



WILDHAVENS

An Independent Assessment of the Marine Stewardship Council



Draft Report

January 15, 2004

Prepared for:
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Please note: the opinions in this report are those of the authors' and do not necessarily reflect the views of the Homeland Foundation, the Oak Foundation, or The Pew Charitable Trusts.

Executive Summary

Improving fisheries management is vital for restoring or maintaining fully functioning marine ecosystems. A market-based mechanism for well-managed fisheries could be an important – and perhaps necessary -- contributor to a global push to move fisheries management beyond single-species management to an ecosystem approach. The Marine Stewardship Council (MSC) was founded in 1999 to provide such a market-based mechanism through independent third-party certification of seafood. In the four years since its inception, MSC has made considerable progress in devising such a system, but has also engendered significant controversy, particularly from conservation groups.

This report is an independent evaluation of the Marine Stewardship Council to assess both the strengths and weaknesses of MSC, to identify major problems, and to recommend ways to resolve these problems. In order to focus our study, we looked at MSC’s sustainable fishing standards and how they are applied as well as MSC’s performance as a consortium organization of stakeholders. Brief summaries of each of the report’s major sections are presented here. The report’s major findings are summarized in Table 1 and reproduced with the accompanying recommendations in Table 2.

Table 1: Major Findings at a Glance

<ul style="list-style-type: none"> MSC’s claim of certifying sustainable fisheries in most cases is not justified under the definition established by its standards, the Principles and Criteria.
<ul style="list-style-type: none"> Principle 2, requiring fishing operations to maintain the structure, productivity, function, and diversity of the ecosystem on which the fishery depends, routinely is not met. MSC has a leadership opportunity to drive best practices toward ecosystem management.
<ul style="list-style-type: none"> Principle 3 does not require fisheries management systems to be in compliance with national laws. Fisheries that are not in compliance with the law can be, and have been, certified.
<ul style="list-style-type: none"> MSC has narrowly interpreted the meaning of controversial fisheries in ways that reduces its flexibility and ability to guide its own future.
<ul style="list-style-type: none"> Certifiers have too much flexibility in determining how the Principles and Criteria are applied, including the thresholds for compliance, allowing for inconsistencies and low thresholds. Recognizing this, MSC is taking steps to propose greater interpretation and guidance to certifiers.
<ul style="list-style-type: none"> MSC is not yet viewed as a credible consortium organization because key environmental stakeholders do not feel that MSC’s mission includes them in a substantive way.
<ul style="list-style-type: none"> MSC has made important decisions in the last two years to increase stakeholder representation on the Board but must continue this trend to restore the organization’s credibility.
<ul style="list-style-type: none"> As one of the few non-governmental, multi-stakeholder organizations in the ocean policy arena, MSC has huge potential to become a convener of diverse interests that craft solutions to difficult issues. However, by not placing enough emphasis on consensus building, MSC is currently missing this opportunity.
<ul style="list-style-type: none"> Staff leadership must continue to push for convening stakeholders, seeking consensus, and implementing solutions as top priorities.

Section 3: The Principles and Criteria. While still a collaborative project of the World Wildlife Fund and Unilever, in 1996 MSC convened a group of very credible experts from around the world to devise a draft of the basic standard upon which to build a

certification system. The resulting draft Principles and Criteria were vetted in multi-sector workshops around the world and revised at a subsequent meeting of experts in 1997. The transparent way in which the process was conducted, the consensus process of the experts who drafted the criteria, and the credibility of WWF and Unilever as major cross-sector partners gave the project the initial credibility to more fully develop the idea of certifying sustainable marine fisheries. The final Principles and Criteria form the basis for certification of fisheries and including three principles and associated criteria: Principle 1 concerns overfishing of targeted species; Principle 2 governs the ecosystem effects of a fishery; and, Principle 3 describes the kind of management system a certified fishery will have.

Section 4: How MSC's third party certification process works. MSC sets the standard to be met, creates the claim and issues the label of approval. Independent, third party certifiers perform the actual certification without case-specific input from MSC. To ensure the overall integrity of the system, MSC, as the accreditor, approves a list of certifiers meeting its requirements and audits the certifying organizations to ensure they are adhering to required practices. MSC's certification process includes six steps: preassessment, assessment, appeal, issuance, chain of custody certification, and licensing of the MSC logo.

Representatives of the fishery hire one of the six accredited certifiers to write a confidential preassessment that determines if there are major issues that would likely prevent certification. Those fisheries with significant impediments to certification are supposed to be discouraged by certifiers from proceeding with full assessment. The results of preassessments are confidential.

In the assessment phase, the certifier assembles a team of experts to develop indicators for the specific fishery for each of the 23 criteria under the three MSC principles. The indicators are assigned a relative weight based on importance and a guideline describing performance at the 100% (perfect), 80% (best practices), and 60% (minimum) level. The team then collects information and scores the fishery on each indicator. In order to receive a passing score, the average of all weighted indicators in each Principle must be at least 80% and each individual indicator must score 60% or greater. Indicators scored below 80% receive conditions that outline what the fishery must do to improve its practices in order to achieve at least an 80% rating.

