

Additional Explanations and Details in Context of the online Submission to the Consultation Survey from Sharkproject International on the following Topics:

1. Changes to the scope of the MSC program
2. Clarifying best practice for reducing impacts on endangered, threatened and protected and out of scope species
3. Identifying further solutions to ensure MSC certified fisheries are not involved in shark finning
4. Supporting the prevention of gear loss and ghost fishing
5. Ensuring effective fisheries management systems are in place
6. Ensuring habitat performance indicators are clear and consistently applied
7. Ensuring ecosystem performance indicators are clear and consistently applied
8. Additional corrections and clarifications needed for several parts of the Standard

1. Changes to the scope of the MSC program

Topic	MSC Reference	Issue	Question / Proposal
Scope Harassment of marine mammals	1.1.2.3 1.1.2.3 c	The CAB shall confirm that the client or client group does not include any entity that intentionally harasses or intentionally kills marine mammals. intentionally harasses or intentionally kills marine mammals, the CAB shall consider the entity as having become out of scope and shall withdraw it from the certificate or client group“The CAB shall make a determination as per 1.1.2.3.c. based on information that has been independently verified ” This independent verification requires a clear definition and wording is not used consistently for similar events throughout the Standard/Guidance and should be harmonised (see also in the chapter for shark finning) requiring clear definition for what kind of information/evidence is going to be accepted and how the CAB needs to consider such information/evidence when provided from independent parties e.g. NGOs

We strongly endorse this proposal “to add a new scope criterion to exclude entities that intentionally harass or intentionally kill marine mammals whilst undertaking fishing activities (e.g. setting or deploying fishing gear) will be effective at ensuring that the MSC program excludes entities that intentionally harass or intentionally kill marine mammals.” This has been long time overdue and should now be introduced swiftly rather than waiting till the Standard comes into effect. Targeting an out of scope species to set nets around it in order to catch the UoA/target species should have been banned already a long time ago.

Sharkproject also supports the specification that UoA assessments shall include unobserved mortality, including from ghost gear and the definitions made in the Toolbox, that

- Consideration of post capture mortality (i.e. cryptic mortality) as “the chance that, if captured, a species would be released and able to survive”. It is further clarified that this includes not just capture but “any injury or mortality caused by direct interaction of the gear”.
- The assignment of “all air breathing species shall be considered default high risk for active and ghost gear set within the diving range of the species”.

However, Sharkproject is concerned that there are still several loopholes and deficiencies in the proposed Standard, its Guideline and the new Toolbox which will fail to deliver on the intent of the MSC to better protect ETP / OOS species, if not strengthened or improved.

- The methods that can be used to understand fishery impacts on marine mammals:
- The reference to ASCOBANS - The reference as a guideline is misleading and only partially reflects what ASCOBANS is actually calling for; the 1.7% reference in the MSC document is stated to be referring to bycatch alone. However, in 2020 ASCOBANS passed [UNEP/ASCOBANS/Resolution 8.5 \(Rev MOP9\)](#) in which the 1.7% addresses total anthropogenic removals not just bycatch. Further, the resolution reaffirmed an intermediate precautionary goal to reduce bycatch to less than 1 per cent of the best available population estimate;
- With regard to the use of SEFRA, a model proposed by the NZ government as an equivalent of PBR: The SEFRA approach has been widely criticised by cetacean experts, and Rmax, one of the key inputs is currently undergoing a major review by the International Whaling Commission. The MSC should not suggest that this model is in any way acceptable as a means of estimating a UoA's impact on a marine mammal population.
- **It is preferred that either an ASCOBANS limit or Potential Biological Removal (PBR) method be employed.** PBR has been used and tested for decades. However, the reference to PBR should be expanded to include the Zero Mortality Rate Goal (ZMRG) which is meant to reduce mortality and serious injury to insignificant levels approaching zero, defined as 10% of PBR
- Calanus/Calanidae are not included in the list of Key Low Trophic Level species. Although they would likely meet at least 2 of the sub criteria in SA2.2.9a.i–iii., given the importance of Calanus for the critically endangered North Atlantic right whale, and knowing that certification of Calanidae is being considered by fisheries, **there should be a specific inclusion of this species.**
- The proposed review of hindering recovery (defined as favourable conservation status being able to be achieved in the shorter time frame of 3 generations or 100 years) is of concern for cetaceans in that generation times for many small cetaceans are still unclear (please also refer to ETP/OOS species below). Also, which definition of generation will be used as a marker; for large whales generation estimates have been determined for both current and “pre-disturbance” (e.g. commercial whaling)? For some species this is significantly different. Current generation for North Atlantic right whales for example is 23.3 years while pre-disturbance generation was 35.7 years. Due to this, as stated previously, it is critical for fisheries to have recovery action milestones that are within reasonable management cycles (5 to 10 years)
- Table A8 of the Toolbox for PSA productivity attributes and scores for marine mammals needs significant review and editing

Table A8: PSA productivity attributes and scores for marine mammals

Productivity Attribute	High productivity Low risk (1)	Medium productivity Medium Risk (2)	Low productivity High Risk (3)
Average age at maturity: Age at first reproduction (female sexual maturity). Median or mean age at maturity. If range provided, use most precautionary (highest) value.	<5 years	5-15 years	>15 years
Average max age: Use reproductive lifespan of females. Median or mean age at maturity. If range provided, use most precautionary (highest) value.	<10 years	10 – 25 years	>25 years
Fecundity: Use number of calves/female per year instead of eggs.	>20,000 eggs per year	100-20,000 eggs per year	<100 eggs per year
Average max size (not scored for inverts)	<100 cm	100-300 cm	>300 cm
Average size at maturity (not scored for inverts)	<40 cm	40-200 cm	>200 cm
Reproductive strategy	Broadcast spawner	Demersal egg layer	Live bearer
Trophic level	<2.75	2.75-3.25	>3.25

- In the Draft Guidance section for salmon fisheries, there is a reference in GSC3.14.1 Habitats management strategy that enhanced salmon fishery interventions may also include ‘removal of predators or competitors to maximise early stage salmon survival.’ This needs to be removed or at least redefined to ensure that this does not allow for killing of ETP/OOS species or a removal that includes the risk of injuring or harassing them, or otherwise affect their natural behaviour.
- The same should also apply for all ETP / OOS species.

Scope Conviction for a serious crime	1.1.2.4 a	<p>The CAB shall confirm that the client or client group does not include an entity that has been convicted of a serious crime for an offence listed in Table 1 in the last 2 years. ■</p> <p>a. The CAB shall interpret ‘serious crime’ to mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.</p> <p>b. If an entity that belongs to a certified client group is convicted for a violation of law with respect to a serious crime, the CAB shall consider the entity as having become out of scope and shall withdraw it from the certificate or client group.</p> <p>c. If a conviction is determined, the CAB shall consider the entity as out of scope until 2 years have passed since the date of the conviction.</p> <p>Illegal fishing - Non-compliance with regulations specific to governing sustainable fishing practices</p>
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Sharkproject notes and is concerned, that

- this includes illegal fishing “Non-compliance with regulations specific to governing sustainable fishing practices” but firstly convictions of 4 years or more will hardly ever happen for such offenses and
- then removing only the entity rather than considering that there might be a systematic problem within the whole fishery appears rather weak
- and removing such an entity then for a mere 2 years is completely irrational.

Conviction of an entity within a fishery for serious crime should make the complete fishery non eligible and at least for 4 years, readmitting such fishery only after proof of substantial improvements in those matters that have been convicted for.

<p>Scope Conviction for shark finning</p>	<p>1.1.2.5 a GSA2.4.3– GSA2.4.4</p>	<p>The CAB shall confirm that the client or client group does not include an entity that has been convicted for a shark finning violation in the last 2 years. Objective verifiable evidence could be any documented statement of fact based on observations, measurements, or tests that can be verified (FCP xxxx).</p>
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Sharkproject notes and requests clarification about

- „If an entity that belongs to a certified client group **is convicted for a violation of law with respect to shark finning**, the CAB shall consider the entity as having become out of scope and shall withdraw it from the certificate or client group.“

What happens if finning is not against the law in a jurisdiction? Since it is violating the FNA policy requirement this should be referenced here too. In addition this procedure of removing an entity for 2 years and then re-admitting it again afterwards is neither transparently verifiable nor generating an kind of deterrence.

