – and improved guidance to:
  - Ensure conditions clearly articulate the issue(s) that need to be addressed, rather than simply restating the SG80 requirements.
  - Clarify the MSC’s intent for milestones – outputs that demonstrate progress towards meeting the condition.
  - Remove duplicative clauses.
  - Clarify condition and milestones timeframes.
- **Client Review:** Changes to the Fisheries Certification Process 7.19.7 – requirements on client review – to clarify the MSC’s expectations for Client Action Plans.
- **Evaluating progress against conditions:** Changes to the Fisheries Certification Process 7.28.16 – requirements on evaluating progress against conditions – and improved guidance to:
  - Clarify that progress is measured by the completion of milestones and the phrases ‘behind target’, ‘on target’ and ahead of target’ are related to milestones.
  - Remove text that was introduced to address conditions that were set prior to the 2011 requirement for conditions to specify milestones.
  - Clarify ‘inadequate progress’ and the application of suspension requirements.
- **Reassessment:** Changes to the Fisheries Certification Process 7.30.4 – requirements for reassessment activities – and improved guidance to:
  - Clearly define inadequate progress.
  - Remove text that was introduced to address ‘legacy conditions’ set prior to the 2006 requirement for conditions to be outcome based and prior to the 2008 introduction of the default assessment tree.
  - Clarify the process for evaluating progress against conditions and closing conditions in year five, with respect to reassessment and 4<sup>th</sup> surveillance audit timelines and reporting.
  - Clarify the circumstances under which ‘related conditions’ can be set at reassessment.
  - Clarify the circumstances under which conditions can be carried over at reassessment.
- **Templates:** Changes to the way conditions are documented in the ‘Reporting Template’, ‘Surveillance Audit Announcement Template’ and ‘Surveillance Reporting Template’ to ensure increased transparency around, for example, exceptional circumstances, related conditions and conditions being carried over.
  - Introduce the use of the ‘Template for Stakeholder Input into Fishery Assessments’.
  - Improve the format of stakeholder input at surveillance audits.
  - Improve the transparency of the CABs responses to stakeholder input.
  - Assist MSC in monitoring and evaluating stakeholder input and CAB response. (aligned to recommendations in the ‘addressing persistent disagreement’ project).

- Optional ‘Client Action Plan template’.

The MSC was seeking feedback on the clarity, auditability and applicability of the draft requirements and accompanying documents.

For further details, see the full draft program documents with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Fisheries Certification Process](#)
- [MSC Guidance to the Fisheries Certification Process](#)
- [MSC Client Action Plan template](#)
- [MSC Reporting Template](#)
- [MSC Surveillance Reporting Template](#)

Note that these documents contain proposed changes and feedback for multiple projects, not just Conditions. See the [general consultation feedback](#) for comments on the ‘Template for Stakeholder Input into Fishery Assessments’ and for other additional feedback received on the consultation. The MSC consulted on but received no feedback on the ‘Surveillance Audit Announcement Template’ in the public consultation.

### 2.2.2.1 Participation

There were six respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 17) from Europe, North America and Asia (Table 18).

**Table 17: Numbers of individual respondents representing each stakeholder group. See Annex 1 for the MSC’s definitions of these stakeholder groups.**

Stakeholder group	Number of Respondents
Academic/scientific	1
NGO	3
Wild harvest fisheries	2

**Table 18: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of Respondents
Australia	1
Bangladesh	1
Canada	1
Germany	2

This round of consultation specifically focused on the clarity, auditability and applicability of the document text, not the policy direction. Consequently, the key target stakeholder groups were CABs (conformity assessment) and ASI (accreditation). The MSC therefore commissioned a desk-based review by one CAB and ASI (feedback summary in [Section 2.2.2.4](#)) and held a CAB workshop (feedback summary in [Section 2.2.2.3](#)) in addition to the public consultation. The proposal was also presented to and discussed by STAC (feedback summary in [Section 2.2.2.5](#)).

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 19) to be used in the public reporting.

**Table 19: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19CON001	NGO	Organisation
L19CON002	NGO	Organisation
L19CON003	Academic/scientific	Individual
L19CON004	Wild harvest fisheries	Organisation
L19CON005	NGO	Organisation
L19CON006	Wild harvest fisheries	Organisation

### 2.2.2.2 Feedback summary

There were five stakeholder submissions that provided feedback on the proposed requirements and guidance for setting conditions, evaluating progress against conditions and conditions at reassessment. Two stakeholder submissions provided feedback on accompanying templates. The majority of the comments related to relatively straightforward issues of clarity and applicability of the requirements and guidance.

#### Setting conditions

One respondent (an NGO) reported that the proposed requirements were 'not acceptable', 'not an improvement' and are 'a serious step backwards'. These comments were focused on the requirements that allow fishery clients a full five years to meet conditions set during a surveillance audit, expedited audit or scope extension assessment. The respondent did not accept these as scenarios under which a condition could be carried over at reassessment.

*"The addition of this clause is completely unacceptable without inclusion of or reference to the requirements of 7.18.1.7. As it is, this creates an easy opportunity for CABs to set conditions during annual surveillance audits that need not be met during the term of certification and can remain open, potentially with little improvement demonstrated during reassessment. This is not acceptable and is in strong conflict with the MSC theory of change. This is not an improvement – it is a serious step backwards."*

**– Respondent L19CON001**

Fisheries respondents pointed out issues with the new requirement for CABs setting dated deadlines for conditions.

*"This is not possible – dates of certification change, surveillances may be rearranged etc. This is why CABs say 'by the second annual surveillance audit' and such like. This needs adequate flexibility – as in 7.18.1.6"*

**– Respondent L19CON004**

*“XXXX notes audit teams are now required to state a deadline for the condition where possible (MM/YYYY). We consider that this approach could be problematic if the schedule of surveillance audits is changed and could thus result in having to either reschedule audit outside the established timeline or undergo an out of synch audit in order to close off the condition.*

*We reiterate that the current approach of defining condition timelines in accordance with the audit schedule (i.e. 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> surveillance audit) is the more sensible and practical approach. Further, the current approach is more conducive to smoother stakeholder participation as there is less likelihood for antagonism to develop around specific dates.”*

**– Respondent L19CON006**

### **Surveillance**

On the requirement for conditions to be met, a respondent raised the issue of poorly set conditions and the need to be allowed to change these.

*“Are we sure that there are no circumstances in which a condition would need to be changed? Such as a gross mistake by a previous team?”*

**– Respondent L19CON004**

The timeline for meeting conditions if behind target (12 months) was questioned.

*“Seems unduly long?”*

**– Respondent L19CON002**

### **Related conditions**

One respondent thought the guidance for related conditions was incomplete.

*“Why would this only relate to outcome Performance Indicators? Is it not possible that there is a change in management or information gathering that leads to a score reduction and a new condition? Is this critical guidance?”*

**– Respondent L19CON004**

## **2.2.2.3 Summary of feedback from CAB workshop – September 2019**

The MSC held its annual CAB workshop at the MSC HQ in London on 3 and 4 September 2019. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Six CABs were represented by 10 individuals, along with four independent assessors/auditors and one representative from ASI. Feedback on proposals for changes to conditions from the CAB participants is summarised below.

CABs raised a key issue relating to the applicability and auditability of the proposed requirements on setting conditions and milestones. ISO 17065 prohibits CABs to ‘offer or provide consultancy’. ISO 17065 defines consultancy as the ‘participation in the designing, implementing, providing or maintaining of a certified service’. There is a contradiction between what the requirements are instructing CABs to do and what is permitted under ISO 17065. There is ambiguity with the CAB’s

ability and remit to set conditions and milestones that are meaningful and sufficiently specific but not prescriptive or instructive, which could be regarded as consultancy by ASI.

CABs raised concerns with the applicability of the proposed requirements on evaluating progress against conditions. The proposed requirements do not allow CABs to rewrite milestones or change condition deadlines. CABs identified that there may be situations outside the client's control that would result in delays in achieving milestones and condition deadlines. CABs concluded that the proposed requirements increase the risk of fisheries being suspended for reasons beyond their control.

CABs raised issues relating to the applicability of the proposed requirements on closing conditions during reassessment. The proposed requirements instruct CABs to close conditions by the publication of the Public Comment Draft Report. CABs reported that this contradicted earlier requirements that state that condition timeframes are the term of a certificate, but the requirement to close conditions by the reassessment Public Comment Draft Report means that condition timeframes are, in reality, less than the term of a certificate. Another issue identified is that the existing requirement on the information cut-off point for an assessment (last day of site visit) means that the information used to close a condition (i.e. re-score the Performance Indicator Scoring Guideposts) must be available at the site visit. Therefore, in reality, the condition would be closed at the site visit, and the condition timeframe would effectively be approximately four years. CABs also raised a number of clarity issues with the requirements.

#### **2.2.2.4 Summary of feedback from CAB and ASI desk-based reviews – September 2019**

In parallel to the public consultation, the MSC commissioned desk-based reviews from one CAB and ASI.

ASI identified that the MSC's requirements for CABs to specify milestones could be considered as the CAB providing consultancy (i.e. ISO 17065). ASI report that the MSC's requirements result in the CABs providing the necessary steps a fishery client must take to close a condition. ASI also identified a contradiction within the MSC's requirements and guidance – the MSC asks CABs to draft annual milestones that specify measurable outcomes but also states that CABs should not be prescriptive about the means of meeting conditions.

ASI identified additional issues with the clarity and applicability of requirements relating to setting conditions and milestones, evaluating progress against conditions at surveillance audits and as part of the reassessment process.

#### **2.2.2.5 Summary of feedback from STAC meeting – October 2019**

The STAC met from 15 to 17 October 2019 at the MSC HQ in London.

STAC members noted that they received the proposed changes to the Fisheries Certification Process with insufficient context regarding the initial phases of the Fisheries Certification Process review and the associated stakeholder concerns. The STAC were therefore unable to determine if these recommendations sufficiently address the issues raised and could not provide any unified opinion on whether these proposed changes to the Fisheries Certification Process were fit for purpose with respect to the setting and resolution of conditions.



The STAC recommended that the MSC conduct a review and analysis of the nature and intent of condition setting, to be provided to the Assurance Working Group to inform its deliberation regarding advice related to the setting and resolution of conditions, and in particular to provide advice regarding when need for condition setting could be mitigated through resolution of ambiguity in the Fisheries Certification Process or Fisheries Standard. Furthermore, this analysis would inform the Assurance Working Group input to the STAC on improving the dispute resolution process.

