



**Marine Stewardship Council**

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**Dear Dr Ziegler,**

Following your letter of January 2018, our team has analysed the points you raise and respond to them below. In this detailed response, we have aimed to explain:

- where your concerns have been addressed in the program,
- where they are within the scope of planned program reviews and
- where the proposed actions would not be appropriate or effective.

I am sorry that it has taken so long to respond. As you can imagine, a letter of this level of detail, dealing with programmes of work that are – in some cases – still in development, requires a thorough response. I look forward to discussing these issues, perhaps in person in the coming months.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nicolas Guichoux'.

**Nicolas Guichoux**

Commercial Director

Marine Stewardship Council

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## Note on changes to scope

Many of the Shark Project recommendations include ruling certain activities outside the scope of the MSC program – ie banning fisheries from entering the program before they can be assessed.

The MSC believes that it is better to assess a fishery’s impacts on an individual basis and expose them to scrutiny than to ban them from the assessment process. Many fisheries make significant improvements before they enter MSC assessment. Preventing those fisheries from entering would have a detrimental effect on the MSC’s ability to catalyse positive change as fisheries work towards becoming sustainable. The MSC program is outcome-oriented and many of these issues are addressed within the assessment process, which provides the greatest opportunity to accurately determine their impact.

## Program developments in progress

### Assurance Review

In addition to regular reviews of the MSC Fisheries Standard, the MSC also regularly reviews the effectiveness of its third-party assurance system: the way MSC assessments are carried out by independent, accredited conformity assessment bodies (CABs).

The MSC Board of Trustees in January 2018 committed to strengthening the MSC assurance model. This will encompass a number of projects, including an analysis of conditions, peer review of fisheries assessments and an Assurance Review Roundtable in April 2018 to allow stakeholders and representatives of the three parties involved in the operation of the MSC program (MSC, ASI and the CABs) to discuss their experiences of the current assurance system and identify whether changes should be made. SharkProject representatives have been invited to represent the views included in this letter. The outcomes of this meeting will be discussed by MSC advisory and governance bodies to confirm whether these changes will be developed and introduced into the program. Any revisions will be open to public consultation before they are finalised.

The MSC is also demonstrating leadership in this space by engaging with other standard setters, along with stakeholders to share experience and determine where improvements can be made. This

initiative aims to improve understanding of the measures other standard setters and certification bodies currently have in place to ensure impartiality and robust assessments, find where improvements can be made, and explore alternative assurance models.

The MSC will undertake additional work to ensure the strength of its system, including:

#### Reviewing conditions of certification

The MSC has commissioned in-depth research by Accreditation Services International (ASI) to analyse the completion of conditions across MSC fisheries and to recommend changes to MSC requirements based on the results. This research is currently under way and the report will be published later in 2018.

#### Peer Review of fisheries assessments

The MSC strengthened the peer review process for MSC assessments by formally establishing an independent Peer Review College in August 2017. The College currently includes more than 50 experts in marine science and fisheries management who review assessment reports and provide additional confidence that fishery assessments undertaken by third-party certifiers are rigorous. MSC will review the performance of the peer review system as part of the wider Assurance Review.

#### Fisheries Standard Review

In line with best practice, and UN FAO *Guidelines for the ecolabelling of fish and fishery products from marine capture fisheries*, the MSC is required to review its Fisheries Standard periodically to ensure that it remains consistent with current science and global best practice. Previous reviews have led to the introduction of additional requirements for low-trophic level species and vulnerable marine ecosystems. Research to inform the next Fisheries Standard Review will be completed this year before a formal process to revise the MSC Fisheries Standard begins in 2019.

As part of this review process, the MSC will consider issues raised and proposals made by stakeholders since the last revision of the Standard (Version 2.0 released in 2014). Stakeholder contributions are an important source of information for the review, along with monitoring and evaluation data on the program's performance, and developments in fisheries science and management.

The MSC Board must consider proposed changes to the Fisheries Standard in accordance with the MSC Standard Setting Procedure. The relevant extract is included in the annex at the end of this response.

#### Pace of change

In line with Principle 60 of the FAO Guidelines for the ecolabelling of fish and fishery products from marine capture fisheries, fisheries have at least three years from a major change in the MSC Fisheries Standard before they are required to adopt that version of the Standard at their next full assessment.