At the very least this should not require a conviction but “information that has been independently verified” should suffice, while noting that the definition of this independently verified information remains also unclear.

- On the other hand the Guidance advises that the CAB should not certify or maintain certification in case of **objectively verifiable evidence that shark finning is taking place**. This appears to be much harsher as not requiring a conviction , however no comprehensive definition for ‘objectively verifiable’ is provided referring to the FCP instead, where such definition currently also seems absent. Why would MSC not use the same wording as for the harassment of marine mammals –‘ information that has been independently verified’ and why not provide a clear comprehensive definition consistent between different issues but same concerns?

<p>Enhanced Fisheries Habitat and ecosystem impacts</p>	<p>1.1.2.6</p>	<p>Using the criteria in Table 2, the CAB shall determine whether the fishery is an eligible enhanced fishery</p>
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Sharkproject notes, that if ‘any modifications to the habitat of the stock are reversible and do not cause serious or irreversible harm to the natural ecosystem’s structure and function.’ and such

modified habitats include fish attracting devices (FADs) than there should be a clear reference to explain what the consequences of this is.

What is the implication of FADs now being an eligible enhanced fishery and which additional measures are therefore needed, respectively do have to be scored? Please also refer to our comments in the ghost fishing section. Habitat modification should trigger a overall precautionary approach requesting the CAB to apply higher levels of scrutiny when scoring and at least evaluate the existence and compliance with globally acknowledged best practices for drifting FADs (please also see below)

2. Clarifying best practice for reducing impacts on endangered, threatened and protected and out of scope species

a) ETP Species Designation

Sharkproject appreciates, that with new scoring in place for ETP species and Principle 2 'in scope' species there is potential in the new Standard for more rigorous requirements on fisheries that catch or interact with ETP designated species. The classification as 'Out-of-scope species' thereby requires all birds, mammals, reptiles can't be targeted and all OOS/ETP species will always have to be scored by the CAB applying the same requirements even if their population is healthy. This is a real improvement.

It is also good to see that now all bait species even if purchased from outside the fishery area are considered in-scope and need to be scored as part of the fishery impact

However, in order to deliver on this intent we note that there are serious issues with the designation of ETP/OOS species according to the proposed decision tree for assignment.

While we appreciate that there is now a broader set of international agreements and the IUCN red list classification applied as baseline for identifying ETP species, there are serious shortcomings and flaws in the proposed designation decision tree that have to be addressed.

The following flaws in this designation remain a big concern and need to be resolved as proposed below

- All species classified as IUCN 'vulnerable' have to be included in baseline assignment as OOS/ETP species while the current proposal only recognises IUCN critically endangered (cr) and endangered (en) species. This is a severe flaw as also vulnerable species (vu) are part of the '**Threatened**' rating by IUCN and therefore should qualify as an 'Endangered, **Threatened** and Protected' species also at MSC
- The current proposal still does not recognize species that are assessed and classified as endangered or threatened by a domestic or international official science body, but not yet listed in national legislation or part of international binding treaties. For example, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) is the national science body that undertakes assessments and classification of all species. If COSEWIC classifies as threatened or endangered that species will then be considered by the minister for listing on the national Species at Risk Act. The science body is officially part of the process and makes the assessment. The decision to list the species on the Act is a political decision and can take many years, if ever, especially for aquatic animals. It is the science assessment that should be recognized by MSC at both domestic and international levels. 'Organizations responsible for assessing the status of species' is wording used in other parts of the ETP section of the Standard and they could use that wording for this case.
- We strongly disagree with the proposed 3 Factors MSC provides for CABs allowing them to 'modify' the ETP species list. Those factors as stated are much too undefined and weak potentially leading to the potential assignment of a depleted and endangered or even CITES App II listed species of fish or invertebrate species as a target species in P1 or an in scope species in P2 with even less rigorous mitigation requirements, despite poor management or unrealistic 'recovery plans' or lack of data as part of the modification approach.

- MSC should err on the side of precaution and not allow for any modification of the ETP species at all. These are endangered and threatened animals that have by definition not yet recovered and should therefore not be allowed being labelled as sustainably certified fish. Having management plans/ recovery plans in place is not the same as effective recovery and out of experience many of these recovery plans are weak or completely ineffective.
- While it is good that bait is in-scope, does this mean that a bait species cannot be classified as ETP, if it is designated as such on one of the lists? MSC should also be clear that Out of Scope species, which may be used as bait in some fisheries, such as marine mammals, can never be considered 'in scope' bait species

b) Endangered, Threatened, and Protected (ETP) and Out of Scope Species Scoring Requirements

The key to delivering on the MSC's intent to strengthen protection for ETP/OOS species are that the fishery is not 'hindering recovery' and whether the catch of the ETP species is a 'non-negligible' part of the fishery's total catch. Therefore these definitions have to be absolutely clear and strong as otherwise they will result in improvements only on paper while the situation on the water does not change, because only if the catch is NOT considered to be 'non-negligible' must a fishery minimize mortality for this ETP/OOS species. In addition the requirements for 'minimized mortalities' are essential and require improvement, not leaving it to the discretion of the CAB how far mortality has to be minimised or not.

Having this in mind a fishery catching vulnerable, CITES II and CMS listed silky shark in the Indian Ocean as a bycatch will have silky shark listed as ETP/OOS species (CITES II, CMS, not subject to modification as it is a shark) by the CAB. However as this catch is e.g. for the Spanish fleet e.g. 500 t per year, so less than 2% of the total catch of more than 30,000 t in the Indian Ocean (please note that these are assumed figures as actual catch numbers unknown due to poor reporting) then this bycatch of silky shark will be treated as negligible and the fishery will not be required to minimise mortality e.g. by reviewing and introducing measures or gear modifications to do so – although such measures do exist and have demonstrated to reduce on board and post release mortality substantially.

Although the requirements to minimise mortality and to review measures for minimisation of mortality are very much appreciated **Sharkproject** is of the opinion that they have to be strengthened by clear and more stringent definitions. The focus should be to minimise mortality by the fishery towards complete elimination of fishing related mortality for these ETP/OOS and species. This has also been a key request from **Make Stewardship Count**, which is supported strongly by **Sharkproject**. Furthermore it must be ensured that information and evidence are available to confirm that a decline in interaction (due to successful bycatch avoidance) is not caused by the species population collapsing but an effect of successfully implemented and complied measures.

➤ Sharkproject also acknowledges, that

- MSC has made an effort to introduce a quantitative threshold to define recovery for ETP species. They are calling this 'Favourable Conservation Status': *a level equivalent to at least 50% carrying capacity, unless a higher level has been defined based on the life history characteristics of the ETP/OOS unit*

- 'Direct effects' of a fishery now includes injuries, sub lethal effects from both observed and unobserved interactions with gear or ghost fishing
- PI 2.2.1 ETP/OOS Species Outcomes

The quantitative threshold to define recovery is an improvement, but in practice will be very difficult to define for many ETP/OOS species and may mean that many ETP/OOS species ended up being scored under the MSC Risk Based Framework for data deficient species, which has a lot of holes still and is very complicated.

 - First barrier for change on the water - catch of a species by a fishery must get over the 'negligible' bar. In the proposed Standard, if the fishery's catch of an ETP/OOS species is considered 'negligible' then no further action is required to minimise mortalities or help with recovery of that species.
 - The associated definition of 'negligible mortalities' in PI 2.2.1 needs to be stronger or too many species will be designated negligible:
 - *Negligible mortalities by a fishery are less than 5 individuals or, for fish and invertebrate species, less than 2% of ETP unit (so, less than 2% of silky shark population, for example) AND*
 - *'the lower bound of estimated population size for the ETP/OOS unit is at least 5000 individuals' AND*
 - *The fishery has not conditions on information adequacy under 2.2.3a*
 - For bird species this definition does not work and instead should be 0.1% of breeding population.
 - For fish and invertebrates less than 2% can still be significant and have a significant impact on less species with low productivity such as amongst others sharks, rays the percentage threshold should be lower.
 - Having a cut off definition of negligible can make some practical sense, but for ETP species this is not 'minimizing mortality' to eliminating and so does not achieve the MSC intent in 2.2.2 c
 - Guidance doc page 62 needs to clarify whether weight (and not just individuals) can be used for ETP/OOS species amount of catch as it currently says weight can only be used for 'in scope' species catch estimates
 - The definition of whether a fishery is 'hindering recovery' also needs to be much stronger. Even if the amount of catch of an ETP/OOS species is considered 'non-negligible', if the fishery is not 'hindering recovery' there is no need to minimize mortalities or make any other changes to fishing practice in regard to ETP impacts. There are four ways a fishery can prove they are not hindering and they only need to be doing one. The two loopholes are that the fishery can show either:
 - That F is below FMSY OR
 - That *'the proportion of catch by the UoA [the fishery] relative to the total catch does not hinder recovery'*
 - Further details in the associated Guidance for 'hindering recovery' state:
 - *'If the component status is low, for whatever reason, the operative issue for the majority of the SGs in P2 assessments is whether the UoA is hindering recovery as defined in SA3.5.9. In these cases, the team should base the assessment on the marginal contribution that the UoA makes to the status or recovery of the*

component under consideration. If the UoA is not the root cause of human impacts on the component, actions of the UoA cannot redress the situation. In any event the UoA is required not to hinder recovery or rebuilding.'