The STAC provided the following inputs to the MSC Board of Trustees regarding conditions:

- The STAC strongly supports actions to increase transparency in the closing of conditions.
- Condition setting and achievement/resolution are fundamental to the MSC Theory of Change.
- In the future there are likely to be three versions of the Fisheries Standard in operation, which makes consideration of setting and achievement/resolution of conditions extremely complex, both to fishery clients and market and other stakeholders.
- Stakeholders with knowledge of market actors/retailers' challenges noted the timelines associated with three Fisheries Standards, and multi-year condition cycles, as particularly challenging to maintaining commitment to the MSC program and the associated brand.
- Under the Assurance Working Group, the STAC intends to provide future advice on the question of whether meeting the Fisheries Standard is the goal, or meeting the specifics of a Client Action Plan is the goal, in order to close a condition.
- The STAC strongly recommends that the MSC Executive prioritise the development of a 'library of conditions' and associated acceptable actions/resolutions, to encourage consistency.
- The STAC recommends that the discussion of how conditions are identified and set is linked to the Fisheries Standard, to ensure that where condition setting is the result of ambiguity in interpretation of the Fisheries Standard, this can be identified and practically addressed.
- The STAC noted that it sees this as an opportunity to address a range of stakeholder concerns as well as contributing to simplification of the Fisheries Standard.

### **2.2.2.6 MSC response and changes to the Fisheries Certification Process**

The MSC decided to make changes to the requirements and guidance to improve reporting of conditions and to improve the understanding and implementation of the requirements. It was also decided to make changes to a number of templates to improve reporting of conditions.

The MSC decided not to include any major changes to the setting of conditions in the release of the Fisheries Certification Process v2.2. There are two main reasons, brought up by participants at the CAB workshop as well as by the STAC:

1. There are outstanding issues with the applicability of the requirements on specifying milestones, which carry over into the applicability of the requirements to evaluate progress against conditions.
2. There are outstanding issues with the MSC's intent on conditions.

The Conditions review project continues as part of the MSC Assurance Review on the Fisheries Standard Review timeline and will focus on firstly resolving the ambiguity in the MSC's intent with conditions. Once the MSC's intent is confirmed and approved by the MSC Board of Trustees, the focus will be on revising the requirements and guidance to ensure the MSC's intent is operationalised. As part of this work, the MSC will incorporate the recommendations from STAC to consider the complexity of setting and closing conditions in the context of multiple Fisheries Standard versions and to link the discussion of how conditions are identified and set to the Fisheries Standard. The changes made included:

### ***Drafting milestones and Client Action Plans***

The MSC has improved the way assessors report conditions in fishery reports. This will increase the transparency when conditions are set, monitored and closed. CABs will provide more information on conditions in full assessment reports and Surveillance Reports.

The MSC is also publishing an online 'conditions log' that contains information on all conditions that have been set for fisheries assessed and certified against the Fisheries Standard v2.0 since 1<sup>st</sup> April 2015. Although all conditions are published in reports on the [Track-a-fishery](#) website, to make it easier for stakeholders to review them, we have collated the data in a single file. More information is available on the [Conditions log](#) webpage.

In all assessment reports, CABs will clearly identify condition deadlines and whether condition deadlines are longer than the length of certificate due to exceptional circumstances. Exceptional circumstances are situations where, even with perfect implementation, achieving the best practice level (SG80) of performance may take longer than the certification period. Exceptional circumstances can relate to natural ecological functions and response times and timeframes needed for research to be funded, undertaken and published.

### ***Review and feedback on Surveillance Reports***

The MSC decided not to implement peer review of Surveillance Reports, due to feedback from the Peer Review College and unclear public consultation feedback. However, to improve transparency, CABs will have to identify the progress of conditions and if a condition was closed during the surveillance audit in Surveillance Reports. CABs will identify if any new conditions have been set or if there have been any changes to condition milestones.

The consequences for insufficient progress on meeting conditions have also been clarified. If progress against a condition is not being made or the condition deadline is not met, the fishery will be suspended until progress is demonstrated, or the condition is closed. Fishery clients cannot enter into a new assessment if they were suspended because they did not make adequate progress on conditions or they did not close conditions by their deadlines.

### ***Conditions at reassessment and closing conditions in year five***

To improve transparency, CABs will clearly identify conditions that are being carried over from the previous certificate, conditions that had previously been closed and are being reopened and conditions that are being rewritten in the reassessment report. Conditions can only be rewritten if the reassessment is against a newer version of the Fisheries Standard.

CABs will also explain why conditions are being carried over, reopened or rewritten. CABs will clearly document conditions that were closed during the reassessment.

The MSC has also clarified the scenarios under which conditions may be carried over or reopened. Conditions can be carried over if they are set during surveillance audits, scope extensions or expedited audits – when this happens fisheries are allowed up to five years to close the condition, and as such the condition timeframe would cross into the next certification. Conditions can be reopened if there is a new version of the Fisheries Standard which has led to an increase in the performance required at the SG80 level (i.e. the sustainability bar has been raised), or if there has been a change in status since the condition was closed. They can also be changed if the scoring element now falls under a different component e.g. in the previous assessment a species was designated as a secondary species but now is designated as an Endangered, Threatened or Protected species.

## 2.3 Addressing persistent disagreement with the expert judgement applied in fishery assessments

The MSC assessment process includes multiple opportunities for stakeholders to provide input on fishery assessments. This ensures that the assessment of the fishery is well informed, comprehensive, and the issues important to stakeholders are taken into consideration. In addition, all assessments are peer-reviewed by members of the [Peer Review College](#). Stakeholder input and peer review are part of the MSC's assurance system which is intended to ensure high quality, objectivity and consistent delivery.

The role of the CAB is to review available evidence and use their auditing and scientific expertise to score a fishery against the Fisheries Standard, and make a determination on the final outcome. These determinations often require evaluation of probabilities or likelihoods in areas where evidence can be mixed, lack clarity, remain incomplete or where circumstances are rapidly changing. The Fisheries Standard requires CAB assessment teams to use their expert judgement to score most, if not all, [Performance Indicators](#).

Stakeholders have raised concerns about how disagreement with the expert judgement in fishery assessments is addressed, especially when it persists between assessors, peer reviewers and stakeholders, despite multiple rounds of comment and response.

### 2.3.1 Public consultation – February-April 2019

The MSC held a public consultation on persistent disagreement from 4 February to 4 April 2019. The MSC consulted on three options as well as the definition of 'persistent disagreement'. The options were:

- **Option 1** – Status quo: The MSC does not make any changes at this time and instead monitors the effectiveness of the improvements to the process for stakeholder input, which were made under the Fisheries Certification Process v2.1, including associated template revisions.
- **Option 2** – Data capture and monitoring: The MSC introduces an intermediate (low impact) process to more accurately capture information on persistent disagreement.
- **Option 3** – Arbitration mechanism: The MSC commissions a best practice review of arbitration mechanisms to identify the most efficient and effective way to resolve persistent disagreement in expert judgement.

Respondents were asked to rate and comment on the acceptability, auditability, feasibility, affordability, effectiveness, fairness, reliability and general preference for the three options. They were also invited to specify alternative options. The full list of and further background to the proposed changes can be found in the [consultation survey document](#). The consultation feedback in its entirety can be found in the [consultation feedback tables](#).

#### 2.3.1.1 Participation

There were 17 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey or via email during the consultation period. These included responses from multiple stakeholder groups (Table 20) across Europe, North America, as well as Australia and South Africa (Table 21). Note that not all respondents commented on all issues nor answered all questions.

**Table 20: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC’s definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
NGO	6
Conformity assessment	5
Wild harvest fisheries	3
Seafood supply chain	2
Governance/management	1

**Table 21: Numbers of individual respondents located in each country.**

Country	Number of respondents
Australia	1
Austria	1
Bahamas	1
Canada	3
Germany	3
Netherlands	1
South Africa	1
UK	4
USA	2

Participation was sought from stakeholders representing conformity assessment, NGOs and wild harvest fisheries. In addition to this, participation was sought from MSC peer reviewers (working for the Peer Review College) and members of the STAC.

The sectoral representation consisted of respondents from NGOs, wild harvest fisheries, conformity assessment and governance/management. The NGO stakeholder group was represented above target whereas all other groups are underrepresented as compared to the participation target. Two STAC members and two peer reviewers were among the respondents. They are, however, identified in Table 20 as representing their primary stakeholder group rather than as peer reviewers or STAC members.

Concerning geographical representation, the majority of respondents were based in North America and Europe, with Africa and Oceania having one respondent each and South America and Asia having zero representation. The lack of geographical representation could be explained by a number of factors, including language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents’ anonymity, all respondents were assigned a participant ID (Table 22) to be used in the public reporting.

**Table 22: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E19DIS001	Seafood supply chain	Organisation
E19DIS002	Conformity assessment	Individual
E19DIS003	NGO	Organisation
E19DIS004	NGO	Organisation
E19DIS005	NGO	Organisation
E19DIS006	Conformity assessment	Organisation
E19DIS007	Wild harvest fisheries	Organisation
E19DIS008	Conformity assessment	Individual
E19DIS009	Conformity assessment	Organisation
E19DIS010	Wild harvest fisheries	Organisation
E19DIS011	NGO	Organisation
E19DIS012	NGO	Organisation
E19DIS013	NGO	Organisation
E19DIS014	Seafood supply chain	Organisation
E19DIS015	Governance/management	Individual
E19DIS016	Wild harvest fisheries	Organisation
E19DIS17	Conformity assessment	Organisation

### 2.3.1.2 Feedback summary

Most respondents regarded resolving this issue as urgent and important, but feedback on the three proposed options was polarised.

Respondents representing fishery clients generally expressed dissatisfaction with the pace of change of the MSC and urged for patience to assess the effect of the changes introduced in the Fisheries Certification Process v2.1 before taking any further action. Respondents representing NGOs and supply chain companies generally expressed dissatisfaction with the status quo and what they perceived as the absence of mechanisms for challenging expert judgement in fishery assessments. They saw this as a risk to the MSC’s credibility as fisheries will continue to be certified despite unresolved science-based disagreement with the assessment and determination. These stakeholders requested more oversight of the processes by the MSC. They also saw unresolved disagreement or poorly resolved disagreement as devaluing and discouraging stakeholder participation. Respondents from conformity assessment were not in favour of Option 3 (arbitration mechanism) and thought that the extent of the issue needed to be determined before implementing new processes. To resolve the issue they believed the root causes needed to be better identified and understood.

A summary of key information from feedback on each of the options in the consultation is as follows:

#### **Option 1: Status quo**

Some respondents (representing fisheries and conformity assessment) preferred to maintain the status quo. However, the majority of respondents regarded it as unpreferable, and many of them (NGOs and seafood supply chain) saw maintaining status quo as unacceptable.

Many respondents felt that the current system was ineffective in addressing persistent disagreement; seen to undermine the credibility of the MSC Program and as discouraging stakeholder participation in fishery assessments.

*“The current system allows very few real opportunities to challenge the scoring/interpretation of CABs. Objections don't work and peer reviewers are not fully empowered to influence certification outcomes.”*

**– Respondent E19DIS003**

*“The credibility of the entire MSC program is undermined when there is unresolved disagreement or poorly-resolved disagreement, particularly around the scientific evidence base used to justify a score against the MSC Standard. Unresolved disagreement or poorly-resolved disagreement on scientific evidence also devalues and eventually discourages stakeholder participation.”*

**– Respondent E19DIS004**

Other respondents stated that the Fisheries Certification Process v2.1 had only recently become effective, so effectiveness of ‘status quo’ was not known and should be monitored and evaluated before implementing more changes.