Section 5: Four case studies. We examined four cases studies to understand how the Principles and Criteria have been applied and what significant issues arose in the course of the assessments. These four were: New Zealand hoki, Alaska salmon, South Georgia toothfish, and the Bering Sea and Aleutian Islands pollock fisheries in Alaska. We selected them to cover some of MSC's earliest certifications (hoki and salmon) as well as recent assessment practices (pollock); to look at certifications from different parts of the world (the case studies occur on three continents); and to run the gamut from controversial (hoki, pollock) to relatively uncontroversial (Alaska salmon). The lessons learned from these case studies are applied in our report's findings and recommendations in Section 7.

Section 6: MSC as a consortium organization. Consortium organization is a term used to describe a new kind of non-profit formed in the 1990s to set consensus-based standards developed by diverse stakeholders. Key characteristics of such organizations include: a clear mission as the center of a consortium of stakeholders, transparent decision-making, balanced stakeholder representation in the governance structure, board accountability to stakeholders, a focus on consensus and results, a business model that can withstand discontinuous progress, and staff leadership with the skills to convene, seek consensus, and implement solutions.

MSC is a consortium organization in the making. Its ability to act as the driving force behind a market-focused marine conservation tool is a direct function of its ability to act as an effective consortium organization with fundamental support from its stakeholder base. We review MSC's original governance model -- a self-perpetuating board with members chosen for expertise rather than affiliation with stakeholder sectors complemented with an informal stakeholder advisory committee appointed by the board -- and describe changes MSC recently made to this structure based on criticism primarily from environmental stakeholders. The changes demonstrate the ability of MSC to re-define itself in becoming a more effective consortium organization. Despite this progress, important improvements are needed and recommended in Section 7.5.

Section 7: Findings and Recommendations. The full report presents detailed findings, narrative explanation, and a total of 43 recommendations organized into five sections. Each section is summarized below. The recommendations are listed in Table 2.

► **Section 7.1: MSC certification as a marine conservation tool.** MSC certification could become an important tool for marine conservation but in the short term MSC's viability is threatened by an internal weakness: lack of credibility from the conservation community, a key segment of MSC's stakeholder base. As an overarching recommendation, MSC's board should recognize that MSC faces a challenge to restore its credibility in the next 18 months to prevent the organization's failure (R1).¹

At the same time, until MSC establishes this credibility and a track record for measurable marine conservation improvements in fisheries, MSC certification may conflict with other conservation efforts in specific fisheries. MSC should recognize that it bears the burden of proof to establish that its certification system will enhance marine conservation efforts (R2). Marine conservationists should be aware of possible conflicts with fisheries management reform efforts in specific fisheries and make decisions about participation with individual certifications appropriately (R3).

MSC also faces an external strategic challenge from the development of FAO guidelines for certification of marine fisheries and should review its organizational strategy to adjust as necessary (R4).

► **Section 7.2: MSC's claim of sustainability.** A standard-setting organization such as MSC is only as credible as the claim for which its label of approval stands. The MSC

¹ Cross-references to specific recommendations in the full report are noted as R1, R2, etc.

claim is that fisheries it certifies are both well managed and sustainable. We find that the claim of sustainability is not justified and should be removed. Instead, MSC should recognize that it is certifying best practices with the understanding that these will continuously improve toward a long-term goal of achieving sustainability (R5). In addition, MSC needs to tighten application of its standards to ensure that best practices are applied *before* certification (R6-8). Finally, MSC needs to implement a system to continue to raise the bar for what constitutes best practices for new fisheries entering the system at the same time that it develops incentives for already certified fisheries to continuously improve beyond their initial best practices score (R9-10).

► **Section 7.3: Application of the Principles and Criteria.** Principle 2, requiring fishing operations to maintain the ecosystem functions on which the fishery depends, routinely is not met in certifications. Our recommendations to fix this problem include: a blue ribbon panel to establish appropriate minimum thresholds for the ecosystem effects of fishing (R11); using certification to leverage no take zones to buffer the ecosystem effects of fishing (R12); and, tightening the ecosystem research requirements of certifications (R13-14). In addition, two gaps in Principle 3 need to be filled. First, fisheries and their management system should be required to be in compliance with national laws (R15). Currently, fisheries can be certified that are not in full compliance. Second, a stronger definition of controversial fisheries is needed to ensure certification takes place in a stable management climate (R16). Finally, MSC and stakeholders would benefit from a common understanding of how the precautionary approach is used in MSC certification (R18).

► **Section 7.4: MSC's accreditation and certification process.** Our findings agree with MSC's own recognition that certifiers need more guidance on how the Principles and Criteria are applied. We recommend that MSC continue to develop this guidance with a special emphasis on identifying acceptable thresholds for certification through a consensus-based approach with the Technical Advisory Board and the Stakeholder Council (R19). In looking at current certification procedures, we list six easily-fixed weaknesses identified in the past that should be corrected (R20-25). We also recommend that MSC require certifiers to develop conditions and preconditions for certification that emphasize measurable outcomes rather than focus on process results (R26). MSC should use these measurable outcomes to credibly document positive changes in fisheries resulting from certification (R27).