- This 'proportionality' argument has been the excuse used by fisheries in all the MSC Standard Versions before - 'we are just a small proportion of the catch of this species, so we don't hinder recovery.' It leads to death by a thousand cuts and removes any requirements for fisheries to address their practices and do their part to reduce any impact possible of ETP species.
- MSC should focus on minimising mortalities towards elimination as their intent states, no matter whether that fishery is the main cause of depletion or not
- This loophole is combined with the shortcomings for assessing cumulative impacts of all MSC fisheries impacting that ETP species. Cumulative impacts is only scored at 80 (so it is not a failing scoring post and would not require conditions) AND all the MSC fisheries must totally account for catch of MORE than 30% of that ETP species catch across whatever the assessment range is. This is a very high threshold to meet and in the current version of the Standard it is the same and it is very, very rarely triggered, therefore, cumulative impacts rarely require any changes on the water. Even with this very high threshold of 30%, the Guidance goes on to state:

'Even if the total catch of a species is clearly hindering recovery (e.g., total fishing mortality is not below FMSY), the team may still determine a strategy is demonstrably effective between all MSC UoAs if the proportion of combined catch by the UoAs is effectively not hindering recovery.'

- This is not acceptable. The threshold at which cumulative impact should be considered should be lowered AND the MSC fisheries should focus on minimising mortalities towards elimination no matter whether their fisheries are not the main cause or only cause of depletion. This will incentivize them to focus on what is in their control - their own fishing impacts and drive those fisheries to push for a level playing field of regulation that ensures other non-MSC fisheries must also put in place mitigation measures.

➤ PI - 2.2.2 ETP/OOS Management Strategy

In PI 2.2.2b **Sharkproject** considers the requirement to minimize mortality on non-negligible ETP species could be a very significant scoring requirement.

However, it is now only scored at SG80. This means a UoA does not need to show evidence of reducing mortalities of ETP/OOS species to get certified. This should have a 60 scoring level that at least requires fisheries to 'reduce' mortalities and that should be defined as specific percentages of bycatch reduction from the baseline. Then 80 should be 'minimize' and 100 could be 'eliminated'

- The definition of 'minimized' for the scoring of 'minimizing mortalities' of ETP in PI 2.2.2a is currently a major loophole. Draft definition is:
 - *"Minimised" shall be interpreted in this context as reduced to the smallest possible level without affecting crew safety, altering the target catch level by more than 10% or negatively impacting other species or habitats.*

- There must be much more required for a fishery to argue that they simply cannot change fishing gear or practice due to changes in their target catch. If there are ETP species that the fishery is impacting and that are not recovering, the fishery should do
- When fisheries are found to be 'hindering recovery' of an ETP/OOS species the conditions set for action should include milestones of recovery actions that are within reasonable management cycles (5 to 10 years) to show progress towards the 'favourable conservation status' being achieved in the shorter of 3 generations or 100 years. Otherwise, there is little incentive for more immediate action.
- Furthermore, 3 generations or 100 years is far too long for many low productive species like marine mammals and sharks but also all deep sea species and some others. This should better say within the shortest possible timeframe. Even a 70% probability of recovery within 100 years is highly risky. **Sharkproject** therefore suggests to have a maximum of 2 generations and 50 years (with some exceptions for species with extremely low reproductivity) and in such cases propose to use the SG100 likelihood definition for these species then already at SG60. Everything else would be in strong contrast to a precautionary approach and to the MSC's intent.

➤ Cumulative Impacts for P2 In scope species PI 2.1.2 a

Sharkproject notes with regard to cumulative impacts

- This is **only scored at 80**, it should be clear that fisheries can still get a condition to address cumulative impact across MSC certified fisheries
- In order for any requirement to be triggered, all the MSC fisheries must totally account for catch of **MORE than 30%** of that species catch across whatever the assessment range is. This is a very high threshold to meet. In the current version of the Standard it is the same and it is very, very rarely triggered, therefore, cumulative impacts rarely require any changes on the water. Even with this very high threshold of 30%, the Guidance goes on to state:
 - *'Even if the total catch of a species is clearly hindering recovery (e.g., total fishing mortality is not below FMSY), the team may still determine a strategy is demonstrably effective between all MSC UoAs if the proportion of combined catch by the UoAs is effectively not hindering recovery.'*
- **This is not acceptable.** The threshold for cumulative impact to be considered should be lowered AND the MSC fisheries should focus on minimising mortalities towards elimination no matter whether their fisheries are not the main cause or only cause of depletion. This will incentive them to focus on what is in their control - their own fishing impacts and drive those fisheries to push for a level playing field of regulation that ensures other non-MSC fisheries must also put in place mitigation measures.
- The wording of PI 2.1.2.a SG 80 is overly complex and difficult to understand it's relation to 2.1.1a - species outcome

➤ Minimize mortality definition for discards of P2 In-scope species PI 2.1.2 e

Sharkproject acknowledges the good intent that discards for catch, even populations of species that are not endangered, are required to be minimized. This can lessen wasteful practices and

has been a key request from Make Stewardship Count and the position paper of **Sharkproject** on a transformation of fishery to and ecosystem-based approach for all impacts of a fishery.

- Removing the possibility to modify the designation of a species as ETP/OOS species and the risk of those species being considered as 'in scope' P2 under this PI (see above), thereby is even more important
- Implementation of alternative measures (gear, practice, spatial changes, etc.) to minimize discards and mortalities of unwanted catch is only required at 80. So, no fishery could fail on this particular SG. That is not precautionary or responsible management, especially since the requirement is only to review possible mitigation measures to reduce discards ever 5 years. This should be at SG 60 - reducing discards, especially dead, is good management practice.
- Implementation of some measures should be required at SG 60 with more measures and evidence of effectiveness at SG80 and elimination of unwanted catch by 100.
- The definition of 'minimized mortality' for unwanted catch is very weak. Similar to our major concerns with 'minimize mortality' definition for ETP/OOS, but in the case of P2 'in scope' species there are more ways given in the Standard and Guidance draft for fishery to avoid change on the water. In particular, there are multiple economic and expense based arguments that will allow fisheries to avoid any fishing gear or practice changes as 'not plausible'. There are 2 pages of guidance discussing what constitutes 'cost prohibitive' including change in catch revenue, cost of gear, operational efficiency, access or restriction on fishing opportunity. There is a lot left up to the interpretation of fisheries and CABs and the list includes the most common objections to changes brought forward by industry.
- This Guidance will be used heavily by fishery clients and CABs to avoid any changes that would modify gear, shift gear types, shift practices in any significant way. If MSC allows these 'opt out' options to remain in the draft, they miss a very strong opportunity to incentivize actual substantive shifts in fishing gear and practice and to achieve their stated intent 'to reduce impact of fisheries on unwanted catch'. The Standard will continue to certify the status quo for many fisheries.

3. Identifying further solutions to ensure MSC certified fisheries are not involved in shark finning

a) MSC Definition of Shark and where it is used in the Standard

The MSC has introduced a 'bespoke' definition of shark:

SA2.4.3.1 "The team shall interpret the term "shark" to refer to any species within the Selachimorpha and Rhinopristiphormes.