*“MSC should make clear that it already has significantly more ‘check and balances’ to ensure auditor competency and stakeholder inputs than any other similar scheme. It should monitor the effectiveness of Fisheries Certification Process 2.1 and evaluate whether the additional measures introduced provide value for money. It should defend the system it has.”*

**– Respondent E19DIS010**

*“We note that Fisheries Certification Process v2.1 has already introduced an, as yet untried, compulsory consultation phase; surely this should be tested before it is superseded.”*

**– Respondent E19DIS016**

There was a perception amongst some respondents that the system is biased towards the CAB’s judgement rather than a credible and solid evidence base, and that CABs reject evidence without adequate justification.

*“It is not evaluated whether the assessment of a certain topic is based on best available knowledge or solely expresses the opinion of the expert team of the CAB (which may differ from the prevailing opinion of the larger scientific community).”*

**– Respondent E19DIS008**

*“CABs are not necessarily manipulating outcomes but do not apply a precautionary approach in their decision making. 50/50 decisions will always go in the favour of fisheries clients as the business model of CABs rely on their support.”*

**– Respondent E19DIS003**

Others saw the issue being a lack of mechanism addressing scientific assessment.

*“There is currently no mechanism to resolve expert disagreement prior to certification. The objection procedure does not address content of scientific assessment, expert judgement, etc. and the majority of objections appear to be on this basis rather than solely on CAB non-conformity with process. The lack of outlet for the science and expert judgement to be reviewed impacts the credibility of the certification process.”*

**– Respondent E19DIS005**

One respondent requested an exploration of root causes.

*“MSC should dive deeper to get a better root-causes understanding of persistent disagreement before looking for solutions. Why does it actually occur? Is it widespread?”*

**– Respondent E19DIS009**

### **Option 2: Data capture and monitoring**

Feedback on the proposed option to ‘introduce data capture and monitoring of disagreements with expert judgement’ was mixed but with slightly more respondents regarding the option as unpreferable than preferable. The option was generally not seen as sufficiently addressing the issue, but received the least negative feedback.

Respondents that were positive to the option highlighted that it could lead to a better understanding of the issue.

*“I think Option 2 would be an effective way of when this occurs and gives CABs the opportunity to learn from it.”*

**– Respondent E19DIS006**

*“Data capture and monitoring does not resolve the issue but giving a more detailed picture.”*

**– Respondent E19DIS008**

Some respondents saw it as introducing additional process and burden without resolving the issue.

*“We caution against adding cost to assessments unless there are clear outweighing benefits.”*

**– Respondent E19DIS009**

### **Option 3: Arbitration mechanism**

Feedback on the option to ‘introduce an arbitration mechanism in situations of disagreements with expert judgement’ was mixed, with some respondents strongly opposed, but many respondents supported this option or a slightly altered version of it.

Many respondents saw introducing an arbitration mechanism as increasing the MSC’s credibility.

*“An effective arbitration mechanism to resolve difference of expert scientific judgement would be preferred, although we still need more detail on how the suggested Option 3 would work in practice. Changes to the Objections process that would require independent scientific review be very preferable.”*

### – Respondent E19DIS013

Some respondents were proposing an alternative option that would introduce a mechanism for addressing persistent disagreement through a panel of experts.

*“Changes to the objections procedure so that it includes a formal process specific to the objections procedure, that is explicitly designed with practical knowledge in mind (and distinct from the Peer Review College or the TAB, which may refer more directly to the state of the science, but not the reality on the water and the political/governance context in which a fishery operates).”*

### – Respondent E19DIS004

Others requested more information on what arbitration would entail.

*“Option 3 I don't think will work given the mediation trialled during the simplification pilot was ineffective and I think has potential to be criticised. I also don't think an MSC assessment should become a legal type process.”*

### – Respondent E19DIS006

Respondents that were negative to the proposal identified issues of increased cost and a need to wait for the effects of changes in the Fisheries Certification Process v2.1. Furthermore, arbitration as a mechanism was drawn into question.

*“Arbitration is a very complex process and if not done carefully is easy to stack in favor of one side or the other. We think it is a very bad idea and will only lead to further complications and challenges to the program.”*

### – Respondent E19DIS010

#### **Definition**

The MSC proposed a definition of ‘persistent disagreement’ as “a difference of expert judgement between a CAB and Peer Reviewer or a CAB and a stakeholder that exists at the Final Draft Report stage despite being raised via stakeholder submissions or Peer Review comments and responded to by CABs”.

A majority of respondents found the proposed definition to be acceptable. The key feedback on the definition was:

- The definition needs to be specific to ‘expert scientific evidence-based judgement’.
- The definition needs to be specific to application of the standard – not the content of the Standard nor the interpretation of process requirements.
- The definition needs to be clear that the issue has been repeatedly raised and disregarded by the CAB.
- A difference in expert judgement does not mean the CAB is wrong.



### **Precautionary approach**

Some feedback was not directly related to the options or definition consulted on, including a request for more direction to CABs on how to apply the precautionary approach in actual practice of scoring against Performance Indicators.

*“There needs to be clearer direction to CABs and additional oversight of CAB performance to ensure the precautionary principle is followed in the actual practice of scoring indicators. This includes unambiguous direction to CABs on how they must address the absence of evidence and how they deal with inconclusive evidence and probabilities in terms of available evidence.”*

**– Respondent E19DIS004**

### **2.3.1.3 MSC response**

The consultation feedback illustrated that the status quo was not desired by the majority of respondents, who supported taking measures to address the issue of persistent disagreement. Many respondents supported Option 3 (arbitration mechanism) and some respondents preferred Option 2. These options are not mutually exclusive and a review of dispute resolution mechanisms is ongoing under the [MSC Assurance Review](#) (see [Disputes Process](#)). Determining whether the system would benefit from an arbitration mechanism is a long-term project which could not be realised within the timelines of the Fisheries Certification Process review and revision.

Several respondents indicated that the Objections Procedure would benefit from a review and the MSC decided to take this forward as part of the wider Assurance Review (see [Disputes Process](#)). Consultation feedback indicated that a) the impact of improved stakeholder input opportunities introduced in the Fisheries Certification Process v2.1 should be monitored and b) the MSC should carry out further investigation of persistent disagreement and potential root causes. To facilitate this, the MSC developed a modified version of Option 2 (data capture and monitoring) with a simplified mechanism for recording stakeholder input and CAB responses during fishery assessments accompanied by proposals for monitoring and evaluating this as well as the improvements implemented in the Fisheries Certification Process v2.1.

Following the consultation in February 2019, at the TAB 30 (June 2019) meeting, the TAB approved taking forward a modified version of Option 2. The TAB approved the proposed changes to the Fisheries Certification Process, the ‘Reporting Template’ and the ‘Template for Stakeholder Input into Fishery Assessments’ for public and targeted consultation. The TAB recommended a STAC review on the accessibility of these changes as this presented an additional reporting burden.

### **Precautionary approach**

The need for more direction to CABs on how to apply the precautionary approach in actual practice of scoring against Performance Indicators was raised in the public consultation. This was taken forward at the TAB 30 (June 2019) meeting as a proposal to codify the precautionary approach into requirements and critical guidance. The TAB recommended that text on the precautionary approach should be presented as guidance, not codified, and that definitions of precaution should be considered throughout.

## 2.3.2 Public consultation – August-September 2019

The MSC held a public consultation on persistent disagreement from 23 August to 23 September 2019. The MSC consulted on proposed changes to the Fisheries Certification Process and templates:

1. Guidance on the precautionary approach
2. Stakeholder input template changes and supporting guidance and requirements:
  - a. ‘MSC Template for Stakeholder Input into Fishery Assessments’ – adding follow-up tab
  - b. ‘MSC Reporting Template’ instructions
  - c. Guidance to Fisheries Certification Process on submissions and CAB responses at Public Comment Draft Report and Final Draft Report stages
3. Definition of ‘persistent disagreement’

The MSC was seeking feedback on the clarity, auditability and applicability of the draft requirements and accompanying documents.

For further details, see the full draft program documents with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Fisheries Certification Process](#)
- [MSC Guidance to the Fisheries Certification Process](#)
- [MSC Reporting Template](#)

Note that these documents contain proposed changes and feedback for multiple projects, not just persistent disagreement. See the [general consultation feedback](#) for comments on the ‘MSC Template for Stakeholder Input into Fishery Assessments’ and for other additional feedback received on the consultation.

### 2.3.2.1 Participation

There were seven respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments, specifically on the changes to guidance and templates for this project, were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 23) across Europe, North America, as well as Australia and South Africa (Table 24).

**Table 23: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC’s definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
NGO	3
Wild harvest fisheries	3
Academic/scientific	1

**Table 24: Numbers of individual respondents located in each country. Only respondents that specified country of work are included.**

Country	Number of respondents
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Australia	1
Canada	1
Germany	3
USA	1

This round of consultation specifically focused on the clarity, auditability and applicability of the document text, not the policy direction. Consequently, the key target stakeholder groups were conformity assessment (CABs) and accreditation (ASI). However, NGOs and other stakeholders that will use the stakeholder input template were also a target group. The MSC commissioned a desk-based review by ASI (feedback summary in [Section 2.3.2.4](#)) and held a CAB workshop and commissioned a desk-based review by one CAB (feedback summary in [Section 2.3.2.3](#)), in addition to the public consultation. The proposal was also presented to and discussed by STAC (feedback summary in [Section 2.3.2.5](#)).

In order to ensure respondents’ anonymity, all respondents were assigned a participant ID (Table 25) to be used in the public reporting.

**Table 25: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19DIS001	NGO	Organisation
L19DIS002	Wild harvest fisheries	Organisation
L19DIS003	Wild harvest fisheries	Organisation
L19DIS004	NGO	Organisation
L19DIS005	Wild harvest fisheries	Organisation
L19DIS006	Academic/scientific	Individual
L19DIS007	NGO	Organisation

### 2.3.2.2 Feedback summary

Feedback on the proposed guidance on the precautionary approach was polarised with some respondents feeling this additional guidance was unnecessary and others indicating that it needed to be clearer and more specific. There was very little feedback received on the stakeholder input template changes and supporting guidance and requirements. Feedback on the definition of persistent disagreement was mixed, with some respondents feeling that this definition would sit better outside the Fisheries Certification Process, and others feeling that more clarity was needed in the wording and on what the next steps were once persistent disagreement was identified.

#### *Guidance on the precautionary approach*

Feedback identified a need for clearer direction to CABs and additional oversight of CAB performance to ensure the precautionary approach is followed in the actual practice of scoring indicators.

*“There needs to be clearer direction to CABs and additional oversight of CAB performance to ensure the precautionary principle is followed in the actual practice of scoring indicators. This includes unambiguous direction to CABs on how they must address the absence of evidence and how they deal with inconclusive evidence and probabilities in terms of available evidence.”*

**– Respondent L19DIS001**

Some thought the inclusion of a definition for a precautionary approach was positive while clearly requiring guidance for the CAB on scoring.