**Certified fisheries should be given a period of at least three years to come into compliance with the revised Standards.**

Currently around a sixth of MSC certified fisheries have transitioned to Version 2.0 of the MSC Fisheries Standard. The MSC needs to assess the impact of Version 2.0 changes before considering further changes to parts of the standard that have recently been revised. The MSC expects to see evidence of significant improvements as fisheries transition to Version 2.0.

## Analysis of Shark Project letter

### Key

Text taken from the Shark Project letter

MSC response in blue

### **1. To ensure that the full ecological impacts of a certified fishery are assessed and improved and fisheries are not wasteful of marine lives and resources:**

1.1 Cumulative impacts of all MSC fisheries and non-MSC fisheries on all species caught (including main and minor bycatch and retained species) shall always be assessed when considering impact, mortality, and whether a fishery is hindering recovery.

Regardless of national or international catch limits, cumulative impacts on all “Endangered, Threatened, or Protected” (ETP) species and on all IUCN ‘Threatened’ species (even when below 2% of the catch) shall be fully assessed applying a precautionary approach and using the best available science.

The MSC agrees that it is important to consider the cumulative impacts of fishing in order to assess environmental sustainability. Accordingly, Version 2.0 of the MSC Fisheries Standard includes cumulative impacts requirements for MSC certified fisheries. Auditors must examine the cumulative impact of certified fisheries on the target (Principle 1) stock and in some instances for wider environmental impacts on other species and habitats (Principle 2).

Fisheries’ cumulative impacts on endangered, threatened and protected species will be further considered for consultation under the upcoming Fisheries Standard Review.

The MSC Standard does not incorporate cumulative impacts on bycatch species for non-MSC certified fisheries, as this would create a disincentive for fisheries to improve their practices and seek certification. Certified fisheries have no influence over non-certified fisheries and cannot be expected to, so the best way to develop more cumulative considerations for non-target (bycatch) stocks and habitats is to bring more fisheries into the MSC program.

1.2 A fishery shall not enter assessment if unwanted bycatch levels of retained and discarded fish species exceed a predetermined, risk based maximum percentage of the Unit of Assessment (UoA) by weight.

MSC recognises that bycatch levels are a concern that has risen up the seafood agenda. To date, the MSC program has examined bycatch levels in terms of the sustainability of the impact on the bycatch stocks.

Predetermined, risk-based, maximum percentage of catch is not currently a requirement of FAO guidelines or the GSSI code, so it is unclear if this currently reflects best practice. It will require further investigation as part of the research on majority of catch issues as an assessment point. This will be considered for consultation under the Fisheries Standard Review.

1.3 Certified fisheries shall demonstrate progressive reduction of unwanted bycatch and discards towards a zero goal. This applies especially but not exclusively to marine mammals and ETP species. Annual Surveillance Audits shall demonstrate robustly that mitigation measures have resulted in a reduction of unwanted bycatch levels as agreed during the setting of certification conditions.

Reducing bycatch, in particular bycatch which is characterised as “unwanted”, is a shared aim: following our most recent Standard review the MSC introduced a raft of requirements mandating fisheries to reduce and regularly review their approaches to support this end (Primary, Secondary and Endangered, Threatened or Protected – ETP – species). Annual surveillance audits will monitor the progress of required improvements for any bycatch-related conditions fisheries receive during the certification process.

A goal of zero bycatch is arguably unrealistic in most fisheries and would significantly exceed the requirements of any recognised international standard. Instead the conservation objective for ETP species in many jurisdictions is recovery to a viable population size. Once measures have been taken to mitigate and reduce bycatch, there will always be a low, random chance of encountering ETP species with the fishing gear or vessel. This need not necessarily compromise the recovery potential of the ETP species however.

The MSC meets the GSSI benchmark for sustainable seafood schemes, which is based on internationally accepted norms – including bycatch issues - developed by the UN FAO. Having said this, the MSC recognises that some aspects of this issue should be investigated as part of the next Fisheries Standard Review,

1.4 Fisheries that deliberately target marine mammals or ETP species as a direct fishery or as a means to locate other species (i.e. the encirclement of cetaceans or whale sharks to locate tuna) must not be allowed to enter the certification process.