► **Section 7.5: MSC as a consortium organization.** Overall, we find that MSC is not viewed as credible by most of the marine conservation community and conclude that MSC risks failure if it does not seek more balanced support among stakeholders. In order to restore its credibility, MSC's board needs to assert leadership on this issue by recognizing the problem and taking action (R29) including: broadening board membership from the Stakeholders Council (R30) and individual stakeholders (R31), establishing an executive committee and rotating board leadership (R33), emphasizing consensus-building especially around key issues (R35-36), improving transparency about its decision-making on accreditation (R38-39), reviewing its business plan (R40), and holding staff leadership responsible for re-building stakeholder confidence. (R41-43).

TABLE 2: FINDINGS AND RECOMMENDATIONS

FINDINGS	RECOMMENDATIONS
▪ MSC Certification as a Marine Conservation Tool	
<i>Over the long term, MSC certification could become an important tool for marine conservation. However, internal weaknesses threaten MSC's viability in the short-term.</i>	1. The MSC Board of Trustees should recognize that the organization faces a critical tipping point in the next 18 months and must act expeditiously to address the key issues outlined below in order to restore its credibility and prevent the organization's failure.
<i>Until MSC establishes a track record for using market forces for measurable marine conservation improvements, MSC certification may conflict with conservation policy reform efforts in specific fisheries.</i>	2. MSC needs to recognize that it has the burden of proof to establish that its certification system will enhance marine conservation efforts and not provide an undeserved "green shield" for inadequate fisheries management.
	3. Marine conservationists and funders should acknowledge that, in the short term, MSC certification may conflict with fisheries management reform efforts in specific fisheries and make decisions about participation appropriately.
<i>The development of FAO guidelines for certification of marine fisheries poses a possible external challenge for MSC.</i>	4. MSC should review its organizational strategy to recognize FAO guidelines on eco-labeling of fish as a potential strategic challenge.
▪ The MSC Claim of Sustainability	
<i>MSC's claim of certifying sustainable fisheries in most cases is not justified under the definition established by the Principles and Criteria.</i>	5. MSC should remove sustainability from its claim and instead recognize that it is certifying well-managed fisheries or best practices in the fishing industry, understanding that these will continuously improve toward a long-term goal of achieving sustainability.
<i>MSC undermines its own credibility by certifying fisheries with indicators that score below best industry practices.</i>	6. MSC should require fisheries to achieve the best practices level of 80% for all indicators or critical indicators before granting certification.
	7. In conjunction with the Stakeholder Council, the TAB should consider developing a fatal flaw methodology by identifying indicators that (1) clearly are fatal flaws; (2) clearly are not fatal flaws; and, (3) are site-specific to a fishery and should be decided by the certifier after discussion with appropriate stakeholders. The methodology could be developed separately for different categories of fisheries as needed.
<i>MSC places too much emphasis on the punitive threat of losing certification and not enough on the positive inducement granting certification provides.</i>	8. MSC should use pre-conditions to require a fishery to meet the best practices standard for all indicators or critical indicators before granting certification.
<i>MSC will continue to be challenged to push the practical edge of continually incorporating new scientific knowledge in order to not certify status quo fisheries management.</i>	9. MSC needs to develop a vision for its certification as the practical edge of science, acknowledging that best industry practices standards applied to fisheries must continue to improve over time as new marine knowledge is gained.
	10. MSC needs to develop a system for driving continuous improvement in all fisheries, regardless of their initial certification score, particularly emphasizing improvements beyond the 80% best practices level in re-certifications. The TAB should ensure procedures for reviewing the latest science and periodically revisiting the MSC standards and procedures as appropriate in conjunction with the Stakeholders Council.

▪ Principles and Criteria	
<p><i>Principle 2, requiring fishing operations to maintain the structure, productivity, function, and diversity of the ecosystem on which the fishery depends, routinely is not met. MSC has a leadership opportunity to drive best practices toward ecosystem management.</i></p>	<p>11. MSC should convene a blue ribbon panel -- similar in stature and make-up to the original experts convened to draft the Principles and Criteria and including leading marine scientists with expertise in ecological interactions -- to provide advice on how to best satisfy Principle 2 by identifying appropriate minimum thresholds for ecosystem effects of fishing. As part of its work, the panel should jointly review selected certifications with the Accreditations Committee to see how Principle 2 is actually applied.</p>
	<p>12. MSC or the blue ribbon panel should also consider implementing recommendations for using certification to help establish no-take zones (criterion 10e of Principle 3) as key components for ameliorating ecosystem effects of fishing. Because no-take zones are often a contentious management tool, MSC's multi-sector approach could be a good place for crafting solutions on this issue</p>
	<p>13. Where conditions or pre-conditions (R8) for satisfying Principle 2 call for research, they should outline the questions that need to be answered and require that management bodies take appropriate action to incorporate research findings into management decisions.</p>
	<p>14. Annual audits and re-certifications should determine whether the management system has practiced adaptive management in response to research conditions for Principle 2 and take this into account in determining continued certification status.</p>
<p><i>Principle 3 does not require fisheries management systems to be in compliance with national laws. Fisheries that are not in compliance with the law can be, and have been, certified.</i></p>	<p>15. MSC should modify Principle 3 to require substantial compliance with the law. Small technical violations should be easily resolvable and therefore not prevent certification. Substantive violations indicate that fisheries should achieve compliance before certification.</p>
<p><i>MSC has narrowly interpreted the meaning of "controversial" fisheries in ways that reduces its flexibility and ability to guide its own future.</i></p>	<p>16. MSC should task the Stakeholder Council and the TAB with restoring a more robust definition of controversial fisheries. As a starting point we recommend considering making the footnote to Criterion A5, Principle 3 a central part of MSC's policy on controversial fisheries. Certifiers should use the definition of controversial fisheries as guidance during pre-assessments to advise clients that are unlikely to satisfy this criterion.</p>
	<p>17. MSC should require certifiers to seek out stakeholder input in annual audits, particularly where fisheries management may be unstable. "Red flags" that suggest an unstable management system include a pattern of court judgments, high-level political activity destabilizing the policy environment, and sovereignty disputes.</p>
<p><i>MSC has not clearly defined its interpretation of a "precautionary approach" leading to misunderstandings about how certification should respond in the face of uncertainty.</i></p>	<p>18. The TAB and the Stakeholder Council should work together to develop a definition of precautionary to apply in certifications.</p>
▪ MSC Accreditation and Certification Process	
<p><i>Certifiers have too much flexibility in determining how the Principles and Criteria are applied, including the thresholds for compliance, allowing for inconsistencies and low thresholds. Recognizing this, MSC is</i></p>	<p>19. MSC should continue to focus on clarifying the narrative intent of the Principles and Criteria, identifying issues that must be addressed, and describing best practices and the minimum level required for certification. This effort should include a consensus-based approach for identifying acceptable thresholds for certification in which the Stakeholder Council works hand in glove with the TAB to ensure that</p>