*“This should include a clear guidance for CABs how to score in these cases, e.g. “the scoring for this Performance Indicator can therefore only be made as SG60 with a detailed justification and an appropriate condition or must fail”. The inclusion of this definition for a precautionary approach is great but clearly requires a guidance for the CAB how to score in these cases.”*

**– Respondent L19DIS004**

Other respondents opposed adding the definition.

*“This is just too general, too open-ended and uncertain. The Performance Indicator Scoring Goalposts define a relevant level of precaution at each Scoring Goalpost – suggest we just leave it at that.”*

**– Respondent L19DIS002**

Many respondents also advised against assuming a negative impact in the absence of information.

*“XXXX opines that there is no need expend resources to prove negatives or demonstrate the obvious, we support XXXX comments and emphasize our concern that this sentence requires clarification or deletion. The fact that the MSC repeats that its assessments are a science-based evidentiary process seems to render that sentence redundant.”*

**– Respondent L19DIS005**

*“But we do not wish to see resources expended to prove negatives, or to show things which are obvious – for example we do not need scientific information to show that pole and line fisheries do not affect benthic habitat. Suggest that this be rephrased such as ‘relevant information’ or some such.”*

**– Respondent L19DIS002**

*“But a significant impact can’t automatically be assumed if information is limited. An assumed impact has to be based on scientific evidence.”*

**– Respondent L19DIS003**

***Stakeholder input template improvements and supporting guidance***

Feedback on the template included a request to ensure that the input codes in the template allow stakeholders to suggest score amendments in general terms, e.g. <60, <80, score too high, score too low, rather than to propose specific scores, and that the input codes on the template reflect that.

Feedback on the guidance included that new information should not be introduced after the site visit, and that stakeholder should only be able to raise new issues at Public Comment Draft Report stage if the stakeholder can prove that they were not aware of this information before, as per existing requirements.

*“This should be possible only if the stakeholder can proof that they were not aware of this information before. This may not lead to tactical delay of the certification and higher costs for the client.”*

**– Respondent L19DIS003**

Another respondent stated that any engaged stakeholder should be able to comment on a CAB response to a previous stakeholder input made by other stakeholders. This would be a change to existing requirements and was not in the scope of this consultation.

*“This has the effect of limiting follow up on CAB responses to written and verbal stakeholder input on the Public Comment Draft Report and/or at the site visit the stakeholder who provided the input. This is restrictive and inappropriate – any engaged stakeholder should be able to comment on a CAB response to a previous stakeholder comment made by other stakeholders.”*

**– Respondent L19DIS001**

### **Definition of persistent disagreement**

Feedback included a comment on the inclusion of the definition being redundant.

*“This is for internal MSC processes, why include it in the Fisheries Certification Process?”*

**– Respondent L19DIS002**

A question about the inclusion of peer review comments was raised.

*“Does this also apply to peer-review comments? If yes, the peer-reviewer should be mentioned here as well.”*

**– Respondent L19DIS006**

## **2.3.2.3 Summary of feedback from CAB workshop and desk-based review – September 2019**

The MSC held its annual CAB workshop in the MSC HQ in London on 3 and 4 September 2019. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Six CABs were represented by 10 individuals, along with four independent assessors/auditors and one representative from ASI. Additionally, a desk-based review was completed by one CAB.

Feedback on proposals for changes to addressing persistent disagreement with the expert judgement in fishery assessments from the CAB participants included:

### **Stakeholder input templates improvements and supporting guidance**

Participants were generally supportive of the revisions to the stakeholder input templates, while reporting that the template instructions need to be clearer.

### ***Definition of persistent disagreement***

Participants indicated that the stakeholder input and CAB response stages could be better articulated in the definition. Participants felt that it was important to distinguish between persistent disagreement with expert opinion and disagreement with MSC requirements.

### ***Guidance on the precautionary approach***

Some participants felt the additional guidance was useful, others were less supportive, arguing that the precautionary approach is already built into the Fisheries Standard. Several participants felt that more clarity was needed in the wording of the guidance. For example, there were perceived to be some inconsistencies between how the guidance is worded and the use of the Risk Based Framework, and because different stakeholders have different views on what ‘uncertain, unreliable or inadequate’ means, this should be made clearer.

## **2.3.2.4 Summary of feedback from desk-based ASI review**

In parallel to the public consultation, the MSC commissioned a desk-based review by ASI.

The feedback provided by ASI included that there was no reference to persistent disagreement in the Fisheries Certification Process requirements and no action expected from the CAB in case this occurs. If there is no formal process for what the consequences of persistent disagreement would be for the fishery or the CAB, it would be preferable to remove this definition from the Fisheries Certification Process guidance and include it in a different type of document.

## **2.3.2.5 Summary of feedback from STAC meeting – October 2019**

The STAC met from 15 to 17 October 2019 at the MSC HQ in London.

The STAC agreed the changes to the ‘MSC Template for Stakeholder Input Into Fishery Assessments’ proposed as part of the project should go forward. The STAC recognised the importance of reviewing the template for usability and accessibility by the STAC Communications & Engagement Working Group.

The STAC supported further development of the project exploring information/evidence adequacy and committed to taking it forward through the STAC Principle 3 Working Group, including considering a risk-based approach.

The STAC did not disagree with the definition of persistent disagreement, but did not reach agreement regarding the location of this definition. Some STAC members indicated they would prefer it be retained within the Fisheries Certification Process until the dispute resolution mechanism work (see [Disputes Process](#)) is finalised, and others indicating they felt it did not belong in the Fisheries Certification Process and should be removed.

## **2.3.2.6 MSC response and changes to the Fisheries Certification Process**

There were no changes made to the dispute resolution mechanisms in Fisheries Certification Process v2.2. This will be addressed in the wider [MSC Assurance Review](#) (see [Section 2.3.1.3](#) for further details).

### ***Stakeholder input templates improvements and supporting guidance***

With very little feedback from the public consultation and generally positive feedback from the CAB workshop, the updated ‘MSC Template for Stakeholder Input into Fishery Assessments’, the ‘MSC

Reporting Template' instructions and related requirements and guidance were released as proposed with minor changes. This, to improve clarity and applicability based on the consultation feedback changes.

The MSC amended the stakeholder input template so that it is easier for stakeholders to see how the CAB has responded to their comments. Stakeholders have the opportunity to follow up on the CAB's response. The exchange is recorded in the stakeholder input template which is included in the Public Certification Report.

These template improvements will enable the MSC to monitor and evaluate stakeholder and CAB disagreements so that improvements can be made to the way disagreements are resolved. This work is part of an ongoing review of dispute resolution mechanisms, which is key component of the [MSC Assurance Review](#).

The MSC has made improvements to the wording of the supporting guidance, including that stakeholder input at Public Comment Draft Report stage should only be based on information available on or before the site visit (this is as per existing requirements).

The requirements around the information cut-off point will not be changed during this review.

#### ***Definition of persistent disagreement***

The definition of persistent disagreement will be used by the MSC internally but not included in the Fisheries Certification Process. This reflects feedback received in the ASI consultation that this definition relates to MSC monitoring and evaluation and is not an instruction to CABs.

#### ***Guidance on the precautionary approach***

Following consultation feedback, the additional guidance on the precautionary approach will not be included in the Fisheries Certification Process. The precautionary approach to scoring is built into the Fisheries Standard and the Performance Indicator Scoring Guideposts and guidance on the precautionary approach already exists in the Fisheries Standard. Adding further guidance to the Fisheries Certification Process may create more ambiguity. Issues relating to information adequacy, evidence and precaution may be better addressed under the Fisheries Standard Review project on [improving fisheries management](#), as embedding a risk-based approach may be more effective than issuing further generic guidance.

## 2.4 Expedited audits

When new information becomes available, or there are changes to a fishery that may change its certified status, the CAB conducts an audit to check if the fishery still meets the Fisheries Standard. The audit is conducted quickly and focuses on the potential impact of the changes to the fishery and/or the new information on the fishery's certification status. This is called an expedited audit. For the Fisheries Certification Process v2.2, the MSC aimed to clarify when and why an expedited audit may be triggered, and the process of conducting an expedited audit.

### 2.4.1 Public consultation – February-April 2019

The MSC held a public consultation from 4 February to 4 April 2019. The consultation on expedited audits included several topics:

- **Topic 1:** Expedited audit process
  - Issue 1: Circularity within the expedited audit process.
  - Issue 2: Peer review of the expedited audit report.
  - Issue 3: Stakeholder input during the expedited audit process.
- **Topic 2:** New information during the initial assessment or reassessment process
  - Issue 1: Incorporation of expedited audit results during (re)assessment process.
  - Issue 2: 9-month timeline between site visit and Public Comment Draft Report.
- **Topic 3:** Review of traceability risk factors during the expedited audit
  - Issue 1: Strengthening the requirements to review the traceability when the scope of the fishery concerning the Fisheries Standard changes.

Respondents were asked to rate and comment on the feasibility, acceptability, affordability, effectiveness and fairness of proposed options to these issues. They were also invited to specify alternative options.

The full list of and further background to the proposed changes can be found in the [consultation survey document](#), and the consultation feedback in its entirety can be found in the [consultation feedback tables](#).

#### 2.4.1.1 Participation

There were 13 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 26) across Europe, North America and Oceania (Table 27). Note that not all respondents commented on all issues nor answered all questions.

**Table 26: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Wild harvest fisheries	6
NGO	4
Conformity assessment	2



Seafood supply chain	1
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**Table 27: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of respondents
Australia	1
Canada	3
Germany	1
Netherlands	1
Norway	1
UK	4
USA	2

Participation was sought from stakeholders representing conformity assessment, NGOs and wild harvest fisheries from the Americas, Europe, and Asia Pacific and the Global South. The target for participation was set to 18 respondents.

The sectoral representation primarily consists of respondents from wild harvest fisheries and NGOs. Stakeholders from conformity assessment (CABs) are underrepresented as compared to the target for participation. In addition to the defined target groups, respondents included one representative from seafood supply chain.

Concerning geographical representation, the majority of respondents were based in North America and Europe. The respondent from Australia is the only representative for Asia Pacific and the Global South. There were no respondents from wild harvest fisheries in this region, which was a target group. The lack of geographical representation might be explained through a number of factors, including language barriers, access to information technologies and rate of certifications in relevant countries/regions.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 28) to be used in the public reporting.