Deliberate harassment or killing of marine mammals during fishing operations is being investigated as part of the next Fisheries Standard Review. Any policy options resulting from this investigation will be consulted on with stakeholders.

1.5 Shark finning precludes a fishery from entering the certification process. Before certification, fisheries that interact with sharks shall have in place a ‘fins naturally attached’ policy with no exceptions and must provide proof of implementation.

Systematic shark finning has been banned from MSC certified fisheries since March 2013.

In version 2.0 of the MSC Fisheries Standard, before a fishery can be certified it must be able to demonstrate that sharks landed have the fins naturally attached. This is regarded as best practice and is in line with the proposals outlined in 1.5.

This is not to say that a single incident of shark finning on a single boat would make an entire fishery ineligible for certification. Such an approach is unrealistic and would result in a perverse incentive for fisheries to avoid monitoring their fishing activities. This is why MSC assessments focus on management strategies to reduce risk.

**2. To ensure that the entirety of the certified fishery methods, gear, and catch are sustainable and that all “main species” of a catch are managed equally to the target species:**

2.1 The majority of fishing techniques in a UoA must be assessed for certification. Before recertification MSC fisheries shall demonstrate that all remaining fishing techniques have improved to the Standard.

This has been addressed under the Unit of Assessment consultation resulting in changes to the Fishery Certification Requirements (FCR) which will be released in August 2018 following a consultation in April 2018. It may also be considered for further consultation as part of the majority of catch issue under the Fisheries Standard Review (see 2.3 below).

2.2 All species identified as “main” in a fishery during certification whether target, retained, discarded, or unwanted bycatch species shall meet the Principle 1 management Standard.

2.3 For target species and all species identified as “main” (> 5% of total catch, or > 2% if the species is less resilient) overfishing ( $F > F_{msy}$ ) is forbidden. If fishing mortality exceeds the maximum sustainable yield the certification shall then be suspended immediately.

The issue of non-target, or bycatch species (in particularly “Majority of Catch” as they relate to Primary species) will be considered as a part of the suite of issues being considered for the Fisheries Standard Review

**3. To ensure that MSC certified fisheries do not destroy seafloor biodiversity, and that the MSC Standard is consistent with internationally accepted fisheries management Standards, certified fisheries should be required to:**

3.1 Bottom fisheries taking place in areas where Vulnerable Marine Ecosystem (VMEs) are known or likely to occur must not be allowed to enter certification process.

The MSC recognises that VMEs, and the management of related fishery impacts thereon, are a special case, as has been the directive of the UN FAO and Regional Fisheries Management Organisations for some time now. That is why they were a particularly strong focus in the most recent Fisheries Standard Review that lead to many new requirements in Version 2.0 which mandated that fisheries avoid significant VME interactions. An example of this focus is the fact that the FAO criteria for identifying and defining VME is now part of the MSC Fisheries Standard, and that the Standard goes further in that it obliges fisheries to consider VMEs and potential VMEs within shallow and or coastal waters, for example biogenic reefs.

MSC certified fisheries have a strong track record of closing areas on a precautionary basis in response to risks of VME interaction. This includes the voluntary closure to trawling of areas of the North Sea (an area now under consideration as an MPA by the Scottish Government) and the

significant voluntary and legislative closures around Svalbard in the Norwegian and Russian Barents Sea fisheries.

3.2 All benthic habitat impacts of a certified fishery should be reversible within a timeframe of < 10 years and recovery rates be well understood. To avoid and mitigate ‘significant adverse impacts’, at least 50% of the habitat type in a region should not be impacted (area closure) by either MSC fisheries or other non-MSC fisheries in the area

MSC agrees that impact should be seen in the context of likely recovery rates but the current approach in the MSC Fisheries Standard relates to habitat function and structure which does not directly align with specific area-based thresholds such as 50% of a specific habitat type. Following the most recent Fisheries Standard Review, which considered best practice as constituted by FAO guidance and wider scientific opinion, the MSC Fisheries Standard now allows a 20-year timeframe for recovery (80% of structure and function) of commonly encountered habitats.

