

*By email*

**Technical Advisory Board and Stakeholder Advisory Council  
Marine Stewardship Council  
1 Snow Hill  
London  
EC1A 2DH**

**May 16, 2022**

Dear MSC TAB and STAC Members,

The undersigned organisations represent a global array of MSC stakeholders that have participated extensively in the MSC Program, in some cases since the MSC's inception. While our organisations have participated independently throughout the current Fisheries Standard Review, and many of us have submitted extensive technical feedback, we felt it important that you hear from us directly and collectively.

We have identified a number of key areas that are vital to the future success of the proposed revised MSC Standard. These topics cover many areas of concern that our organisations have raised about the weaknesses in the current version of the MSC Standard and must be addressed if the MSC is to deliver on its sustainability claims.

If these weaknesses persist in the new standard, the MSC jeopardizes its reputation and credibility. This will also create a reputational risk for organisations such as ours that have previously engaged with or endorsed the MSC eco-label, as well as companies that process and market MSC-labelled products. For these reasons, we are taking the extraordinary step to address you directly at this final stage of the Fisheries Standard Review process.

Thank you for your consideration of these concerns and recommendations as you finalise the MSC Standard version 3.0 and associated MSC Program documents.

Signed,

**BirdLife**  
**Oliver Yates**  
Head International Marine  
Programme



**Earthworm**



The Nature  
Conservancy 



**SHARKPROJECT**



## Joint Concerns about the Draft Standard as published on 01 February 2022

### **1. Proposed Section SE: Principle 1 requirements for stocks managed by Regional Fisheries Management Organisations**

**We strongly recommend that the timelines included in the “Phased Conditions Pathway” for harvest strategies and HCR implementation in Section SE should not exceed the well-established and standardised 5-year certification timeline.**

- 1.1. **We strongly disagree with the proposed 10-year timelines for stocks managed by RFMOs in Section SE of the draft Standard.** The phased approach proposed in Section SE is overly complex, further complicates the Standard, and will give some fisheries up to 10 years to meet conditions set for implementation of Harvest Strategies and HCRs, which is far longer than necessary for development and implementation of a harvest strategy based on a comprehensive management strategy evaluation (MSE) process.
- 1.2. **As members of the TAB and STAC, you have the opportunity to recommend several changes that would strengthen the Standard and ensure harvest strategies for certified fisheries are robust, effective, and developed in a timely manner.** The MSC would better incentivize harvest strategy and HCR adoption for RFMOs by adopting the proposed milestones in SE3.2.5, while limiting the deadline to close conditions to the well-established and standardised 5-years. The new Standard should also include the requirement proposed in SE 1.1.3 that mandates a formal commitment to MSE as a **prerequisite** for entering assessment. Finally it is important to ensure the consequences for not achieving a condition defined in the relatively recently revised Fisheries Certification Process (FCP) are acted upon and not undermined by this proposed Standard revision.
- 1.3. **It is unclear how the proposed phased condition pathway would incentivize change.** There are currently RMFO-managed fisheries that have had harvest strategy-related conditions in place since 2007. The MSC Executive has not provided a clear rationale for how extending that timeline will be more effective in closing these conditions. There is no evidence to show that a ‘phased’ approach to conditions will be any more successful in helping to achieve HCRs than the current approach.
- 1.4. **The proposed addition of Section SE would run counter to one of the main goals of the current FSR, which was to simplify the MSC standard.** As proposed, the new Annex would create an entirely different Principle 1 assessment tree with differing condition timelines and scoring requirements for RFMO-managed fisheries. It would also add complexity within the RFMO-managed fisheries themselves, creating three tiers of fisheries, each with their own condition deadlines. Finally, because the timeline requirements are based on stock, and not fisheries, there will be as-yet-unknown implications for harmonisation.

- 1.5. **If Section SE is adopted as proposed, it is unclear how and when fisheries will transition between Standards and how existing condition milestones will be modified.** If a transition process is not carefully crafted and specified unambiguously, the intent of the FSR will be fatally undermined for these fisheries. We have serious concerns that a proposed transition plan has been developed without a formal process to gather stakeholder input, which could identify potential unintended consequences or suggested improvements. We ask that any transition plan be made available for public comment before it is adopted by the MSC.

## **2. Evidence Requirements Framework**

**We urge the MSC to provide an opportunity for stakeholder input on the final Evidence Requirements Framework when released.**

A significant number of important text sections and clauses in the proposed Standard and Guidance are in square brackets and require a final decision that may determine whether stakeholders can support the new MSC Standard, perhaps most notably the Evidence Requirements Framework (ERF). Given that: (i) the ERF will provide a fundamental underpinning to the integrity of the whole Fisheries Standard; (ii) the ERF was expressly identified as incomplete/in draft form at the time of consultation by MSC itself and (iii) it is presently unclear to what extent to these proposals have changed in the course of the consultation; we believe it is necessary for MSC to further consult stakeholders on the ERF if substantive alterations have been made to the published proposal.

In addition to this procedural point, we provide the following inputs on technical aspects of the ERF:

**We strongly urge the MSC to maintain quantitative minimum coverage levels for independent observation of catch proposed in the ERF.** The required levels are based on strong science and have the potential to be one of the strongest drivers of improvement in the new Standard. To ensure this significant improvement in the Standard is meaningful and effective, it is critical to tighten guidance and include an approach that recognizes relative risk of differing fisheries.

We recommend:

- 2.1. **Removing the associated option of equivalence in proposed guidance B1.3.1.2 c**, which allows certification with status quo observer coverage levels if “catch estimates are likely to achieve a level of precision that has been prescribed by the management agency in order to achieve stock assessment or management purposes” or (in related Guidance GB1.3.1.1) with ‘precision targets set by management agencies’.