**Table 28: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E19EXP001	NGO	Organisation
E19EXP002	NGO	Organisation
E19EXP003	Wild harvest fishery	Organisation
E19EXP004	Conformity assessment	Organisation
E19EXP005	NGO	Organisation
E19EXP006	Seafood supply chain	Organisation
E19EXP007	Wild harvest fishery	Organisation
E19EXP008	NGO	Organisation
E19EXP009	Wild harvest fishery	Organisation
E19EXP010	Wild harvest fishery	Individual
E19EXP011	Conformity assessment	Organisation

E19EXP012	Wild harvest fishery	Organisation
E19EXP013	Wild harvest fishery	Organisation

### 2.4.1.2 Feedback summary

Consultation feedback was generally mixed. However, respondents agreed on some of the topics. Respondents representing NGOs wanted significant changes to include more opportunities for input and oversight of the CAB processes. Respondents representing fishery clients wanted minimal changes, as they were wary of the implications in terms of increased costs or time taken, but supported some alterations to the procedures and requirements.

A summary of key information from feedback to each of the major themes in the consultation is as follows:

#### Circularity

Feedback on the proposal to remove ‘review of information’ as an option for expedited audits, to avoid circularity, was generally positive, with mixed feedback on the importance and urgency. An off-site audit was seen to deliver essentially the same outcome at similar time and cost.

Several respondents requested further changes beyond the proposed options to include public notification of new information being considered.

*“There must be a requirement for the CAB to inform MSC Technical Oversight and registered stakeholders for the fishery that potential new information or a change in the circumstances of a fishery are being evaluated by the CAB and assessment team.”*

– Respondent E19EXP006

#### Peer review

Feedback on the proposal to introduce peer review in the expedited audit process was mixed, with mixed responses to the importance and urgency of the issue.

Some respondents saw introducing peer review as vital to ensuring credibility and oversight of the process.

*“Modification of the expedited audit process to include peer review will add increased credibility and ensure against misapplication of the MSC requirements in potential cases when CAB’s do not adequately perform their surveillance and audit obligations.”*

– Respondent E19EXP002

However, a question about whether the outcomes of expedited audits have actually been perceived as unfair was raised.

*“It would be news to us that the \*outcomes\* of commenced exp.audits have been perceived as unfair.”*

– Respondent E19EXP003

Other respondents saw introducing peer review as complicating the process and adding cost and time with little perceived benefit, with one suggesting that it could be reserved for decisions to lift suspensions. The additional time was also seen as an obstacle both to arranging appropriate peer reviews and also in the sense that any delay to the release of the audit report could be seen as a non-credible delay to the suspension of a non-compliant fishery.

*“We do not support the introduction of peer review at either expedited audits or surveillance audits. This is seen as an unnecessary complication, especially as it would not be only an additional 30 days – peer reviewers would need to be contracted and consulted on prior to the expedited audit. This would then entail delays before and after the audit, making it much less expedited.”*

**– Respondent E19EXP009**

### **Stakeholder input**

Feedback on the proposal to introduce stakeholder input in the expedited audit process was mixed, with mixed responses to the importance and urgency of the issue. Neither of the proposed options received strong support, with respondents proposing other options.

Some respondents saw introducing stakeholder input as vital to ensuring the credibility of the process. They requested changes that went beyond the proposals to expand the possibility for stakeholder comment to include the option to comment both at announcement and after the draft report is published.

*“An opportunity to comment only at the announcement is unacceptable, unless there was also time to comment given after draft is published. This is in line with your concurrent consultation on stakeholder feedback options on all audit reports.”*

**– Respondent E19EXP001**

These respondents also advised that the announcement of the audit should happen at least 30 days in advance, rather than the suggested 15 days, in line with the standard timeframe for stakeholder input.

Other respondents agreed with a 30-day timeline but suggested moving the surveillance audit forward to cover the new information as an option to carrying out an expedited audit. They also stressed the need for consultation to take place prior to the production of the report.

*“In line with the underlying principle of stakeholder consultation – we would see consultation as a means of providing information to the CAB, not to provide another vehicle for ongoing disagreement over expert judgements. Accordingly, consultation should take place before, not after, the report is produced.”*

**– Respondent E19EXP009**

### **Expedited audit results during full (re)assessment process**

Feedback on the proposal to incorporate expedited audit results during (re)assessment processes was polarised.

The current time lag between the cut-off for new information after a site visit and the publication of the Public Comment Draft Report was seen as an issue.

*“Not considering recent, relevant information that could lead to a change in scoring or make the difference between certification or not, would reduce the credibility of the MSC process.”*

**– Respondent E19EXP008**

Other respondents urged for patience to assess the effectiveness of the new assessment process in the Fisheries Certification Process v2.1, as it is designed to reduce this time lag.

*“The new assessment process in Fisheries Certification Process v2.1 is designed to reduce the time between site visit and release of the Public Comment Draft Report. This has yet to be proven, but surely we should find out how effective this is before introducing more changes. [Incidentally, if this is an important change, why was this not introduced at the same time as Fisheries Certification Process v2.1?]”*

**– Respondent E19EXP013**

These respondents expressed strong adversity to introducing expedited audits in the (re)assessment process. Most respondents said that whether or not the MSC’s proposals in this area achieved their aims depended on other unresolved issues, such as the question of whether or not there should be peer review/stakeholder input into expedited audits, and requested more information to feasibly judge this.

#### ***Nine-month timeline between site visit and Public Comment Draft Report***

Feedback on the proposal (to remove the requirement to have 30 days for stakeholder input when time between full assessment announcement and Public Comment Draft Report exceeds nine months) generally stated that whether or not the MSC’s proposals in this area achieved their aims depended on other unresolved issues, such as the question of whether or not there should be peer review/stakeholder input into expedited audits.

*“There should not be any change to the 9-month stakeholder consultation requirement until the other consultation issues regarding the structure of the expedited audit process are resolved.”*

**– Respondent E19EXP005**

It was, as in the above issue, pointed out that the new assessment process in the Fisheries Certification Process v2.1 is designed to reduce this time lag between site visit and the publication of the Public Comment Draft Report.

*“As the Fisheries Certification Process v2.1 assessment process is designed to reduce the time between announcement and Public Comment Draft Report anyway, then presumably this can be removed with impunity?”*

**– Respondent E19EXP013**

### **Review of traceability risk factors when a change in scope occurs**

More respondents found resolving this issue to be urgent and important, however many respondents felt that the information presented was insufficient for them to evaluate the issue.

*“In particular, the MSC must provide specific recommendations and proposals as to what is needed to strengthen the requirements regarding traceability risks and systems. This is important and action is preferable, but it difficult to evaluate without more information.”*

**– Respondent E19EXP005**

Other respondents supported the option of status quo.

*“It is not clear why this is an issue. If the expedited audit is required to follow 7.28.15, then this automatically requires consideration of any changes on traceability (if relevant), as for surveillance audits at present? Also, why strengthen traceability reporting, when the issue triggering the expedited audit may well have nothing to do with this (these are usually responding to changes in stock status)?”*

**– Respondent E19EXP007**

### **2.4.1.3 MSC response**

#### **Circularity**

At the TAB 30 (June 2019) meeting, following the consultation feedback, the MSC proposed to remove the option to conduct an expedited audit as a ‘review of information’ from the expedited audit requirements. This change was expected to have minimum impact. A subclause of the requirement that explains ‘review of information’ states that an off-site audit must be undertaken when new information is being considered that could affect the scoring of a Performance Indicator. Since triggering an expedited audit is usually caused by new information that would change the scoring of a Performance Indicator, this makes an off-site audit a minimum for most expedited audits.

#### **Peer review and stakeholder input**

The MSC proposed not to include a separate stakeholder input and/or peer review stage into the expedited audit process. The MSC’s intent is that stakeholders have an opportunity to respond to any new information that could affect the scoring of the fishery. Even without adding a specific timeline for stakeholder input, this intent will be ensured by requiring CABs to always perform an off-site or on-site audit when an expedited audit is triggered. Under the Fisheries Certification Process v2.1, CABs are already required to hold interviews and actively seek the views of stakeholders and audit participants with every expedited audit, to ensure that the team is aware of any concerns held by stakeholders.

The decision not to include a stakeholder input stage at this point is also supported by the data, which showed limited uptake by stakeholders when CABs announced a stakeholder input period during an expedited audit. Under the MSC Fisheries Certification Requirements v2.0, the document predating the Fisheries Certification Process v2.1, CABs followed surveillance audit timeline requirements when conducting expedited audits, including a 30-day announcement timeline. Of the 20 expedited audits conducted in the last five years (2015-2019), CABs announced the audit and requested stakeholder feedback on average 29 days before conducting the audit activities. For two

expedited audits, stakeholders other than the fishery client and management agencies submitted comments at the site visit. For six out of the 20 expedited audits, stakeholder comments were received in writing.

There is no evidence from previous expedited audits to suggest that there is a need for additional assurance by peer reviewers. Even though it would be logical to extend this to any scoring or rescore that occurs so that scoring is subject to the same level of assurance every time, including this in the expedited audit process would create additional complexity and costs. Additionally, the Peer Review College acknowledged that with the tight time constriction and unexpected nature of an expedited audit, there is a chance that adding a peer review process can create more delays than the additional 30 days that were proposed.

### ***Expedited audit results during full (re)assessment process***

It is the MSC's intent that new information or changes to the circumstances that may cause a material difference are considered during the full assessment process. With the timeline requirement in the Fisheries Certification Process v2.1, CABs must respond to new information that could cause a material change within 30 days of becoming aware of it. Consequently, this means that an expedited audit will be triggered during the assessment process if the CAB becomes aware of new information.

The MSC proposed to either have CABs publish a separate expedited audit report, or to delay the next reporting stage and include the results during the assessment. As the consultation feedback and data analysis was inconclusive, the MSC requested TAB's input on the first issue in particular, as more feedback was seen to be beneficial for the decision-making process.

### ***Nine-month timeline between site visit and Public Comment Draft Report***

There is no data available on how often the nine months requirement is triggered and whether information is received that would change the scoring. However, one of the most frequent variation requests submitted to the MSC is on clause 7.3.4 in the Fisheries Certification Requirements v2.0 (no data is yet available on the equivalent clause 7.20.1 in Fisheries Certification Process v2.1). This could indicate that the requirements are not optimal, and change could be considered. The MSC proposed to remove the requirement to preserve the intent of streamlining by frontloading stakeholder feedback in the assessment process and to minimise variation requests.

### ***Review of traceability risk factors when a change in scope occurs***

With the introduction of the requirements related to successful prosecution for forced or child labour in the Fisheries Certification Requirements v2.0, there is the possibility that an entity within a certified client group may no longer meet the scope criteria and hence be withdrawn. If this happens, there could be an increased risk of substitution of certified product between part of the fishery that is still certified and the withdrawn entity. This issue is resolved by the threshold of an expedited audit that has been introduced in Fisheries Certification Process v2.1. One of the triggers is new information or changes to the circumstances of the fishery that could influence a change in scope, and this would trigger an expedited audit.

Removing 'review of information' as an audit option would ensure that all expedited audits will need to cover traceability issues during the expedited audit. The problem that the relevant requirements lack clarity on how to respond to, and report changes that affect traceability, is overcome by the 'Surveillance Reporting Template' that CABs are required to use for expedited audits. This document outlines that any developments or changes impacting traceability or ability to segregate are reported upon.