#### **4. To ensure that the sustainability claim of MSC certified fisheries is evidence based and transparent with the data used for decision making in assessment and audit of fisheries:**

4.1 Prior to entering assessment, the extent and quality of data on retained and discarded catch and incidental bycatch must be defined using a transparent, risk-based approach informed by scientific advice, taking into consideration inter alia gear type, species and catch size.

The MSC recognises that participation in a fishery assessment can be a difficult and time-consuming process for environmental NGOs and other stakeholders and is committed to improving this process.

As part of this, the MSC is implementing a [streamlined assessment process](#) that frontloads stakeholder input on ‘likely scoring levels’ which are published and subject to stakeholder scrutiny before the auditors conduct the site visit. This will help stakeholders to relate information back to MSC Performance Indicators and allow the certifier assessment (CAB) team to focus its questions at a site visit.

The [latest consultation on this process](#) is open until 15<sup>th</sup> April 2018.

The quality of information on bycatch species is explicitly covered in the MSC Fisheries Standard. Additionally, in the most recent Fisheries Standard Review, the quality of information was identified as having special relevance, particularly when the stock is recovering or its status was uncertain. In response, the MSC developed requirements to ensure that highly verifiable data or information should be used in these cases.

Further review of information requirements for ETP species and those associated with the majority of catch issue may also be considered for further consultation under the Fisheries Standard Review.

4.2 Upon request, all registered stakeholders must be provided access to AIS/VMS data (if in use by the fishery) and to all electronic/human observer data (including raw data) of the fishery. This should be available at time of site visits or publication of the desk review report (in new simplification process) or, at the latest, by the time of publication of the Public Certification Draft Report (PCDR).

The Fisheries Standard currently facilitates stakeholder access to data through its sections on access to information (4.4) and confidentiality agreements (4.5). The intent of these sections is to provide stakeholders with access to key unpublished information, including potentially confidential

information, that is considered necessary to review the logic used by the assessment team in scoring a performance indicator. This must be made available before the posting of the PCDR.

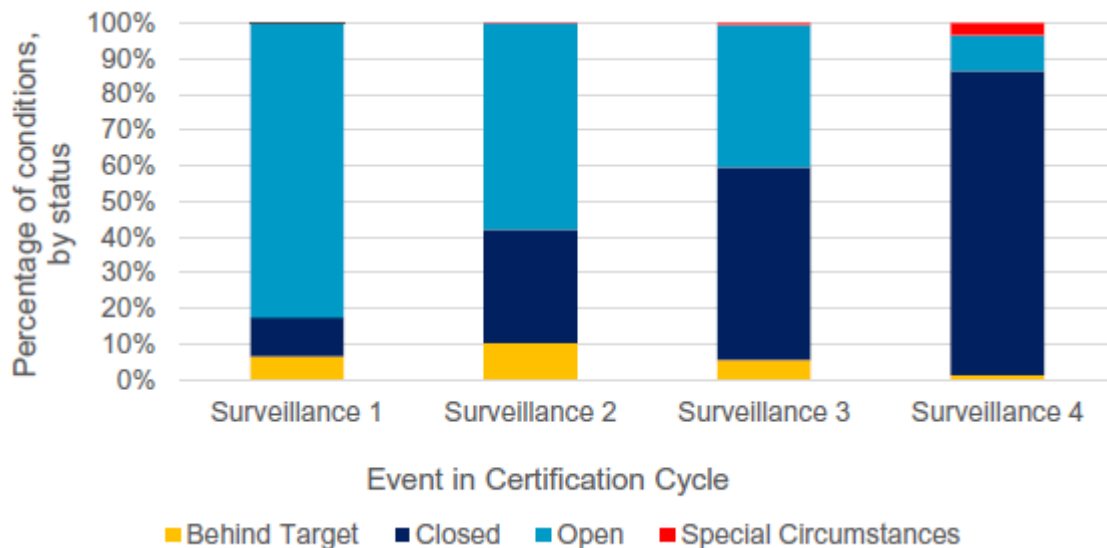
In general, information that cannot be shared with all stakeholders cannot be used in an assessment. In some restricted cases, however, unshared confidential information may be used in an assessment following a variation request to the MSC from the CAB. This aspect of information transparency is being considered for consultation under the Fishery Standard Review.