<i>taking steps to provide greater interpretation and guidance to certifiers.</i>	satisfactory thresholds are established in a transparent way (see recommendation 7).
<i>MSC's process of certification has several other easily-fixed weaknesses that unnecessarily detract from its credibility.</i>	20. Ensure that all certifiers undertake sufficient and appropriate levels of stakeholder involvement in all assessments. Stakeholders are an important source of information and perspective beyond that provided by the client fishery.
	21. Clarify the role of peer reviewer comments in assessments, what input reviewers should be providing, and the assessment teams' responsibility to respond to these comments.
	22. Ensure transparency in all documents and decision-making as much as possible.
	23. Require certification reports to clearly document the rationale and reasoning of the assessment team.
	24. When final results can be confused because of subsequent Appeals Panel decisions, provide a single final decision document as the benchmark for stakeholders, the fishery, and certifiers.
	25. Be vigilant about conducting adequate annual audits and making results public. Audits should be sufficiently rigorous and substantial to ensure that all Principles and Criteria and conditions are being met despite potential changes in the management system.
<i>Conditions established in certifications to raise a fishery's environmental performance level often emphasize process rather than outcomes, making claims of improvements stemming from certification difficult to substantiate and undermining MSC's credibility in the marketplace.</i>	26. MSC should require that certifiers include conditions that focus on achieving outcomes, include timelines for completion, and require revising management practices as appropriate.
	27. In auditing the performance of certifiers, MSC should examine outcomes and measure the positive changes in fisheries (in partnership with stakeholders) resulting from certification.
<i>Off-product use of the MSC logo increases concerns about illegally-caught fish.</i>	28. MSC should review its current policy on off-product use, specifically examining the benefits of retaining this option against problems of consumer confusion and loss of confidence by some stakeholders.
▪ MSC as a Consortium Organization	
<i>MSC is not yet viewed as a credible consortium organization because stakeholders do not feel that MSC's mission includes them in a substantive way.</i>	29. The Board needs to revisit and, if necessary, clarify MSC's mission as a consortium organization – i.e., one that convenes diverse interests seeking consensus. Equally important, it should communicate to and engage with stakeholders in discussions over the MSC mission.
<i>MSC has made important decisions in the last two years to increase broader stakeholder representation on the board but must continue this trend to restore the organization's credibility.</i>	30. Change the articles of association to specify that 8 of the 15 Board members will be chosen by the Stakeholder Council (they may or may not be members of the Stakeholder Council). In addition, special consideration will be given to ensure a balance of economic, environmental, and social interests.
	31. Draw additional high quality Trustees from the broad stakeholder groups whose trust MSC must earn and maintain in order to carry out its mission. These board members would not represent the Stakeholder Council, but rather apply their own judgment and expertise on decisions.
	32. Choose board members that can help the MSC raise money from a broader set of potential donors. This recommendation would also help to ensure a more stable business model.