Additionally, the MSC launched a larger project on fishery traceability in 2019. The work of this project includes reviewing the actions necessary by the CAB to guarantee traceability. As such, the MSC proposed not to introduce any changes regarding this topic, and to keep the requirements as per status quo.

## 2.4.2 Public consultation – August-September 2019

The MSC held a public consultation on expedited audits from 23 August to 23 September 2019. The respondents were invited to review the final changes to the requirements to address:

- The removal of ‘review of information’ as a type of audit.
- The removal of the requirement to open a stakeholder input period if the time between announcement and publication of Public Comment Draft Report exceeds nine months.
- Additional requirements to ascertain that the full assessment should be paused when an expedited audit is announced until the expedited audit has been conducted. This includes requirements that the results are included in the full assessment report of the next reporting stage, e.g. Public Comment Draft Report, Final Draft Report and Public Certification Report, and an additional 90 days to timeline requirements.

This round of consultation specifically focused on the clarity, auditability and applicability of the document text, not the policy direction.

For further details, see the full draft program documents with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Fisheries Certification Process](#)
- [MSC Guidance to the Fisheries Certification Process](#)

Note that these documents contain proposed changes and feedback for multiple projects, not just Expedited audits. See the [general consultation feedback](#) for additional feedback received on the consultation.

### 2.4.2.1 Participation

There were four respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 29) across Europe, North America and Oceania (Table 30). Note that many respondents only provided partial comments to the consultation.

**Table 29: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC’s definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Wild harvest fisheries	2
Academic/scientific	1
NGO	1

**Table 30: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of respondents
Bangladesh	1
Canada	1
USA	1

This round of consultation specifically focused on the clarity, auditability and applicability of the document text, not the policy direction. Consequently, the key target stakeholder groups were CABs (conformity assessment) and ASI (accreditation). The MSC commissioned a desk-based review by ASI (feedback summary in [Section 2.4.2.4](#)) and held a CAB workshop and commissioned a desk-based review by one CAB (feedback summary in [Section 2.4.2.3](#)) in addition to the public consultation. The proposal was also presented to and discussed by STAC (feedback summary in [Section 2.4.2.5](#)).

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 31) to be used in the public reporting.

**Table 31: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19EXP001	Wild harvest fisheries	Organisation
L19EXP002	Academic/scientific	Individual
L19EXP003	NGO	Organisation
L19EXP004	Wild harvest fisheries	Organisation

## 2.4.2.2 Feedback summary

Feedback included that incorporating results and score changes coming from an expedited audit into the next reporting stage, contradicts the requirement of when a score change can happen (i.e. information that is available at site visit). A respondent made the point that it is better to first certify the fishery and then suspend it immediately as incorporating results could cause the fishery to fail and have to redo the full assessment process.

*“It would be better to allow the assessment to be completed and then the fishery suspended. Having new information at an expedited audit which causes a fishery to fail an assessment would lead to the need for a new assessment, potentially soon afterwards when an issue has been resolved (e.g. mackerel). By contrast, lifting a suspension can be quickly and easily done without the need to repeat an assessment.”*

**– Respondent L19EXP001**

There was concern that the difference between surveillance audits and expedited audits was becoming vague. Expedited audits should be triggered when information cannot be considered in a normal surveillance audit.



*“We are very concerned that the differences between surveillance vs expedited audits is becoming confused and the language provided in this clause is not helping. Please clarify the exact purpose of an expedited audit (e.g. changes to the fishery which immediately impact the integrity of the certification and cannot be accommodated within the surveillance auditing process.).”*

– Respondent L19EXP004

There was also a request to clarify when an expedited audit is triggered instead of a surveillance audit.

*“So is an expedited audit sufficient reason to move the surveillance timing by up to 6 months either way? Why not just spell out in this section the circumstances in which an expedited audit is carried out instead of a surveillance?”*

– Respondent L19EXP001

### **2.4.2.3 Summary of feedback from CAB workshop and desk-based review – September 2019**

The MSC held its annual CAB workshop in the MSC HQ in London on 3 and 4 September 2019. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Six CABs were represented by 10 individuals, along with four independent assessors/auditors and one representative from ASI. Additionally, a desk-based review was completed by one CAB. Feedback on the proposed changes relevant to the Expedited audits project from the CAB participants included that:

- The 90-day extension added to timeline requirements during the initial assessment and reassessment is too short for a full assessment to incorporate results, as the full assessment team needs to revisit the report after score changes.
- When a surveillance audit is initiated instead of an expedited audit, it is unclear whether an expedited audit report is also expected, and which timelines need to be followed.
- The word ‘pause’ in the requirement “the CAB shall pause the full assessment and complete the expedited audit before continuing the full assessment” creates confusion about what is happening to the assessment process.

### **2.4.2.4 Summary of feedback from ASI desk-based review – September 2019**

In parallel to the public consultation, the MSC commissioned a desk-based review by ASI. The feedback included that it is unclear whether an additional expedited audit report should be published alongside incorporating the results in Public Comment Draft Report, Final Draft Report and Public Certification Report. The 90-day extension added to timelines during the initial assessment and reassessment can be made clearer and simpler.

### **2.4.2.5 Summary of feedback from STAC meeting – October 2019**

The STAC met from 15 to 17 October 2019 at the MSC HQ in London. Feedback from the meeting was that the 90-day extension should be dropped as it should be clear that the MSC expects an expedited audit to be triggered after information cut-off dates and when new information meets the expedited

audit threshold. It was advised that the threshold was updated to reflect only changes that could result in suspension.

## 2.4.2.6 MSC response and changes to the Fisheries Certification Process

### *Circularity*

The MSC has removed ‘review of information’ as an audit type in line with most stakeholder feedback.

### *Nine-month timeline between site visit and Public Comment Draft Report*

The MSC has removed the requirement to open a stakeholder input period if the time between announcement and publication of Public Comment Draft Report exceeds nine months, in line with most stakeholder feedback.

The MSC has changed the threshold for triggering an expedited audit. In line with feedback from STAC, the MSC has removed “a Performance Indicator score falling between 60 and 80” from the threshold that would trigger an expedited audit. This represents a revised objective for expedited audits – that expedited audits should only be triggered if the new information or change in circumstance might affect the fishery’s certification status, whereas surveillance audits are the mechanism in the certification process to address any new information that would result in adding one or more new conditions. In an analysis of all expedited audits (n=27) between mid-2015 and mid-2019, one resulted in a failing of the assessment and 10 in the suspension of the fishery, while 11 resulted in the addition of one or more new conditions. The change in scoring and the addition of the condition(s) could have been dealt with in a surveillance audit. The MSC has added requirements with the objective that:

1. CABs adhere to the cut-off date for information upon which the final determination of the certification is based.
2. Expedited audits are triggered at any point after the cut-off date as per the revised thresholds during an assessment and conducted alongside the assessment process.
3. Where an expedited audit results in a rescoring of an individual Performance Indicator to less than 60 or a Principle score less than 80, the certificate is issued (aligned to point 1) and immediately suspended. The expedited audit report is not published during the assessment process but with the Public Certification Report to support this.
4. The suspension is immediate and there is no 30-day notice period.

### *Surveillance audits*

Responding to feedback in the public consultation, the MSC has added a requirement to clarify that CABs can conduct a surveillance audit as an alternative to an expedited audit as long as 1) it is announced within 30 days of becoming aware of the changes to the circumstances or new information, and 2) the surveillance schedule can accommodate the change.

### *Cut-off date for new information*

The cut-off date for information that is used by the assessment team to score a fishery against the Fisheries Standard is the last day of the site visit. If new information becomes available after the site visit it could trigger an expedited audit if it is likely to impact the fishery fulfilling the requirements of the Fisheries Standard. The CAB will conduct the expedited audit alongside the (re)assessment. The fishery will be certified based on the information available at the site visit, but if the expedited audit shows that the fishery does not meet the Fisheries Standard anymore, the fishery will be suspended

immediately upon certification. This approach means the fishery has the opportunity to address the issues identified and come back into the program by lifting their suspension.

The proposal to add a 90-day extension to timeline requirements if an expedited audit was triggered during assessment, an outcome of the TAB 30 (June 2019) meeting, was not included. Feedback from CABs and ASI stated that the situations that ask for a 90-day extension are not common and therefore a variation request would be a better approach. Additionally, there was a worry about lack of clarity and potential for adding confusion.

The MSC has also clarified requirements on assessment team leaders to have the relevant expertise needed to review the information before triggering an expedited audit.

## 2.5 Shark finning scope requirements

At its December 2011 meeting, the MSC Board of Trustees resolved that shark finning shall not be undertaken within MSC certified fisheries. The MSC recognises a need to review the current requirements to ensure that the intent is clear and being effectively delivered in MSC certified fisheries. There are currently requirements regarding shark finning in both Principle 1 and Principle 2 of the Fisheries Standard. Assessment teams must provide a score based on the level of certainty that shark finning is not taking place. Stakeholders have raised concerns that the intent of the Board of Trustees' decision is not clearly reflected and implemented in the MSC requirements.

### 2.5.1 Public consultation – March-April 2019

The MSC held a public consultation on shark finning from 4 March to 4 April 2019. The MSC consulted on two options:

- **Option 1:** Status quo – review shark finning requirements as part of the Fisheries Standard Review (three-year implementation timeframe after release date). Existing requirements would remain in place during the review.
- **Option 2:** Option 1, combined with the introduction of a new scope requirement in addition to existing shark finning requirements, as part of the Fisheries Certification Process (six-month implementation timeframe after release date).

Respondents were asked to rate and comment on the feasibility, acceptability, affordability, effectiveness and their general preference for the two options. They were also invited to specify alternative options.

The full list of and further background to the proposed changes can be found in the [consultation survey document](#), and the consultation feedback in its entirety can be found in the [consultation feedback tables](#).

#### 2.5.1.1 Participation

There were 29 respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 32) representing Europe, North and South America, Oceania, Asia and Africa (Table 33). Note that not all respondents commented on all issues nor answered all questions.

**Table 32: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
Seafood supply chain	10
NGO	8
Wild harvest fishery	6
Conformity assessment	2
Academic/scientific	1

Standard setter	1
Unspecified	1

**Table 33: Numbers of individual respondents located in each country. Only respondents that specified country are included.**

Country	Number of respondents
Australia	2
Austria	1
Bangladesh	1
Brazil	1
Canada	1
Germany	3
Indonesia	1
Marshall Islands	2
Singapore	1
South Africa	1
Spain	2
Switzerland	1
UK	6
USA	7

Participation was sought from stakeholders representing conformity assessment (CABs), NGOs, academic/scientific, wild harvest fisheries and seafood supply chain.

The sectoral representation primarily consists of respondents from seafood supply chain, wild harvest fisheries and NGOs. Seafood supply chain was the only stakeholder group to meet the target for participation, with every other group underperforming. Stakeholders representing conformity assessment and academic/scientific were underrepresented in this public consultation, but were covered in targeted consultations, which included a CAB workshop (see [Section 2.5.2.3](#)) and targeted surveys. In addition to the defined target groups, respondents included one representative from standard setting and one unspecified.