If the UoA is part of a management agency whose definition of "shark" includes additional species, the management agency's definition shall apply. "

While we accept this bespoke definition of sharks may be suitable for defining sharks when scoring the risk of finning. **However**, the proposed MSC bespoke definition of sharks is completely inappropriate and far too narrow for use in any other part of the Standard (i.e. ETP designation or scoring, or assignment as a main species or when fins are traded)

While we note that the relevant EU regulation defines sharks as all elasmobranchs and indeed when assessing their vulnerability to overfishing sharks should be considered in context with all chondrichthyes including all rays, skates and chimaeras.

In general the ETP scoring and guidance should be precautionary and strong enough for all inherently vulnerable fishes, including sharks.

- When referring to 'sharks' aside from the scoring indicators and the requirement for an FNA the definition should cover all elasmobranchs, if not all chondrichthyes
- The proposed text to require all sharks to be designated as 'main' species when they are P2 in-scope (if the fishery trades in fins) is an important precautionary approach. However, the proposed text is currently only in the non-binding Guidance and should therefore be included in the SA section of the Standard document.

b) Position Statement: MSC's proposed revised Fisheries Standard and the newly proposed Toolbox will fail to deliver on the MSC's intent of 'zero tolerance' for finning unless they are strengthened and the excessive discretion for CABs removed

Background

MSC banned finning in 2011 and repeatedly states that it takes a 'zero tolerance' approach towards the practice. However, many stakeholders view MSC's existing requirements, which allow for unattached fins to be present on certified vessels, as representing a significant loophole. To address that loophole, stakeholders have called for a Fins Naturally Attached (FNA) policy as a prerequisite for certification. An FNA policy requires that retained sharks are landed with their fins still attached to the carcass and thereby prohibits fisheries from removing fins on board of vessels. An FNA policy is globally acknowledged as the best practice to prevent finning. Additionally, stakeholders have called for a risk-based level of independent monitoring of compliance with such an FNA policy, whereby fisheries with a higher risk of non-compliance would require a higher degree of independent verification of compliance.

How does MSC's proposed Standard revision intend to prevent shark finning in certified fisheries?

Shark finning is assessed as a Scoring Issue (SI) under three different Performance Indicators (PIs): 1.2.1 (e); 2.1.2 (d); 2.2.2 (d), depending on whether sharks are the target species, an in-scope species or an endangered, threatened or protected (ETP) / out-of-scope (OOS) species. Under the new proposal, each of these SIs now has just one scoring guidepost (SG) namely SG60, which has to be met in order for the fishery to get certified. This reads: "It is **highly likely** that shark finning is not taking place".

The 'SA paragraphs' within the proposed Standard establish that the CAB assessing a fishery shall determine "that an FNA policy is in place for all retained sharks". The CAB shall additionally "apply the Evidence Requirements Framework in the proposed MSC Fisheries Standard Toolbox to establish that the information used to determine that a FNA or a non-retention policy is in place has a **high degree of accuracy**."

However, there is still a need for improvement and clarification in order to deliver on the intent of the FNA policy as a prerequisite for certification and on 'zero tolerance' for finning.

A: Improvements to the proposed revised Fisheries Standard

(i) More stringent requirements for scoring at SG60, or at an added SG80 level which fisheries would need to achieve over the course of the first certification period. Under the new proposal, each of the three finning SIs now has just one scoring guidepost (SG), namely SG60, which has to be met in order for the fishery to get certified. This reads: "It is **highly likely** that shark finning is not taking place". This is the wording of SG80 for the finning SIs in the existing Standard.

So, in effect, the wording otherwise applied at SG80 is being moved to SG60. Yet the wording of SG80 in the existing Standard is not the most stringent wording. This is found in SG100 of the existing Standard, and it reads as follows: "There is a **high degree of certainty** that shark finning is not taking place."

For a policy area where MSC's declared approach is one of 'zero tolerance', and for a revision of the Standard where MSC has decided to do away with all but a single scoring guidepost at SG60, it seems incoherent that MSC is not then proposing a requirement for 'a high degree of certainty' at SG60. The use of 'a high degree of certainty' would send a very clear message that MSC is serious about implementing its 'zero tolerance' approach.

If not already at SG60 then at least this more stringent requirement should apply to an additional SG80 level, which the fishery has to meet over the course of the certification. Thereby, conditions could be defined at SG60 requiring a higher degree of certainty at SG80 (as required at SG100 for other SIs) and this also presents an incentive for further improvement in line with MSC's Theory of Change. In particular, where there is no legislation regulating the management and catch of sharks or ratified RFMO conservation measures requiring compliance with FNA but where FNA is instead implemented as a UoA / company level code of conduct as described in GSA2.4.3–GSA2.4.4 of the guidance to the Standard, it will be important to have such an incentive for a higher degree of certainty over time.

(ii) More stringent wording for the degree of accuracy required. The wording of SG60 is accompanied by further requirements set out in 'SA paragraphs' within the proposed Standard. These require that the CAB assessing a fishery must determine that an FNA policy is in place for all retained sharks and that the CAB shall apply the evidence requirements set out in the proposed Toolbox, to establish that the information used to determine that an FNA policy is in place has a '**high degree of accuracy**'.

A 'high degree of accuracy' is required at SG80 for other SIs but applied already at SG60 in the proposed revised Standard for scoring the likelihood of finning occurring in a fishery. While this demonstrates the intent to increase stringency, this degree of accuracy sits between 'broadly understand' and 'very high degree of accuracy', in assessing the trueness of information used for scoring and is defined in the proposed Toolbox as follows:

'high degree of accuracy': *the nature and extent of potential bias in the information is understood and it is not considered to have a consequential effect on its trueness.*

'very high degree of accuracy': *there is limited potential for bias in the information, and where potential bias does exist, it is not considered to have a consequential effect on information trueness.*

The difference between these two definitions is that in the first, the potential for bias needs to be 'understood' but is generally accepted to exist, whereas in the second, the potential for bias needs indeed to be 'limited' meaning that there is little room left for it. At a 'very high degree of accuracy' also higher thresholds for independent monitoring of fishing activities apply as a 'very high level of precision' or less variability between all repeated measurements then has to be demonstrated.

As with point (i) above, for a policy area where MSC has a 'zero tolerance' approach, it seems incoherent that MSC is not proposing a requirement for the highest level of accuracy, i.e. a 'very high degree of accuracy' to evaluate the trueness and to limit the existence of bias in the information when assessing whether an FNA policy is in place.

Again at the very least at an SG80 scoring guidepost this should be required to be demonstrated.

(iii) A clearer definition of FNA is needed inside the binding SA paragraphs of the proposed Standard

a) Definition of 'FNA' should be in the SA paragraphs, not in the guidance. The guidance accompanying the proposed Standard defines FNA as:

"Where reference is made to the requirement for FNA, in order to facilitate freezing and storage, the fishery could partially cut the fins, including for the purposes of draining blood to avoid ammonisation, and fold them around the carcasses. However, fins should be attached to a substantial part of the shark, not just some vertebrae, allowing the shark to be easily identified to the species level. If fins are removed and then artificially attached to the carcass via ropes or wire, or placed into a bag that contains that carcass and fins, this would not constitute FNA."

This definition is central to the success of the new requirement that an FNA policy is to be in place. Therefore this definition should not be provided in the guidance document but in the SA paragraphs instead.

b) Definition of 'FNA' should be improved and include transshipment. As noted above, FNA is not defined in the Standard but in the guidance document instead. The proposed definition, that

'An FNA policy requires that retained sharks are landed with their fins still attached to the carcass'

lacks clarity in two aspects and should therefore be revised according to the definition used in existing legislation of the EU's Council Regulation No 1185/2003 on the removal of fins of sharks on board vessels and amended by Council Regulation No 605/2013, which prohibits 'the

removal of shark fins, retention on board, transshipment and landing of sharks or shark fins', providing a comprehensive definition of a FNA policy.

To address this, the definition for FNA should be revised in the (binding) SA paragraphs rather than in the (non-binding) guidance, reading as follows

'An FNA policy requires that all retained sharks are landed with their fins still attached to the carcass, by prohibiting the removal of shark fins on board vessels, and the retention on board, transshipment or landing of shark fins.'

- c) Definition of the term 'in place'. The wording of SG60 is accompanied by further requirements set out in 'SA paragraphs' within the proposed Standard. These require that the CAB assessing a fishery must determine that an FNA policy is in place for all retained sharks. But the term 'in place' is not defined. Does 'in place' mean, simply, that the policy exists or that the policy is fully and consistently complied with by all vessels within the fishery?