**5. To ensure that condition-based certification is resolved prior to recertification:**

5.1 Conditions closed at surveillance audits should have an option, upon request, for peer review and stakeholder involvement, to ensure impartiality. There currently remains no mechanism to object to or review CAB decisions published in Annual Surveillance Audit Reports. This must be changed.

5.2 All conditions must be fulfilled during the certification period in order for a fishery to be eligible for recertification.

In-house research conducted by the MSC (and published in 2017) showed that just under 90% of all conditions are closed out in the first certification period.



There are currently two reasons why MSC certified fisheries would be allowed to continue to recertification with open conditions. These are to reflect positive changes to the MSC Fisheries Standard and “exceptional circumstances” such as delays to allow the publication or completion of research necessary for the assessment. This flexibility accounts for the complex and challenging nature of fisheries management in dynamic natural systems and meets the best practice requirements set by both the United Nations’ Food and Agriculture Organization (UN FAO) and ISEAL.

Recognising stakeholder concern on this issue, in January 2018 the MSC commissioned a review from Accreditation Services International on the closing of conditions in 300 certified fisheries. This research is currently under way and the report will be published later in 2018.

Once the report is available, this will determine what, if any, changes are necessary and whether this should be part of the Assurance Review or the Fishery Standard Review.



## **6. To ensure that the certification assessment and audit process are impartial:**

Assessments and audits of fisheries against the MSC Standard need to be performed by impartial CABs who shall adhere to the precautionary principle. To avoid real or perceived conflict of interest CABs shall neither be selected nor paid directly by the fishery being assessed.

CAB guidance as to the application of the precautionary principle is being strengthened in the Fishery Certification Requirements Version 2.1 which will be released in August 2018.

The Assurance Review is investigating this perceived conflict of interest and the MSC is holding a round-table discussion to explore alternative options to the current model of CAB payments.

## **7. The MSC must proactively uphold the scientific rigour and goals of the program:**

The MSC must be more proactive and engaged in reviewing and the quality control of the process, substance, and outcome of assessments. In cases where there is an obvious, urgent problem (i.e. scientific warnings on habitat concerns, ETP issues) the MSC shall be more proactive and engaged in ensuring that the issues are resolved in a timely manner or otherwise certification has to be denied or suspended.

Under a third-party assessment system, in accordance with UN FAO Guidelines and GSSI benchmarking, the MSC cannot forcibly over-rule the independent CAB decision. At present, no [ISEAL member certification scheme](#) includes this option.

However, options to improve the technical oversight of assessments will be examined under the Assurance Review. It will also be part of the Assurance Roundtable with the MSC's Stakeholder Advisory Council, CABs and invited NGOs.

It is of note that the Icelandic lumpfish fishery and Gulf of St Lawrence snow crab fisheries both had their MSC certificates suspended recently due to interactions with ETP species, showing that the MSC systems are responsive and effective.

**End**

## Annex

### Extract from MSC Standard Setting Procedure

5.5 In reviewing whether a Standard needs to be revised or not, the Board shall consider the Standard's continued relevance and effectiveness in meeting the scope defined by the Board. The Board will ultimately make the decision on whether there is sufficient evidence to make changes to requirements and will typically require that both 5.6.a.i–ii below are satisfied.

5.6 A decision to revise an existing Standard or develop a new Standard should consider, inter alia:

- a. For fisheries Standards, whether new scientific knowledge and management best practice changes as stipulated below have occurred:
  - i. There is improved scientific understanding, with widespread scientific support, to demonstrate that a change in the performance requirement is necessary to achieve the intentions of our Principles, and more broadly the FAO Code of Conduct upon which our Principles are based.

- ii. There is improved fishery management best practice, with growing support in fishery management and policy circles, that is accepted as being required and appropriate to achieve the FAO Code of Conduct, and by implication our Principles.
- b. For all Standards:
  - i. Stakeholder and/or internal MSC feedback requesting a revision.
  - ii. Whether legislation that might affect the Standard has changed.
  - iii. Whether monitoring and evaluation data on Standard performance indicates changes in effectiveness or relevance of a Standard.
  - iv. Any other significant change in the fishery and seafood supply chain industries which indicated that the effectiveness of a Standard has changed.