This ‘opt-out’ clause in the current draft will allow fisheries to avoid the new minimum independent observation levels by deferring to existing coverage levels which are deemed equivalent by RFMOs and government management agencies, even if those coverage levels are much lower. For example, the minimum observer coverage requirement for longline tuna fisheries in the WCPFC and ICCAT is only 5%.

- 2.2. **Strengthening the guidance definition of what can be considered ‘independent observation’ and ‘alternative methods of monitoring’ in fulfilment of the minimum thresholds.** The current guidance to the proposed Standard leaves too much open to the expert judgement of CABs. There should be more specific guidance on what is not acceptable in regards to alternative monitoring methods, and for what types of fisheries in terms of risk and impact any alternatives that do not include observer coverage and EM would be acceptable.
- 2.3. **Reconsidering earlier proposals during the development of the ERF that included risk assessment as part of determining precision thresholds (using criteria such as species, scale, gear, location, and seasonality).** A risk-based approach can avoid creation of an unnecessary burden for low risk fisheries, while ensuring adequate ‘independent observation’ is available for scoring fisheries with a known high risk of non-compliance, thereby narrowing the opportunity for variable interpretation by CABs by exercising ‘expert judgement’. We note that the Standard already includes such direction in a simplified way under Guidance GSA 3.12.3 and GSA 3.13 related to what constitutes quantitative evidence of impact on sensitive habitats. These GSAs include risk-based details for prescriptive application as well as detail on what is and is not an acceptable monitoring system. We strongly recommend that similar guidance be included in the ERF.

### **3. Minimising mortality of ETP species and unwanted catch of In-Scope species**

**We urge the MSC to strengthen the definitions of ‘hindering recovery’, ‘minimise’, and ‘negligible’ in the scoring and guidance related to unwanted catch of in-scope species in Pls 2.1.1; 2.1.2 and ETP/OOS mortality in Pls 2.2.1 and 2.2.2.**

The proposed draft guidance allows too many ‘opt-outs’ that ultimately undermine MSC’s stated intent of minimising mortality and unwanted catch towards elimination. Implemented properly, this intent could be one of the strongest levers for change in the new Standard.

Specifically we recommend:

- 3.1. **Narrowing the economic reasons fisheries can avoid adopting best practices for minimising mortality/unwated catch.** The draft includes ‘opt-outs’ if changes are ‘cost prohibitive’, ‘not plausible economically, and/or they alter ‘the target catch level by more than 10%’. We strongly believe that policies that make sustainability subservient to fisheries profitability are entirely inappropriate for a global sustainability standard.

- 3.2. **Reducing the ‘negligible’ mortality threshold.** For many species of ETP fish and invertebrates the proposed threshold of 2% mortality of their assessed unit is too high and can significantly impact recovery. For example, when considering bird species, we recommend using a threshold such as 0.1% of the breeding population instead. Similar changes should be made for other ETP species complexes.
- 3.3. **Removing the option for fisheries to avoid requirements to show they are not hindering recovery if their impact is deemed ‘proportionately’ small.** The ‘proportionality’ or ‘we are just a small part of the problem’ rationale is used extensively under the current version of the Standard to avoid change and leads to ‘death by a thousand cuts’. It is not a precautionary approach to fisheries improvement.

#### **4. Fins Naturally Attached**

**We strongly urge the MSC to maintain the proposed requirement that fisheries have a FNA policy *without exemptions* in place for entry into the certification process.** To ensure this proposed requirement is effective in the final Standard version, we recommend:

- 4.1. **Strengthening the definition of FNA by explicitly adding text to prohibit the removal of shark fins on board vessels, and to retain on board, tranship or land shark fins.**
- 4.2. **Moving the definition of FNA from the guidance document into the binding and auditable SA clauses** of the MSC Standard associated with shark finning PIs PI 1.2.1. SI (e); PI 2.1.2 SI (d) and PI 2.2.2.SI (d).
- 4.3. **Requiring quantitative evidence of compliance with FNA by requiring the application of the precision thresholds for ‘independent observation’** defined in the Evidence Requirement Framework also when scoring the likelihood of shark finning to take place in PI 1.2.1. SI (e); PI 2.1.2 SI (d) and PI 2.2.2.SI (d).

## **5. Precision thresholds for Monitoring Control and Surveillance (MCS) in Principle 3**

**We recommend MSC apply the precision thresholds in the ERF, including a risk-based approach, to Monitoring Compliance and Surveillance under PI 3.2.3.**

The signatories to this letter are highly concerned that the precision thresholds in the ERF are not applied to MCS scoring under PI 3.2.3 and that language has been weakened for this PI resulting in scoring focusing on existence of MCS mechanisms rather than the effectiveness of those mechanisms. Again, adopting a risk-based approach can avoid creation of an unnecessary burden for low risk fisheries, while ensuring adequate monitoring is in place and effective when scoring fisheries with a known high risk of non-compliance.

## **6. Narrowing interpretation by Certifying Bodies**

**We urge MSC to safeguard against excessive discretion and inconsistent use of expert judgement by CABs in interpreting the MSC Standard during fishery certifications.**

To ensure the Standard's intent is met and to reduce the potential conflict of interest in a 3rd party system where CABs are paid by the fisheries they assess, we recommend:

**Clarifying ambiguous clauses and known loopholes that allow CABs to circumvent MSC intent by exercising 'expert judgement' throughout the Standard and guidance text.**

In particular, this is critical with relation to the new Evidence Requirements Framework and in areas of the Standard where CABs are allowed to determine equivalency of management, mitigation, or alternative measures and where CABs evaluate the proportional risk/impact of fisheries under P2 scoring and related guidance.