Certainly the latter should be the case. This is especially important to verify in cases where no binding legislation or ratified RFMO measure exists to require an FNA policy and where fisheries therefore have an internal FNA policy or code of conduct in place instead, a situation that clearly leads to a higher risk of non-compliance. A definition should therefore be provided in the (binding) SA paragraphs rather than in the (non-binding) guidance.

B: The Implications of the proposed Toolbox for shark finning

First, it is a very positive starting point that the wording of SG60, when read in conjunction with the SA paragraphs, now requires all certified fisheries – without exemptions – to have an FNA policy in place, unless they instead have a policy of non-retention of sharks. Additionally, for either non-retention or FNA, the proposed revised Standard requires determination of whether the chosen policy is truly in place.

However, the evidence requirements needed to demonstrate implementation of an FNA (or a non-retention) policy are set out in the proposed Toolbox meaning that, in practice, **the extent to which this Standard will succeed in preventing shark finning will ultimately come down to the requirements set out in the [Toolbox](#) and the application of that Toolbox by CABs.**

Given MSC's repeated commitments to 'zero tolerance' on finning, it would be reasonable to expect that the issue would receive special attention and that stringent measures would be set out. However, the evidence requirements set out in the proposed Toolbox for shark finning are far from achieving this as **they provide too much discretion for CABs.**

How will the proposed Toolbox be applied and why does this create excessive discretion for CABs?

- a) Table B6 in the proposed Toolbox (see extract below) sets out three **categories of information CABs should consider, as a minimum, in determining whether an FNA policy is in place.** These categories are entirely qualitative and very broad, meaning the CAB has a large amount of discretion to decide what actually constitutes the types of information referenced in this table and how far to go in looking for that information.

Table B6 Information to be considered in the evaluation of trueness.

PI/SI	Relevant information	Information categories
PI 1.2.1 SI (e) PI 2.1.2 SI (d) PI 2.2.2 SI (d)	Information to determine the implementation of a fins naturally attached (FNA) policy	<ul style="list-style-type: none"> Records of interactions with sharks, including with the gear and when onboard Information on relevant monitoring and enforcement activities Records of infringements related to shark finning

- b) A table in the guidance section of the proposed Toolbox (on [p.105](#)) then provides some further detail on potential sources of information for some of the categories above, suggesting for example that information on monitoring and enforcement might come from on-board observers, electronic monitoring, and / or interviews (amongst other sources). However, the guidance states that *'certain pieces of information may have greater significance in the context of the assessment, so teams should use their judgement in this respect'*, essentially giving CABs unlimited discretion as to how much weight to attach to any given piece of information.
- c) Furthermore, Table B7 (see [p.101](#); one example provided below for illustration) sets out four criteria and some accompanying 'considerations' to help CABs structure their evaluation. Once again, these are entirely qualitative and very broad. So there is substantial discretion allowed to the CAB in interpreting the wording – for example, what exactly is meant by 'independently collected and/ or verified' in the example below? The other criteria set out in Table B7 – 'relevance', 'completeness' and 'consistency' – are no more precise in their definition.

Table B7 Criteria used to structure the evaluation of information trueness.

Criteria	Considerations
Objectivity The extent to which information is free from conflict of interest	<p>To what extent has the information been independently collected and/or verified?</p> <p>To what extent is the veracity of the information likely to be affected by a conflict of interest?</p>

The Toolbox defines three levels of accuracy for determining which scoring guidepost is met (see B1.4.2 on [p.102](#)): 'broadly understand', 'establish with a high degree of accuracy', and 'establish with a very high degree of accuracy'. Whichever one of these three standards is eventually chosen by MSC for finning, the definitions of all three are qualitative and all provide discretion for CABs. Furthermore, the Toolbox (see B1.4.3) states that assessors 'should' (rather than 'shall') be precautionary in their assessment; the word 'should' indicates mere encouragement rather than a requirement.

C: Solutions for Improvements of the Toolbox

'Accuracy' is defined in the proposed Toolbox in terms of 'trueness' in B1.2 (Toolbox)

- as *'the converse of bias, which is a systematic deviation from the truth. The greater the effect of a bias, the lower the trueness of the observation. The concept of trueness is appropriate whether the observation is made up of quantitative or qualitative information.'*

and in terms of 'precision' in **B1.3** (Toolbox)

- *as 'the variability between repeated measurements and corresponds to random error in statistical estimates. Greater variation between measurements indicates lower precision. This definition is suited to the evaluation of quantitative information, such as catch estimates.'*

In the case of the three finning SIs, there is no obligation under MSC's current proposals to look at any aspect of precision. Instead, there is only an obligation to consider trueness. The way the CABs are required to consider trueness involves merely qualitative assessments entailing excessive amounts of discretion for the CABs.

To strengthen MSC's proposals on finning, precision must be considered in addition to trueness by introducing quantitative requirements for monitoring that are informed by risk assessment.

Risk assessment

When it comes to finning, different fisheries and circumstances within a fishery present different levels of risk. For example, a fishery using longlines to target sharks and tuna presents a far higher risk of finning than a fishery using pots to target lobsters.

An assessment is needed to differentiate between a 'high', 'medium' or 'low' risk of finning happening in any given applicant fishery. A pre-defined list of factors relevant to the risk of finning should be provided, including, amongst other factors, target species, gear type and fishing practice, transshipment, and whether there are already legal requirements for an FNA policy existing in the fishing region. These factors could also be laid out in an easy-to-use decision tree, thereby providing the CABs with clear guidance for assignment of fisheries to the different risk categories. The assigned risk categories would in turn define the minimum level of independent monitoring that needs to be in place to provide a high level or very high level of confidence that an FNA policy is complied with on the water.

Quantitative requirements for independent monitoring

A fishery with a high risk of finning should be subject to a higher level of monitoring than a fishery with a medium or low risk of finning. In the proposed Toolbox, minimum levels of independent observation are already defined (in **B1.3**, on precision), but currently these relate only to the tasks of estimating catches of in scope or ETP/OOS species or estimating the extent of impact on habitats.

However, finning too needs minimum levels of monitoring to be established. After all, the scoring guidepost (SG60) for the finning SIs in the proposed Standard requires a high likelihood that finning is not taking place which Table SA8 defines for finning SIs to be 80% or more. Without an adequate level of independent observation, how can there be confidence that this level of likelihood and probability is being met?

The risk-based assignment of quantitative requirements for monitoring needed to score the fishery for the finning SIs should be carried out by means of the following steps.

- a) In Table **B5** in the proposed Toolbox, the finning SIs should be moved from Category 1 to Category 2. This means that the CAB should undertake both the process in **B1.2** (regarding trueness) and the process in **B1.3** (regarding precision).

- b) **B1.3** should be adapted so that as well as covering catch estimates and estimates of habitat impact it also covers assessment of compliance with an FNA policy (respectively a non-retention policy). This should be done by adding the finning SIs to Table **B8** and creating thresholds applicable to them. The wording of the thresholds will depend on what level of accuracy is established for the finning SIs by the SA paragraphs.

Currently the requisite level is just '*a high degree of accuracy*'. But if MSC is serious about its 'zero tolerance' approach, this should not be the maximum level of accuracy for the finning SIs. '*A high degree of accuracy*' could remain as the requirement at SG60, but then, SG80 should be introduced for the finning SI requiring '*a very high degree of accuracy*'. On that basis, thresholds specific to the finning SIs should be inserted into Table **B8** as follows:

Threshold B (applicable to SG60 for the finnings SIs): The monitoring programme in place is expected to provide an assessment, with a high level of precision, of whether there is compliance with the FNA policy (or non-retention policy).

Threshold C (applicable to SG80 for the finning SIs): The monitoring programme in place is expected to provide an assessment, with a very high level of precision, of whether there is compliance with the FNA policy (or non-retention policy).

This amendment to the proposed Toolbox is intended to avoid any need to redesign **B1.3** and, instead, to simply fit as a new row within the existing Table **B8** in **B1.3**.

In addition, the title of Table **B8** would need to be changed to 'Thresholds for precision'.

- c) Minimum levels of 'coverage rates' (see further below) of 'independent observation' would need to be established for each of the three different risk levels: at threshold B at SG60 and for threshold C at SG80.