Concerning geographical representation, the majority of respondents were based in North America and Europe, however there was also representation from across Asia and Oceania, as well as respondents from South Africa and Brazil.

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 34) to be used in the public reporting.

**Table 34: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
E19SHA001	NGO	Organisation
E19SHA002	Seafood supply chain	Organisation
E19SHA003	Conformity assessment	Organisation
E19SHA004	Seafood supply chain	Organisation
E19SHA005	Seafood supply chain	Individual
E19SHA006	NGO	Organisation

E19SHA007	Seafood supply chain	Organisation
E19SHA008	Seafood supply chain	Organisation
E19SHA009	NGO	Organisation
E19SHA010	NGO	Organisation
E19SHA011	Standard setter	Organisation
E19SHA012	NGO	Organisation
E19SHA013	Conformity assessment	Organisation
E19SHA014	Academic/scientific	Individual
E19SHA015	NGO	Organisation
E19SHA016	NGO	Organisation
E19SHA017	Seafood supply chain	Organisation
E19SHA018	Seafood supply chain	Organisation
E19SHA019	Wild harvest fisheries	Organisation
E19SHA020	Seafood supply chain	Organisation
E19SHA021	Seafood supply chain	Organisation
E19SHA022	NGO	Organisation
E19SHA023	Wild harvest fisheries	Organisation
E19SHA024	Wild harvest fisheries	Organisation
E19SHA026	Unspecified	Organisation
E19SHA027	Seafood supply chain	Organisation
E19SHA028	Wild harvest fisheries	Organisation
E19SHA029	Wild harvest fisheries	Individual
E19SHA030	Wild harvest fisheries	Organisation

### 2.5.1.2 Feedback summary

The consultation resulted in mixed results from a broad range of stakeholders. On balance, a majority of respondents regarded the options as either feasible or very feasible, but conversely, a majority of respondents also regarded the options as either unacceptable or very unacceptable. Option 2 was seen as more effective than Option 1, and also ranked as more preferable.

A summary of key feedback to each of the major themes can be found below:

#### Scope requirements

Generally, more respondents did not think that a scope requirement excluding individual legal entities that have been successfully prosecuted for incidences of shark finning within the last two years would solve the problem adequately.

*“Moving things like this to scope, particularly with a self declaration approach, just adds more paperwork, is not transparent, and does not provide any more certainty.”*

**– Respondent E19SHA003**

*“MSC should strengthen its safeguards against shark finning and shark finning actors, including (but not limited to) immediately excluding legal entities who have been prosecuted in the last 5 years for shark finning from the program or from being part of a Unit of Assessment.”*

– Respondent E19SHA007

Others thought Option 2 was acceptable.

### ***Fins Naturally Attached (FNA) policy***

Most respondents were in favour of further investigation into requirements for an FNA policy in order to achieve a minimum score of SG60, as they consider this to be global best practice.

*“Fins-attached requirements are in place in many regions/countries now (much more so than when MSC did the first consultation in 2012). This includes the European Union, one of the world's top shark fishing entities.”*

– Respondent E19SHA001

Some respondents were opposed to this policy.

*“Shark may be caught at very low levels in the longline and gill net fishery. Vessels are at sea for fairly extensive periods, and as and when sharks are caught, the fins are removed and the shark cut up for bait. This practice represents a practical response.”*

– Respondent E19SHA024

### ***Timeframe***

CABs asserted that a scope requirement would be arduous to assess prior to starting the full assessment with the client and the Fisheries Certification Process timeline may be too fast to implement.

*“Option 2 would be challenging but not impossible to accept for CABs as it would require a very quick turn around on classifying fisheries as out of scope and not giving them much time to make a case for why they are in scope and should remain in the programme.”*

– Respondent E19SHA013

The majority of respondents asserted that the changes were not happening quickly enough, and that MSC should revise the shark finning requirements in one year.

*“A faster timeline is necessary to address the serious concerns around the occurrence of shark finning in certified fisheries. The MSC board have made their position clear. A further 3 years according to FAO guidelines is certainly inappropriate when all that is required is ensuring that CABs apply shark finning PIs consistently and according to current guidance.”*

– Respondent E19SHA022

Others thought the timeframe was appropriate.

*“We consider a three-year implementation period as appropriate for any changes which affect the outcome of an assessment. This would apply here for both options.”*

– Respondent E19SHA019

### **Evidence requirements**

Many respondents requested clarifications to levels of information required to be certain shark finning is not taking place.

*“The evidence required for a CAB to determine whether shark finning has occurred or is occurring needs to be made adequately explicit to avoid inconsistent interpretation by CABs.”*

**– Respondent E19SHA012**

The removal of ‘systematic’ from the definition was requested.

*“MSC added a new clarification in the interpretation log in 2015: No systematic shark finning is undertaken in the fishery. This is counter to the intent of the board advice and the word ‘systematic’ should be removed immediately.”*

**– Respondent E19SHA007**

Better monitoring, to secure proper evidence, was advocated for.

*“Identify which technologies will have greatest application at illuminating shark finning activities”*

**– Respondent E19SHA009**

### **Unit of Certification**

Feedback showed conflicting opinions on whether detection of shark finning in a fishery should lead to consequences for the fishery as a whole or only the involved vessels.

*“Not fair to punish multiple vessels covered under a single legal entity - only the offending vessel/s should be excluded from the UoC.”*

**– Respondent E19SHA018**

### **2.5.1.3 MSC response**

While responses to the consultation were extremely varied and from a wide range of stakeholders, Option 2 was highlighted as the preferred and more effective option by respondents. Option 2 was therefore taken forward and proposed for further development at the TAB 29 (December 2018) meeting. Feedback from each response relating to the specifics of the proposed scope clause was considered in terms of alignment with MSC’s [Theory of Change](#), feasibility, practicality and potential impacts to certified fisheries. This included feedback such as the need for a mechanism to exclude entities at the ‘vessel’ level rather than at the ‘legal entity’ level. Where feasible, feedback was built into proposals taken to the TAB and then to the MSC Board of Trustees.

The MSC noted that many stakeholders felt that the implementation of a scope requirement alone would not resolve their concerns. However, Option 2 was taken forward as it offered the fastest opportunity to clarify the intent on shark finning through the Fisheries Certification Process release. This would also enable the MSC to work on further clarifying and strengthening the existing



requirements in the Fisheries Standard during the Fisheries Standard Review (i.e. the MSC would take a two-pronged approach to resolving the issue but working on different timelines).

Other comments regarding the need for a requirement for FNA at SG60 level were integrated where possible into research tailored for the Fisheries Standard Review portion of ‘Option 2’. This included further investigation of an FNA policy and how this is positioned in terms of current global best practice and its evolution in terms of application within management agencies, since shark finning requirements were first introduced in 2014.

## 2.5.2 Public consultation – August-September 2019

The MSC held a public consultation from 23 August to 23 September 2019. The aim of the consultation was to seek feedback on the clarity, applicability and auditability of the proposed requirements and guidance and to ensure that the MSC’s intent is clear. It was not a consultation on the policy direction. The proposed changes included:

- A scope mechanism should be added so that any entity that has been convicted for shark finning in the last two years is out of scope for MSC certification.
- The interpretation for ‘systematic’ shark finning issued in 2015 should be retracted.

For further details, see the full draft program documents with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Fisheries Certification Process](#)
- [MSC Guidance to the Fisheries Certification Process](#)
- [MSC-MSCI Vocabulary](#)

Note that these documents contain proposed changes and feedback for multiple projects, not just Expedited audits. See the [general consultation feedback](#) for additional feedback received on the consultation.

### 2.5.2.1 Participation

There were eight respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from multiple stakeholder groups (Table 35) from Oceania, Europe and North America (Table 36).

**Table 35: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC’s definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
NGO	4
Governance/management	2
Academic/scientific	1
Wild harvest fisheries	1

**Table 36: Numbers of individual respondents located in each country.**

Country	Number of respondents
UK	1
Australia	1
Germany	1
Bangladesh	1
Marshall Islands	1
USA	1

This round of consultation specifically focused on the clarity, auditability and applicability of the document text within the proposed Fisheries Certification Process v2.2, not the policy direction. Consequently, the key target stakeholder groups were CABs (conformity assessment) and ASI (accreditation). The MSC therefore commissioned a desk-based review by ASI (feedback summary in [Section 2.5.2.4](#)) and held a CAB workshop and commissioned a desk-based review by one CAB (feedback summary in [Section 2.5.2.3](#)) in addition to the public consultation. Feedback was also solicited internally from MSC staff. The proposal was also presented to and discussed by the STAC (feedback summary in [Section 2.5.2.5](#)).

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 37) to be used in the public reporting.

**Table 37: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19SHA001	Governance/management	Individual
L19SHA002	NGO	Organisation
L19SHA003	Academic/scientific	Individual
L19SHA004	NGO	Organisation
L19SHA005	Governance/management	Organisation
L19SHA006	NGO	Organisation
L19SHA007	Wild harvest fisheries	Organisation
L19SHA008	NGO	Organisation

### 2.5.2.2 Feedback summary

Overall, there was broad support for the MSC to reinforce and clarify its intent with respect to shark finning. There was broad recognition that the Fisheries Certification Process and the retraction of the interpretation offers the most rapid pathway to do this.

The overarching policy direction was not open for consultation at this stage, however concerns were still raised that this policy would be ineffective; that two years is too short a timeframe for successfully prosecuted entities to remain out of scope; and that this policy does not do enough to address the issue of shark finning and provide confidence to stakeholders.

*“XXXX recommended 5 years in our previous comments. This should be reiterated and other comments also incorporated.”*

**– Respondent L19SHA006**

*“The proposed amendments with regards to shark finning remain wholly inadequate.”*

**– Respondent L19SHA004**

### ***Fins Naturally Attached (FNA)***

Some thought the policy would not be effective and that an FNA policy at SG60 or within scope would be preferable.

*“This would be the opportunity to include the requirement of “fishery demonstrating to have a FNA policy in place” in order to be in line with the procedure required for forced and child labour policy, where the fishery also has to demonstrate having a policy in place”*

**– Respondent L19SHA002**

### ***Requirements for suspensions***

Several respondents thought requirements should extend to ‘reported infringements’, not only ‘successful prosecutions’

*“This restricts sanctions to jurisdictions that have legal instruments (i.e. laws) pertaining to shark finning.”*

**– Respondent L19SHA006**

*“Support recommendation for banning of vessel but upon receiving a report of finning rather than a successful prosecution for shark finning.”*

**– Respondent L19SHA005**

*“What do you constitute as a prosecution, because you may have a situation where offence are judged as minor and thereafter result in a warning. On the issue per se, I still have issues with the inability to detect offences where there is next to no inspection or visual evidence. Many longline fisheries are systematically finning, and yet we have no ability to detect this.”*

**– Respondent L19SHA001**

*“The text proposed here notes that the client shall not include an entity that has been successfully prosecuted for a shark finning violation in the last 2 years. However, for example, in the case of the XXXX, in response to requests, the MSC has not been able to provide any evidence that sanctions or prosecutions happening at all for the majority of recorded shark finning incidents so it is questionable whether prosecutions is a useful metric.”*

**– Respondent L19SHA004**

A respondent representing fisheries emphasised that suspensions should be applied to individual vessels.