	<p>33. Rotate the board leadership positions while maintaining the knowledge of past leaders. MSC should consider forming an Executive Committee comprised of the current Chairman, the Chairman Emeritus, and the Treasurer. Distributed leadership such as this would sidestep issues of special interests and ensure rotating leadership representing various stakeholder interests.</p> <p>34. Expand the minutes to ensure that they convey balance in consideration of alternative perspectives and solutions.</p>
<p><i>As one of the few non-governmental, multi-stakeholder organizations in the ocean policy arena, MSC has huge potential to become a convener of diverse interests that craft solutions to difficult issues. However, by not placing enough emphasis on consensus-building, MSC is currently missing this opportunity.</i></p>	<p>35. The Board should elevate convening a broader range of representative interests around key issues and processes through the Stakeholder Council. Board and staff should make the necessary budget allocations to allow this.</p>
	<p>36. The Board should identify a few high priority areas where consensus should be the standard before MSC action. We suggest revising the claim (R5), identifying thresholds for certification (R19), and defining controversial fisheries (R16) as good candidates for priority consideration.</p>
<p><i>The functioning of the Stakeholder Council needs to be strengthened to help MSC be a better convener of stakeholders.</i></p>	<p>37. The leadership of the Stakeholder Council needs to define and run its meetings using the staff as resource people. Board and staff should seek funds for convening additional meetings including considering ways to have some stakeholders pay their own way to attend meetings while still retaining satisfactory attendance.</p>
<p><i>MSC has made important improvements in operating in a more transparent way but needs to continue down this path.</i></p>	<p>38. The MSC Board should review the policy around the accreditation procedure to see if the organization can publish accreditation findings or key portions that stakeholders are concerned about.</p>
	<p>39. The Board needs to update its strategic evaluation of its formal and informal relationship to ISO and the potential threat or opportunity with the WTO. The resulting analysis needs to be incorporated into the strategic plan and made available to stakeholders in language that clearly articulates MSC's position.</p>
<p><i>It is unclear whether MSC's business model can withstand the discontinuous progress that is inevitable at this stage of the organization's development</i></p>	<p>40. The Board of Trustees needs to review the business plan and strategy for the organization to ensure that the business model does not put the interests of showing market progress ahead of conservation gains.</p>
<p><i>Staff leadership must continue to push itself to be a leader within the organization for convening diverse interests, seeking consensus, and implementing solutions.</i></p>	<p>41. Ensure that the staff leadership through his/her annual evaluation is held accountable to the Board for improved performance of MSC as an organization convening diverse interests and seeking consensus on key issues. Performance measures and indicators should be established and approved by a range of stakeholders on the Board.</p>
	<p>42. Create an 18-month ombudsman position that reports directly to the Executive Committee of the Board (assuming it is created) to assist the staff in improving on this issue, to collect comments from stakeholders, and to advise the Board on specific steps for action.</p>
	<p>43. Clearly communicate to stakeholders that the Board is taking its responsibility in this regard very seriously and will hold staff accountable to a higher standard than it has in the past.</p>

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1 Introduction

This report is an independent evaluation of the Marine Stewardship Council (MSC), a non-profit organization founded in 1999 to provide a market mechanism to help encourage better fisheries management through independent, third-party certification of seafood. In the four years since its inception, MSC has made considerable progress in the momentous and complex task of devising such a system. Along the way, it has also engendered significant controversy, particularly from conservation organizations in Europe, Oceania, and the United States. The Homeland Foundation, the Pew Charitable Trusts, and the Oak Foundation, three U.S.-based charitable foundations with international marine grantmaking programs, commissioned the authors to assess both the strengths and weaknesses of MSC, to identify major problems, and to recommend ways to resolve these problems. The consulting team's qualifications are attached as Appendix D.

Evaluations, such as ours, of complex organizations over short duration can only provide a snap shot in time of a limited number of critical issues. In order to focus our study, we looked at MSC's sustainable fishing standards and how they are applied as well as MSC's performance as a consortium organization of stakeholders. We employed a straight-forward methodology including over three dozen interviews (listed in Appendix A) and extensive document review (cited documents are listed in Appendix B). We were also fortunate to be invited to attend a meeting of MSC's Technical Advisory Board in Seattle and to interview MSC personnel in their London offices.

By necessity, this report does not look at a number of very important facets of MSC's operations. For example, we did not perform any significant analysis of MSC's market share or the organization's financial structure. By happenstance, our evaluation coincided with another assessment concentrating more on those issues.¹ In addition, we did not look at the overarching question of whether certification of fisheries is a better investment for marine grantmakers than other forms of marine conservation. We took it as a given that a well-functioning MSC would be a valuable addition to marine conservation efforts and concentrated our analysis on evaluating its current performance.

The report is organized in 7 major parts. In the following section, we lay the context for fisheries certification by briefly summarizing why improving fisheries management is important. Sections 3 and 4 examine the history and substance of MSC's standards, the Principles and Criteria for Sustainable Fishing, as well as the major elements of MSC's certification methodology. In Section 5, we look at four case studies of fishery

¹ The Bridgespan Group conducted the concurrent assessment on behalf of the David and Lucile Packard Foundation. We wish to thank both Bridgespan and the Packard Foundation for sharing information about their assessment with us during the course of this investigation. In addition, at a time when they were being asked for data from both evaluation teams, we are grateful to the MSC staff for graciously giving us access to information, documents, and staff time for interviews.

certifications to see how the standards were applied. Section 6 discusses the role of stakeholder participation in consortium organizations like MSC. Our findings and recommendations are found in Section 7.

2 The Impact of Fisheries on the Marine Environment

Improvement of fisheries management – although often a mind-numbing specialty -- is a vital necessity for humans entering the 21st Century for two simple reasons. First, seafood is a vital source of food and an important part of coastal economies. Overfishing in this context translates into lost revenue and jobs and, in some places, hunger or malnourishment. Second, the impact of fisheries on the marine environment – “severe, dramatic, and in some cases irreversible” (Dayton et al. 2002) -- may very well be the leading human impact on marine biological diversity and production (Jackson et al. 2002).