	High risk	Medium risk	Low risk
Threshold B	65%	30%	20%
Threshold C	100%	65%	30%

These minimum levels of '*coverage rates*' would need to be added into Table **B9** in **B1.3**.

- d) Clarity is needed about what exactly the minimum percentage levels in Table **B9** mean. Table **B9** currently has the following heading: '*Minimum required coverage rates of fishing days per year with independent observation*'. So the percentages are minimums; that is clear enough. But what is meant by '*independent observation*', '*fishing days per year*' and '*coverage rates*'?

Clarifying '*independent observation*'

There is no definition in the proposed Toolbox of the term '*independent observation*'. (The term is not used in the proposed Standard or in the guidance accompanying it.) The only indication as to its meaning is found in the guidance section of the proposed Toolbox, which reads as follows:

'Independent observation is specified as the resulting catch data are typically associated with a higher level of objectivity. This includes, but is not limited to, the use of fishery observers, cameras or sensors.'

The term '*independent observation*' is very significant: it is the whole basis for bringing meaning to the minimum levels of '*coverage rates*' set out in Table **B9** in **B1.3**.

When amending the Toolbox as described above *'independent observation'* is the means that will collect quantitative data for demonstrating compliance with an FNA policy at a 'high level of precision', respectively at a 'very high level of precision' for the information used by the CAB to evaluate the level of accuracy.

(In addition to the quantitative evaluation of compliance with an FNA policy also a qualitative evaluation of the information whether an FNA policy is in place has to be evaluated for each level of accuracy. However, this in the specific context of trueness – as opposed to precision – as covered by **B1.2** in the proposed Toolbox.)

However, on the basis of the extract above, all that is known about *'independent observation'* is that it is linked to objectivity and that three examples are *'fishery observers, cameras or sensors'*.

Therefore the CABs are left with discretion to decide on a case-by-case basis: (a) what means other than *'fishery observers, cameras or sensors'* are acceptable means of *'independent observation'*; (b) what quality control (e.g. training for observers or anti-tamper measures for sensors), if any, should apply to any given means; and (c) what makes any given means 'independent'.

Leaving discretion of this magnitude to the CABs is unacceptable. Monitoring is of critical importance, whether it is for catch estimates or quantifying habitat impacts or assessing compliance with an FNA policy, and it cannot be left to the CABs to decide matters such as '(a)', '(b)' and '(c)' above without any kind of constraint or guidance.

The situation is made worse by a provision in the guidance section of the proposed Toolbox headed *'Alternative methods of monitoring'*, which reads as follows:

'Where independent observation is absent, or does not achieve all of the specified coverage level, the team should consider if multiple sources of information can be combined in a methodology that it considered to be equivalent in terms of sampling rate and objectivity to the levels of independent observation in Table B9. In doing this, the team should consider the level of sampling achieved and the potential for bias in the resulting estimates.'

So whereas Table **B9** in **B1.3** refers to independent observation, and establishes this as a requirement, the guidance, in allowing *'Alternative methods of monitoring'*, completely undermines this requirement. In other words, according to the guidance, there can be an absence of independent observation, whereupon the CAB can *'consider if multiple sources of information can be combined in a methodology that it considered to be equivalent'* to what **Table B9** requires. This is a case of guidance eroding requirements and should therefore be deleted: if the requirements of **Table B9** cannot be met, the fishery should fail certification.

Clarifying *'fishing days per year'*

Table **B9** is entitled *'Minimum required coverage rates of fishing days per year with independent observation'*. It is important to know whether the term *'fishing days per year'* in the title means calendar days or vessel days. The former will lead to lower amounts of coverage of the fleet than the latter. Therefore MSC needs to clarify exactly what is meant by *'fishing days per year'*.

In addition, the guidance section of the proposed **Toolbox** states that:

'Where a fishing day includes multiple smaller units of effort, it should be considered by the team to have had independent observation if at least 1 unit of effort was subject to independently observation.'

It is not clear what is meant by '*multiple smaller units of effort*'. However, if, say, a single set is a unit of effort, and if there are, say, three sets by a vessel during a 24-hour period, does the extract above from the guidance mean that observation of just one of the three sets would count as observation of one vessel day? MSC needs to clarify this.

Clarifying '*coverage rates*'

Even if it were known clearly what is meant by '*independent observation*' and '*fishing days per year*', the term '*coverage rates*' still needs to be better understood and requires better descriptions and definitions of the acceptable means

- a) for remote electronic monitoring systems: e.g. positioning of cameras on board, measures to prevent fraud and percentage of review of stored footage need to be defined and evaluated
- b) in the context of fisheries observers the observed activities need to be defined: e.g. catch, processing, trans-shipment
- c) How will it be ensured that there is a randomised spread of coverage, representative of the entire fleet in terms of its fishing effort?

4. Supporting the prevention of gear loss and ghost fishing

MSC Reference	Issue
<p>P1 Harvest strategy P1.2.1</p> <p>SA2.4.5.2</p> <p>SA3.3</p> <p>P2 In scope species Management strategy 2.1.2</p> <p>P2 Habitats Management strategy 2.3.2</p>	<p>Ghost gear is considered under unwanted catch</p> <p>(f)</p> <p>Review of alternative measures</p> <p>When applying scoring issue (f) to target stocks in P1, the team shall include consideration of “alternative measures” directed at minimising mortality of unwanted catch from ghost gear.</p> <p>e. “If necessary”, in the management PIs, excludes the assessment of UoAs that do not impact the relevant component at these SG levels. ■</p> <p>i. In the case of ghost gear, this refers to whether or not the risk of ghost fishing or ghost gear impacts are either demonstrably absent or negligible</p> <p>(f) Ghost gear management strategy</p> <p>There are measures in place, if necessary, for the UoA that are expected to minimise ghost gear and its impact on all in scope species.</p> <p>There is a partial strategy in place for the UoA, if necessary, that is expected to minimise ghost gear and its impact on all in scope species.</p> <p>There is a strategy in place for the UoA that is expected to minimise ghost gear and its impact on all in scope species.</p> <p>There are measures in place, if necessary, for the UoA that are expected to minimise ghost gear and its impact on all habitats.</p> <p>There is a partial strategy in place for the UoA, if necessary, that is expected to minimise ghost gear and its impact on all habitats.</p> <p>There is a strategy in place for the UoA that is expected to minimise ghost gear and its impact on all habitats.</p> <p>Ghost gear management strategy ■</p> <p>The team shall only assess scoring issue (f) within the In scope scoring component if the corresponding ghost gear management scoring issue in the Endangered, Threatened or Protected/out-of-scope Species (ETP/OOS) scoring component is not scored.</p> <p>The team shall score scoring issue (f) if the risk of ghost fishing or ghost gear impact from the UoA is not demonstrably absent or negligible.</p>

MSC Reference	Issue
SA3.6.7	The team shall interpret “minimise” in scoring issue (f) as a reduction of ghost gear and its impact to the point where the risk of ghost fishing or ghost gear impacts are either demonstrably absent or negligible. The team shall use its expert judgement in determining what is “negligible” when making a determination as per SA3.6.8 and SA3.6.9.
SA3.6.8	In making the determination as per SA3.6.10, the team shall consider the significance of the ghost gear risk in relation to the prevalence of ghost gear and vulnerability of species (for In scope and/or ETP/OOS scoring components) or habitats (for Habitats scoring component) at risk of ghost gear impact.
SA3.6.9	
SA3.6.10	
SA3.6.10.1	

Sharkproject notes and would like to understand why ghost gear impacts have to be reviewed differently for P1 and P2

In P1 minimisation of mortality from ghost gear needs to be evaluated as part of the Harvest Strategy when scoring SI (f) which reviews alternative measures to reduce unwanted catch of the target stock, while there are specific SIs for in scope species, ETP species and habitats to score the UoA's 'ghost gear management strategy' to minimise ghost gear and its impacts

Overall we appreciate that MSC has introduced the review of ghost fishing impacts and requires a reduction of these impacts in the proposed Standard.