*“Any suspension should be against vessel and not company based as linkages are often hard to prove. Unless this is done, the proposed measure favours operators of concern.”*

**– Respondent L19SHA005**

A respondent did not find it clear that information regarding convictions for shark finning offences will be publicly available or available to the CABs on request.

*“XXXX is concerned about CABs’ ability (or inability) to access information to verify if “conviction or other outcome from legal proceedings, which confirms guilt with respect to a violation of shark finning law, has occurred in the last 2 years”. CABs could benefit from having examples of what would be considered evidence as part of the guidance.”*

**– Respondent L19SHA008**

Requirements were requested for CABs to verify number of vessels to be excluded at each audit.

*“There is no requirement here for CABs to evaluate the number of vessels that need to be excluded at the time of each surveillance audit or recertification suggesting that this will be left to their discretion, contrary to the stated purpose of the Fisheries Certification Process being the establishment of a defined process that enables all CABs to operate in a consistent and controlled manner.”*

**– Respondent L19SHA004**

*“A guidance for CABs how to confirm such convictions and at what times to do so is needed e.g. “confirm at each surveillance audit the list of vessels within the UoC by requesting and reviewing convictions of all applicable national courts for shark finning and publish the list of out of scope vessels as part of the surveillance report”*

**– Respondent L19SHA002**

Other feedback included requests to make it clearer that entities remain out of scope for two years following successful prosecution, as well as the use of ‘entity’ and what level this extends to.

### **2.5.2.3 Summary of feedback from CAB workshop and desk-based review – September 2019**

The MSC held its annual CAB workshop in the MSC HQ in London on 3 and 4 September 2019. The aim of the workshop was to solicit feedback on the feasibility and auditability of proposals for changes to the Fisheries Certification Process. Six CABs were represented by 10 individuals, along with four independent assessors/auditors and one representative from ASI. Additionally, a desk-based review was completed by one CAB.

Feedback on the proposed changes to the shark finning scope requirements from the CAB participants included that:

- ‘Successful prosecutions’ is an ambiguous term.

- The level of an ‘entity’ is not clear and inconsistent with the MSC vocabulary – impractical at various levels (e.g. individual). Should this be aimed at the ‘beneficial owner’?
- The process for removing an entity as a result of this requirement is not clear.
- Evidence required is not clear – statement from client should suffice until publication of the Announcement Comment Draft Report.
- More guidance is needed on when a fishery must be two years free of successful prosecutions (e.g. signing of contract or announcement?)

### 2.5.2.4 Summary of feedback from desk-based ASI review – September 2019

In parallel to the public consultation, the MSC commissioned a desk-based review by ASI. Feedback included that the MSC needed to provide more guidance on the nature and type of evidence presented by CABs that would be considered sufficient, i.e. whether a statement from the client would be enough. ASI also stated that the requirements needed to be rephrased to instructions for CABs and not instructions for clients.

### 2.5.2.5 Summary of feedback from STAC meeting – October 2019

The STAC met from 15 to 17 October 2019 at the MSC HQ in London. The STAC were broadly supportive of the policy direction as an interim step prior to Fisheries Standard Review revisions to clarify intent, however, emphasised that communication is key. They also requested clarity from the MSC Board of Trustees on why this policy exists in the Fisheries Standard, and whether the policy aimed to address issues of animal welfare or sustainability.

### 2.5.2.6 MSC response and changes to the Fisheries Certification Process

Changes to the Fisheries Certification Process shark finning scope requirements have been implemented and proposed to the TAB 31 (December 2019) meeting following the stakeholder feedback received. The main changes made as a result of the feedback were changes to the wording of the requirement: replacing the term ‘successful prosecution’ with the term ‘conviction’. This change was made to remove any ambiguity regarding successful prosecution and what constitutes ‘...other outcome of legal proceedings...’, a term that was formerly in the guidance and that now has been removed to improve clarity and achieve more consistent outcomes.

Importantly, the [interpretation on ‘systematic’ shark finning](#) will be removed as it does not work in parallel to the new scope criteria. It is also important to highlight that existing shark finning requirements remain in the Fisheries Standard, therefore shark finning will be assessed in two parts: the scope criteria forms a first initial check and further to that, any instances of shark finning that have not been prosecuted resulting in convictions would be addressed as part of the assessment of the fishery under the existing requirements.

Guidance has also been added in the form of a flow chart to illustrate how an entity should be removed from a certificate applying MSC’s existing requirements for updating vessel lists and changes to client groups. Further clarity has also been provided to CABs on what level of entity MSC expects to be removed and what kind of checks need to be undertaken to confirm that a fishery is within scope. A new requirement has also been added to ensure that the CAB considers the entity as out of scope until two years have passed since the date of the conviction.

Questions were raised regarding the ability of CABs to gain access to this information in order to confirm scope. This was addressed through a questionnaire sent out to a range of management

authorities, which confirmed that while this information may not be publicly available in all cases, it should generally be available to the CABs on request.

The two-year timeframe for fisheries to remain out of scope was determined when developing the [labour requirements](#) (introduced in the Fisheries Certification Requirements v2.0). This was a decision taken by the MSC Board of Trustees, therefore the shark finning clause aligns with this decision.

### ***Fins Naturally Attached (FNA) policy***

Further requests for an FNA policy to be required at SG60 were raised in the public consultation. This is being reviewed as part of the [Fisheries Standard Review project on shark finning](#) and has not been the focus of the Fisheries Certification Process scope requirement work.

## 2.6 Disputes Process

At the end of the assessment process, stakeholders have an opportunity to object to the CAB's decision. This is regulated by the Objection Procedure, which was an annex to the Fisheries Certification Process. When the Fisheries Certification Process v2.1 was released in March 2019, the MSC made changes to what stakeholders could object to at the end of the assessment process. As part of this, stakeholders can no longer object to the conditions set by the CAB. Stakeholders can instead object to the CAB's decision to accept the Client Action Plan provided by a fishery that outlines the actions it will take to resolve its conditions.

A disputes resolution project is ongoing as part of the wider [MSC Assurance Review](#).

### 2.6.1 Public consultation – August-September 2019

The MSC held a public consultation from 23 August to 23 September 2019. The MSC consulted on separating the Objection Procedure from the Fisheries Certification Process. It was not a consultation on the policy direction.

All clauses referencing the Objection Procedure were moved from the Fisheries Certification Process to the new Disputes Process. The MSC did not make any changes to the intent as no substantive changes were made to the Objection Procedure in itself.

Following the changes made in the Fisheries Certification Process v2.1, where stakeholders can no longer object to the conditions set by the CAB, the MSC proposed a follow-on change to the powers of the independent adjudicator to ensure consistency.

For further details, see the full draft program document with proposed changes that were subject to consultation, which include consultation feedback in the form of anonymised comments:

- [MSC Disputes Process](#)

#### 2.6.1.1 Participation

There were four respondents to the consultation, some of whom were individuals and some of whom represented organisations with multiple signatories. Comments were submitted through an online survey and via email during the consultation period. These included responses from stakeholders representing NGOs and wild harvest fisheries (Table 38) in Europe, North America and Oceania (Table 39).

**Table 38: Numbers of individual respondents representing each stakeholder group. See [Annex 1](#) for the MSC's definitions of these stakeholder groups.**

Stakeholder group	Number of respondents
NGO	2
Wild harvest fisheries	2

**Table 39: Numbers of individual respondents located in each country.**

Country	Number of respondents
Australia	1
Canada	1
UK	2

In order to ensure respondents' anonymity, all respondents were assigned a participant ID (Table 40) to be used in the public reporting.

**Table 40: Participation identification for the respondents, specifying stakeholder group and whether they were responding as an individual or on behalf of an organisation.**

Participant ID	Stakeholder group	Individual/Organisation
L19DIS001	NGO	Individual
L19DIS002	Wild harvest fisheries	Organisation
L19DIS003	Wild harvest fisheries	Organisation
L19DIS004	NGO	Organisation

### 2.6.1.2 Feedback summary

The MSC did not receive any feedback indicating that stakeholders disagreed with the proposal to separate the Objection Procedure from the Fisheries Certification Process and transfer into a new stand-alone document – which was the subject of the consultation.

Respondents either provided minor comments on the clarity of the text or commented on parts of the document that were not being reviewed as part of this consultation.

A respondent commented on the proposed follow-on change to the power of the independent adjudicator, where 'conditions' would be removed from the text as stakeholders no longer can object to the CAB's setting of conditions.

*“This appears to be a major change to the MSC objections procedure that removes the ability of stakeholders to object to condition setting by the CAB and limiting the ability to object to conditions set for improvement of a fishery only to the CAB’s review of the Client Action Plan. This is not acceptable, nor does the process for the change appear to have been transparently documented.”*

**– Respondent L19DIS004**

### 2.6.1.3 MSC response and changes to the Fisheries Certification Process

The MSC's proposal did not result in any changes to the intent as no substantive changes were proposed to the Objection Procedure in itself. This is why the feedback has not been incorporated.



The removal of condition setting as a ground of objection on which the independent adjudicator can remand the decision back to CABs is a follow-on change from the Fisheries Certification Process v2.1. There, the MSC made changes to what stakeholders could object to at the end of the assessment process. As part of this change, stakeholders can no longer object to the conditions set by the CAB. Stakeholders can instead object to the CAB's decision to accept the Client Action Plan, which outline the actions it will take to resolve its conditions provided by a fishery.

At the TAB Working Group meeting in July 2017, the MSC proposed that 'setting of conditions' should not be grounds for objection. The TAB agreed and approved public consultation on this option, and the MSC consulted on this in September 2017. However, while edits were made to remove text referring to 'setting conditions', edits to the requirements on the 'Power of the Adjudicator' did not remove text referring to 'setting of conditions'. Furthermore, text referring to 'setting of conditions' was not removed from the Notice of Objection Template. The MSC proposed to remove the erroneous text related to 'setting of conditions' from the Objection Procedure and the 'Notice of Objection Template' to reflect the decision (supported by the TAB) to remove 'setting of conditions' as grounds for objection. If the text had been kept, the threshold for accepting or remanding an objection would have been very high. The objector would have to show that the setting of conditions and the CAB review of the Client Action Plan cannot be justified. Both would have to be met for an objection to be accepted and/or remanded.

With the Objection Procedure separated from the Fisheries Certification Process into a new document, the review of dispute resolution mechanisms will continue as part of the [MSC Assurance Review](#). This work is exploring mechanisms for resolving disputes, and this includes reviewing the Objection Procedure. Any future changes will go through a process of public consultation and the results of this work will be incorporated into the MSC Disputes Process.