The fact that humans are having an impact on target species through fishing is no longer breaking news. Since the 1990s, the FAO has reported that most of the world’s major marine fishing zones are at their limits, in decline, or in recovery from overfishing (FAO 1998). Independent interpretation of world catch statistics has found that the world’s capture fisheries have been in overall decline since even before then – perhaps as much as 500,000 metric tons per year (Watson and Pauly 2001; Pauly et al. 2003). Perhaps more surprising than the extensive overfishing of targeted species has been the broad scope of the indirect effects of fishing on the marine environment that scientific study is just beginning to uncover.

In many cases, regulation of overfishing does not take into account bycatch: the unintentional catch of fish, bird, turtles, mammals, and other sea life. The FAO estimates that one quarter of the global catch -- more than 20 million metric tons of fish -- is thrown overboard each year dead and dying as unwanted bycatch (FAO 1998). Bycatch can be economically wasteful of commercially valuable fish. It also has negative impacts on non-commercial species. Bycatch is one of the greatest threats to seabirds like albatrosses, petrels and shearwaters; a major factor in the decline of many marine mammal populations; and, the largest single element standing in the way of sea turtle recovery (Dayton et al. 2003).

Fishing itself can also cause habitat loss. One study calculated that fishing with mobile gear (i.e., trawl nets and dredges dragged along the seafloor) disturbs an area of the seabed as large as Brazil, the Congo, and India combined every year, an area 150 times larger than the amount of forests logged each year (Watling and Norse 1998). Like logging, scraping the ocean bottom reduces biological diversity and can permanently prevent the return of climax communities. One way to preserve marine habitat is to create marine reserves where no fishing is allowed. Recently, a leading scientist in the field called for a ban of fishing in one-third of all seas in order to restore commercial levels of fisheries (Gell and Roberts 2003). Yet on a worldwide scale, less than one percent of

marine habitat has been protected in marine reserves to date (Roberts et al. 2001).

These three problems -- overfishing, bycatch, and habitat destruction – are commonly listed as the primary effects of fishing on marine ecosystems. Yet even as fishery management is slowly expanded to try to deal with these problems, historical analysis of what has been lost in coastal marine ecosystems is starting to show that fishing's effects may be worse. A worldwide shift in commercial fishing targets from higher to lower trophic levels (Pauly et al. 1998) may mean that we are altering the marine food web in ways that cannot be repaired by the mere rebuilding of single species. Reconstruction of the historic productivity of coastal ecosystems (Jackson et al. 2001), whale populations (Roman and Palumbi 2003), and large predatory fish populations (Myers 2003) suggest that baselines of biological productivity were much greater than assumed. Consequently, exploitation of these populations and ecosystems to current levels has been much greater and restoration will be more difficult.

Placed in the proper historical context of the literally unbelievable magnitude of these once-rich populations of sea turtles, sea otters, whales, groundfish or oysters, the overfishing statistics reported under fishery management systems appear to be inadequate to describe or measure the changes to marine ecosystems that fishing causes. The good news from recognition of the central role that overfishing plays in marine ecosystem decline is that restoring some basic components to large marine ecosystems could lead to incredible gains. In most cases, these top predators are still found in numbers that could be restored to former ecological functions. A focus on ecosystem restoration with special attention to top predators and shellfish could stabilize and buffer key marine ecosystems at a time of increased ecological stress, and restore economically important fisheries, beaches and coastal waters.

The other important implication is that fishery management is squarely charged with regulating one of the primary human impacts on our oceans. By extension, then, fishery management emerges as a centrally important key for restoring or maintaining fully functioning marine ecosystems. In this context, a market-based mechanism for well-managed fisheries such as MSC certification could be a very important – and, perhaps, necessary -- contributor to a global push to expand the boundaries of fisheries management from single-species management to greater consideration of ecosystem productivity and function.

3 MSC's Principles and Criteria for Sustainable Fishing

3.1 Development of the Principles and Criteria

MSC began as a collaborative project between the World Wildlife Fund, one of the largest conservation organizations in the world, and Unilever, one of the largest purchasers of fish in the world (MSC 1997a). Early in its development, the project set

about to devise a set of criteria that could be used as the heart of a scheme to certify well managed fisheries. The project convened a group of very credible experts from around the world including scientists, conservationists, fishermen, and government and industry representatives to devise a first draft of what became known as MSC's Principles and Criteria for Sustainable Fishing (MSC 1996). The project vetted the draft Principles and Criteria in multi-sector workshops in eight countries on four continents (MSC 1997b). Based on the input from stakeholders, a second meeting of the experts revised the draft and MSC produced the final Principles and Criteria in 1998 (MSC 1997c).

Several key issues that remain important for MSC today were discussed, although not always resolved, during this extensive consultation process. These issues included:

- Debates about the sustainability claim and best practices (MSC 1996; MSC 1997b)
- Debates about whether the standard meant a fishery was already sustainable or was moving toward sustainability (MSC 1997b)
- The need to give certifiers specific criteria to use (MSC 1997b)
- The need for performance criteria that must be implemented to demonstrate compliance (MSC 1997c)
- Compliance with applicable national and international laws as a minimum requirement (MSC 1997b).