- It's important that MSC now specifically addresses the impacts of ghost gear on mortality of unwanted catch to be minimised and requires ghost gear mortality to be evaluated as unobserved mortality in addition to observed mortality.
- Recognising the extent of ghost fishing and its contribution to mortality of unwanted catch and ETP species as well as its impact on all habitats and not just VMEs, requiring a management strategy being in place to minimise impact from ghost fishing is certainly an important improvement
- FADs are now explicitly named as ghost fishing and causing unobserved mortality and thereby CABs now will have to evaluate the UoA's management strategy to minimise their impact on unwanted target stock, ETP species and habitats

However, **Sharkproject** is concerned that this approach has not been sufficiently scrutinised and would hope to see the following problems resolved in the final Standard

- The need to score the impacts from ghost gear are qualified by 'if necessary' and depends on 'whether or not the risk of ghost fishing or ghost gear impacts are either demonstrably absent or negligible' whereas it is left to the expertise of the CAB to decide whether this risk is 'negligible' and therefore does not require scoring, which allows CABs to avoid scoring this SI at all.
- When review of alternative measures to reduce mortality of unwanted catch is demanded to include ghost gear in P1 the same concerns apply as to alternative measure review

elsewhere in the Standard. Since there is no need to implement any of such measures if impacting the target catch by more than 10% this potentially results in a pure paper exercise, and will not require such measures to be implemented.

- It is not clear why SA3.6.7 limits the scoring of a ghost gear management strategy to either only in scope species or only ETP species when saying: 'The team shall only assess scoring issue (f) within the In scope scoring component if the corresponding ghost gear management scoring issue in the Endangered, Threatened or Protected/out-of-scope Species (ETP/OOS) scoring component is not scored' This is completely irrational as ghost fishing impacts different species differently and to a different extent. Therefore, both in scope and ETP species should be scored for ghost fishing impacts
- In the respective guidance a partial strategy being in place for ghost fishing management as required for SG80 is defined to comprise at least two measures to prevent and/or remedy ghost fishing., This may be sufficient in case of the loss of fishing gear but certainly far from adequate let alone best practice to address ghost fishing impacts from gear that is routinely or even deliberately abandoned such as drifting FADs. For a partial strategy at least best practice measures as widely published for dFADs (see NGOTF, Blue Marine Foundation or IOTC Res 19/02) should be required, comprising prevention measures to reduce mortality from entanglement by the use of a completely lifetime non entangling design and biodegradable materials with management measures of limiting the number of FADs, active tracking of buoys in close to real time, and remediation measures such as polluter pays and mandatory retrieval of lost FADs
- The guidance describing drifting FADs in combination with anchored FADs is misleading with regard to the potential impact and the probability of such an impact - while anchored FADs may get sometimes lost in storms, drifting FADs get lost at a regular rate or are even abandoned deliberately with 8% of FADs beaching every year (Escalle 2020), damaging or destroying sensitive habitats like coral reefs. Furthermore dFADs are not only ghost fishing whether intently or non intently getting lost, but also while in normal operation. Entanglement of sharks, turtles and other ETP species in netting and meshed constructions contributes substantially to unobserved mortality as entangled animals are predated on and may drop out of the netting after some time and will therefore never be recorded. Filmlalter had estimated that globally between 400,000 and 2,000,000 silky sharks get entangled in dFADs every year and Escalle confirmed in 2020 that entangling FAD constructions are still widely used.
- Also MSC's definition that ' FADs are not considered a gear type as such because they do not capture fish, but merely facilitate subsequent capture. FADs therefore may be included as a **functional part of certain fishing gear types** (e.g. purse seine, handline) as they are sometimes used to facilitate the capture efficiency of these gears.' is problematic as thereby FADs would not even be subject to gear marking as a management measure, one of the ghost gear management measures suggested by MSC; clearly not adding improved transparency or a management strategy; MSC should not downplay the impact and the extent of this impact caused by the use of dFADs but actively address those and include best practice management requirements for FADs for CABs to assess when scoring this PI.

5. Ensuring effective fisheries management systems are in place

Topic	MSC Reference	Issue
P3 SA49 Compliance and enforcement	PI (PI 3.2.3)	<p>Monitoring, control and surveillance mechanisms ensure the management measures in the UoA are enforced and complied with.</p> <p>(a) Monitoring, Controls and Surveillance (b) Sanctions (c) compliance information (d) compliance outcome</p> <p>In scoring issue (d), the team shall interpret “systematic non-compliance” to mean the recurring infringement of regulations specific to governing sustainable fishing practices at sea.</p> <p>In scoring issue (d), the team shall consider compliance with regulations associated with protected habitats and species SA4.9.2.1 The team shall interpret “protected habitats” to mean habitats, which have been afforded a level of protection by a competent authority. SA4.9.2.2 The team shall interpret “protected species” to mean species or stocks which have been listed in national ETP legislation</p>
	Guidance GSA 4.9	<p>At SG60, systematic non-compliance should be considered as the reoccurring infringement of regulations in a coherent and coordinated manner. For example, if regulation(s) are not being complied with by a large number of fishers in the UoA on a regular basis, this should be regarded as systematic non-compliance. Ad hoc infringements by individual fishers should not constitute systematic non-compliance. Systematic non-compliance demonstrates that the MCS enforcement mechanisms and sanctions in place are not effective in preventing frequent re-offence by the UoA. When scoring SI (d) at SG60, systematic non-compliance is specific to those regulations governing sustainable fishing practices at sea.</p> <p>At SG80 and SG100, ‘majority of regulations’ is not restricted to regulations specifically governing sustainable fishing practices at sea (i.e. as defined at SG60). Instead, it should include all regulations associated with the 3 dimensions of routine fishing operations:</p> <p>Prior to fishing During fishing During landing of catch</p>

Sharkproject welcomes the introduction of this new approach to scoring of compliance and sees some strong potential in the evaluation of compliance of a fishery when scoring ‘Monitoring, control and surveillance mechanisms’ to ‘ensure the management measures **in the UoA** are enforced and complied with’ applying in PI 3.2.3 4 Scoring Indicators rather than only assessing systematic ‘non compliance’ as in the previous standard.

However, we note substantial loopholes and caveats in this new Monitoring Controls and Surveillance PI when scoring the SIs

- (a) Monitoring, Controls and Surveillance
- (b) Sanctions
- (c) compliance information
- (d) compliance outcome.

- All Scoring Issues are now only referring to the UoA, therefore strictly speaking **only this part of the fishery instead of the whole fishery** has to be evaluated for any of the 4 SIs while compliance and enforcement topics should obviously apply to the fishery as a whole as stated in the previous Standard version. Especially for mixed fisheries that are only going to have some species in the UoA this will be relevant
- For **MCS** at SG60 in the previous Standard at least a 'reasonable expectation of effectiveness was required while now a pure existence is sufficient – whether complied with or not, as this is only required at SG80 now to demonstrate compliance with regulation
- **Sanctions** to address non compliance in (b) only need to exist at SG60 and have to be applied only at SG80 - this should be reconsidered as without application of sanctions there is no incentive for fisheries to comply with any regulation that is cumbersome to them
- **Compliance Information** is scored applying the evidence requirement framework of the toolbox and evaluating information trueness broadly, with a high degree of accuracy or a very high degree of accuracy but not requiring any quantitative precision to demonstrate this compliance. Therefore they same concerns as to the lack of independent observation existing applies as for compliance with finning/FNA/non retention
It needs to be understood that this P3 scoring however relates to ALL compliance topics and therefore will result in an overall evaluation rather than a specific outcome of non compliance e.g. with a non retention policy or FNA
- **Compliance (Outcome)** with 'regulations specific to governing sustainable fishing practices at sea is not evident within the UoA.' at SG60 requires only assessing whether '**systematic non compliance**' is **evident** while only at SG80 will the UoA have to be **likely to comply with the majority of regulations** and at SG100 do they have to comply with the majority of these regulations '**consistently**'. Thereby compliance with regulations specific to sustainable fishing practices does not really appear to be of importance to MSC. This definitely would have to be revised with SG80 wording applying to SG60 already – it should not be sufficient to score a fishery as sustainable if '**recurring infringement**' is not evident. There has to be at least highly likely that such systematic compliance does not occur.
- The Standard also states in the relevant SA sections that 'in scoring issue (d), the team shall interpret "systematic non-compliance" to mean the recurring infringement of regulations specific to governing sustainable fishing practices at sea' and . 'In scoring issue (d), the team shall consider compliance with regulations associated with protected habitats and species'

- SA4.9.2.1 The team shall interpret “protected habitats” to mean habitats, which have been afforded a level of protection by a competent authority.
- SA4.9.2.2 The team shall interpret “protected species” to mean species or stocks which have been listed in national ETP legislation

This makes the complete SI Compliance outcome even more dangerous as it **limits the compliance assessment for habitats and ETP species to those protected by competent authorities respectively national ETP legislation. This is unacceptable**, as ‘regulations specific to governing sustainable fishing practices at sea’ have to apply to all ETP species and habitats and not just those specifically protected by legislation.