Although certification was a new approach to many participants in the workshops and many reservations were expressed, the transparent way in which the process was conducted, the consensus process of the experts who drafted the criteria, and the credibility of WWF and Unilever as major cross-sector partners gave the project the breathing room necessary to more fully develop the idea of certifying sustainable marine fisheries.

3.2 MSC Principles and Criteria for Sustainable Fishing

The experts based the MSC Principles and Criteria on widely-accepted descriptions of good practices (MSC 1997c).² The Principles and Criteria consist of an introduction, a preamble, and three overarching principles each with more specific criteria. The full text of the Principles and Criteria can be found in Appendix C. Below, we briefly outline the highlights.

The introduction to the Principles and Criteria includes a list of precepts upon which a sustainable fishery should be based:

- The maintenance and re-establishment of healthy populations of targeted species;
- The maintenance of the integrity of ecosystems;

² These included the *FAO Code of Conduct for Responsible Fisheries*; the *U.N. Agreement on Highly Migratory Fish Stocks and Straddling Fish Stocks*; and the *Principles for the Conservation of Wild Living Resources*, Ecological Applications 6(2), 1996, pp. 338-362.

- The development and maintenance of effective fisheries management systems, taking into account all relevant biological, technological, economic, social, environmental and commercial aspects; and
- Compliance with relevant local and national local laws and standards and international understandings and agreements

The preamble goes on to further develop a definition of sustainable fishing as one that:

- ...can be continued indefinitely at a reasonable level;
- ...maintains and seeks to maximise, ecological health and abundance,
- ...maintains the diversity, structure and function of the ecosystem on which it depends as well as the quality of its habitat, minimising the adverse effects that it causes;
- ...is managed and operated in a responsible manner, in conformity with local, national and international laws and regulations;
- ...maintains present and future economic and social options and benefits;
- ...is conducted in a socially and economically fair and responsible manner.

The heart of the document consists of the three principles and their associated criteria. Principle 1 concerns overfishing of the targeted species and reads:

Principle 1. A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.

Three criteria follow calling for (1) maintenance of high productivity of target populations and the associated ecological community, (2) recovery of depleted populations consistent with the precautionary approach, and (3) not impairing the reproductive capacity by altering age, genetic structure, or sex composition.

Principle 2 governs the ecosystem effects of a fishery:

Principle 2. Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.

Three criteria under Principle 2 require a fishery to: (1) maintain natural functional relationships between species and to not cause trophic or ecosystem state changes; (2) not threaten biological diversity and to avoid or minimize mortality or injuries of endangered, threatened or protected species; and (3) affect recovery of exploited species that are depleted.

Principle 3 describes the kind of management system a certified fishery will have:

Principle 3. The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.

This principle has 17 criteria that further describe an effective management system. Although the list is too long to summarize here, a few of the criteria under Principle 3 that will be relevant to this report include: an appropriate mechanism for resolution of disputes (criteria 5); adaptive management using best available information and a precautionary approach (criteria 7); establishing no-take zones where appropriate (criteria 10d); fishing gear and practices designed to avoid non-target species (criteria 12); fishing methods to minimize adverse impacts on habitat (criteria 13); and compliance with the fishery management system and all legal and administrative requirements (criteria 16).

4 MSC Certification Methodology

MSC has adopted the methodology of third party, independent certification. In this approach, MSC act as the accreditor, creating the claim and ultimately issuing the label of approval. However, independent, third-party certifiers perform the actual certification without case-specific input from MSC.³ To ensure the overall integrity of the system, MSC approves a list of certifiers that meet certain requirements and periodically audits the certifying organizations to make sure they are adhering to the required practices in their assessments.

There are six steps from the time a fishery first enters the system until a MSC label ultimately is affixed to a certified product: preassessment, assessment, appeal, issuance, chain of custody certification, and licensing of the logo.⁴

Preassessment. The MSC certification process begins when a client (such as a fishing industry association or government) hires one of the six accredited certifiers to write a confidential preassessment that determines if there are major issues that would likely prevent certification. Those fisheries with significant impediments to certification are supposed to be discouraged by certifiers from proceeding with full assessment.⁵ Clients choose certifiers based on competitive bids, considering factors such as cost, timing,

³ Throughout this report, the word “certifier” will be used to refer to these independent certification bodies.

⁴ MSC has made and may continue to make changes to its assessment process. This description of the MSC assessment process is based on our understanding of current procedures.

⁵ A number of fisheries apparently have undergone preassessment and have not proceeded to full assessment. However, preassessments remain confidential between the client fishery and the certifier, and MSC does not collect information on this. Therefore, it is unclear how many fisheries have been discouraged from proceeding with a full assessment.

expertise, and reputation of the bidding certifiers. Prices quoted can vary greatly. Typically, the certifier that conducted the preassessment also conducts the full assessment.