- No level of independent monitoring of compliance as defined in the Toolbox by the precision level is required for any of the compliance SIs. How can compliance be evaluated without a minimum level of independent observation in place?
- Also for this we had suggested to introduce a risk based level of minimum level of coverage to ensure that high risk fisheries do need to have more independent monitoring (extent and intensity) in place while low risk fisheries should not have to undergo the same level of scrutiny
- In the Guidance ‘systematic non-compliance should be considered as the reoccurring infringement of regulations in a coherent and coordinated manner. For example, **if regulation(s) are not being complied with by a large number of fishers in the UoA on a regular basis, this should be regarded as systematic non-compliance.**’ this is relevant at SG60 and very concerning as it demonstrates what extent of non compliance is needed to fail a fishery from scoring SG60 - large number and regular basis **AND that this only applies to practices at sea**, while systematic non compliance at such scale ‘prior to fishing’ and during landing operations is not evaluated at all.
- In addition this wording in the guidance may most probably trigger an interpretation log request from CABs to the MSC seeking clarification on how big this number has to be and the interpretation log might then further weaken this compliance outcome SI

6. Ensuring habitat performance indicators are clear and consistently applied

7. Ensuring ecosystem performance indicators are clear and consistently applied

For these feedback topics **Sharkproject** considers the Toolbox, which now includes the evidence requirements as most important and therefore addresses the shortcoming of the toolbox as to providing adequate evidence to justify the CABs scoring of the related PIs and SIs. After two years of working on how to do this with many organizations calling for a risk based approach that requires a higher level of information independence, quality, and precision from high risk, high impact types of fisheries vs. low risk, low impact gear, small, etc. fisheries - the MSC has proposed instead this Evidence Toolbox. However, as evident from the report on this work stream within the FSR there hasn't been enough to finalize all the details, with much of the text still being in [square brackets] and also the available impact testing so far seems to demonstrate that this Toolbox is far from being ready.

We don't understand why MSC obviously at a rather late stage of the Review changed directions and decided to go for this toolbox approach when all previous consultations and stakeholder input has clearly preferred a risk based approach to the definition of how much and which quality of independent evidence is needed to assess different fisheries and score them for different PIs / SIs with some fisheries being higher risk than others and should therefore have to provide more and a higher quality of independent evidence. Although we note that there is a reference in the impact assessment saying that the risk based approach was deemed to be too time consuming and impractical we note that the now selected toolbox approach will be requiring at least as much time and effort to complete, if done properly, and is in addition very confusing and in-transparent, thereby awarding the CABs with a much higher level of discretion to decide what to evaluate and what to consider equivalent or adequate than will be needed to have a transparent and consistently applied Standard and scoring of different fisheries.

The real improvement of the MSC's approach to evidence requirement now reflected in the Toolbox is the clear definition of threshold levels of independent observation required as a quantitative minimum requirement of information required for scoring and basing these thresholds on statistically needed sample size for making such an evaluation. The tool consulted for deriving these thresholds is excellent but could indeed have been applied more widely and more transparently to define minimum sample size needed for assessing the precision of data on the one hand and the confidence in provided compliance data on the other hand.

Although the currently suggested precision thresholds are still in brackets we strongly recommend to now retain them and include these numbers as they are into the final wording, yet extending the applicability of a quantitative assessment of the information accuracy to more PIs, including compliance PIs /SIs.

Besides this excessively high degree of discretion for the CABs **Sharkproject** also heavily criticises the lack of the Toolbox to require a defined, quantitative amount of 'independent observation' or verification for all outcome SIs, and including the compliance with legislations, regulation or internal company policies. This has to be revised and both information 'trueness' and 'precision thresholds' for levels of 'independent observation' have to be required for all SIs/PIs, whereas we acknowledge that these precision thresholds may be different for different PIs depending on the fishery's overall risk for this PI. Assigning 'precision thresholds' to PIs and differentiating between 'high', 'medium' and 'low' risk fisheries based on clearly defined criteria would be a more straight forward, easier and indeed a more transparent approach.

In more detail we note the following

- The draft Toolbox set up is overly complicated
- The independent observation of catch should be assessed by CABs across the fishery for all scoring to do with catch information, information about impact of fishery on species, and compliance with regulations and policies, management plans, fleet codes of conduct, and measures to minimise mortalities unwanted catch/ETP/OOS
- The qualitative criteria for the other types of information should be weighted by importance and also assessed by CABs
- As repeatedly recommended by **Sharkproject**, Make Stewardship Count and many other stakeholders the Evidence Requirements for independent observation would be better guided via a clearly defined decision tree through which the level of risk of a fishery – i.e. selectivity and impact of gear on P2, Habitat, Ecosystem; scale and location of fishery is assessed as 'high', 'medium', or 'low' risk. For 'high risk' fisheries - more prescribed type of independent observation through observer coverage and EM systems should be required. The levels of observation in Table B9 should be required for medium and high risk fisheries, for example, while low risk, smaller fisheries could benefit from the flexibility given in the Guidance document on types of independent information CABs can accept
- It is important to note that the independent observation thresholds currently do not apply to any of the P3 3.2.3 compliance scoring, but this is precisely where they should be applied, too.
- As notes above these thresholds should also be applied to the shark finning PIs 1.2.1.e, 2.1.2d, 2.2.2d to ensure compliance with the required fins naturally attached policy is independently verified
- Definition of 'independent observation' - independent observation only names amongst others human observers, cameras, sensors, but leaves it entirely to the discretion of the CAB to decide which other methods to consider as adequate and it lacks the definition of minimum requirements needed for the listed types of 'independent observation' e.g. tamper proof requirements or analysis of footage when using electronic monitoring systems)
- Other definitions e.g. coverage rates, fishing days per year are too vague to requires that the coverage is representative of the complete fleet or respectively the UoA (the part of the fleet which aspires certification) and its complete activities
- The draft Toolbox has a number of large loopholes included that would allow for the undermining of the proposed observer level thresholds and allow instead for status quo levels to pass:

Table B9 Minimum required coverage rates of fishing days per year with independent observation.

Dispersion	Threshold B		Threshold C	
	ETP/OOS species	In scope species	ETP/OOS species	In scope species
Lower dispersion	[30%]	[20%]	[30-100%]	[20-100%]
Higher dispersion	[65%]	[20%]	[65-100%]	[20-100%]

The team shall determine that threshold B is met if:

- ▣ a. [There is independent observation of catch for the UoA at or exceeding the applicable level of coverage specified in Table B9]; or
- b. [There is a procedure in place for estimating catches using multiple sources of information that the team considers to be equivalent with (a) in terms of sample size and objectivity]; or
- c. [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.]

- The Guidance c above should be removed. This will allow fisheries and managers to argue that any current observer levels (often only 5-10%) prescribed by a management plan are equivalent and the strong thresholds that MSC has in Table B9 will be moot.
- The Guidance b above needs to be tightened up to ensure that other independent information used to estimate catch - or indeed as requested also compliance with regulations - is indeed equivalent and sufficiently defined as to its adequacy and not thereby allowing the CAB to drop the need for the defined thresholds of independent observation at the discretion of the CAB.

8. Additional Clarifications and Errors

- SI for Finning in Section SC: Modifications to the default assessment tree for salmon fisheries – normative. This is not consistent with the PIs for finning in the other part of the Standard and should be corrected in this way
- Decision tree on ETP designation in the Standard: the * notes used to identify that sharks are exempt from modification once assigned ETP/OOS status is currently still confusing and should be made clearer by a separate sentence saying so instead of the *
- Definition of probability for highly likely in Table SA8 of the Standard – it should be made clear that the probability of in the 80th %ile also applies to the definition of 'highly likely' for all finning SIs adding these as separate rows for both P1 and P2. The current *note is very confusing and prone to cause misinterpretation
- Toolbox Section A Risk Based Frame Work includes many wrong terminology and consistencies and needs to be completely scrutinised for scientific correctness for the different species and sections