Assessment. To conduct assessments, certifiers assemble a team of experts to serve on the assessment team, gather information about the management of the fishery – including information solicited from stakeholders – and establish a framework to determine if the standards are being met through three steps:

- Developing indicators and scoring guidelines. Assessment teams develop indicators for each of the 23 criteria under the three MSC Principles for the specific fishery. The team assigns a relative weight to the indicators according to their perceived importance. Each indicator then is assigned a performance guideline describing performance at the 100% (perfect), 80% (best practices) and 60% (minimum) level.
- Scoring the fishery. After determining each indicator, weight, and performance guideline, the team collects information from the client and stakeholders, and scores the fishery on each indicator. In order to receive a passing score, the average of all weighted indicators in each Principle must be at least 80% and each individual indicator must score 60% or greater. Indicators scored below 80% receive conditions that outline what the fishery must do to improve its practices in order to achieve at least an 80% rating.

This is an integral part of MSC's approach to continuous improvement in fisheries. Namely, in order to retain their certifications, fisheries must satisfy the conditions identified in the assessment. By certifying fisheries with conditions, MSC believes it is improving fisheries management and bringing those fisheries closer to sustainability. There is no stated policy at this time for continuous improvement beyond the 80% best practices level.

- Draft and final certification reports. The certifier issues its decision in a certification report. The preliminary draft report with the scores, weightings and certification outcome is sent first to the client in order to get agreement that they will accept all conditions required to receive and keep certification.⁶ The draft report is then sent out for peer review by at least two people chosen for their expertise by the certifier. The assessment team must address the issues raised in the reviewers written comments and incorporate appropriate changes. After peer review, the report is sent out for public comment. The certifier then issues a final certification report with a determination for (or against) certification.

⁶ This is a recent change in procedure. Formerly, the client received the draft report without the scores and weighting.

Appeal. Under MSC's objections procedure finalized in 2002, any party that has previously provided input to the assessment team and/or the certifier about the evaluation may object to a final certification report. The objection is heard by a committee chaired by an MSC board member who appoints at least two other people with technical expertise. Until the appeal is resolved, MSC does not issue its certificate to the fishery and the client may not use the MSC logo or claim on its products.

Certification Issued. Following resolution of appeals (if filed), MSC issues the certification. Once the certification has been issued, the client has the right to claim the fishery as a "Well Managed and Sustainable Fishery" in accordance with the MSC Principles and Criteria.

Chain of Custody Certification. Any product displaying the MSC logo and claim must undergo a chain of custody certification assessment. The certifier and the client agree on whether the chain of custody certification associated with the fishery itself will be done jointly with the fishery assessment (a "joint assessment") or whether chain of custody considerations within the fishery will be addressed in a separate assessment process. Whichever approach is chosen, all subsequent points in the chain (wholesalers, processors, retailers and restaurants) must undergo their own separate chain of custody assessment to ensure that the product is from the fishery claimed. This requirement ends either at the point of sale to the consumer or the point at which the product is packaged. For each party undergoing certification, the certifier undertakes two basic steps: a desktop review of the party's operational procedures for fish segregation and documentation and an on-site visit to meet with staff and review the procedures.

Use of the MSC logo. In order to use the logo on a product, each party must hold a licensing agreement with Marine Stewardship Council International (MSCI), MSC's trading company. When displaying the logo, every product must also display the relevant copyright/trademark code, a chain of custody license code unique to their certificate, the MSC website address, and the MSC Claim: "This product comes from a fishery which meets the Marine Stewardship Council's environmental standard for a well-managed and sustainable fishery."

In addition to on-product use of the logo, MSC allows organizations to use the logo "off-product" without undergoing chain of custody certification, as long as they obtain a licensing agreement with MSCI. This allows them to display the logo on material other than on a product containing seafood, including company letterhead and promotional material. It can be used by companies such as restaurants or retailers to make general claims about their support for MSC, so long as they do not identify specific non-certified fish products they sell as being from MSC-certified fisheries or use the logo in a misleading way.

5 Case Studies of Four Certifications

Since 2000, seven fisheries have been certified under the MSC label: Alaska salmon, Burry Inlet cockles, Loch Torridon nephrops, New Zealand hoki, Southwest Mackerel handline fishery, Thames herring, Western Australias rock lobster, An additional 13 fisheries are currently undergoing the MSC certification process.⁷

For this report, we reviewed four certifications as case studies: New Zealand hoki, Alaskan salmon, South Georgia toothfish, and the Bering Sea and Aleutian Islands pollock fisheries in Alaska. For each certification we examined how the Principles and Criteria have been applied and what significant issues arose in the course of the assessment. The four fisheries were selected to cover some of MSC's earliest certifications (hoki and salmon) as well as recent assessment practices (pollock); to look at certifications from different parts of the world (the case studies occur on three continents); and, to run the gamut from controversial (hoki, pollock) to relatively uncontroversial (Alaska salmon). Alaska salmon and hoki were certified in 2000 and 2001, respectively. Toothfish received a final positive recommendation for certification from its assessment team in 2002 but is in the appeals process. Pollock was recommended for certification in a September 2003 draft report that is still undergoing peer review and public comment.

None of the fisheries reviewed were flawless, and comments from members of assessment teams, reviewers, and stakeholders revealed legitimate concerns in each of the fisheries and for each of the Principles. We briefly describe key issues of concern in each certification below. The descriptions of each fishery assessment are illustrative of the concerns identified – particularly those that cut across assessments -- but are by no means comprehensive. Specific findings and recommendations about the Principles and Criteria and the assessment process follow in Section 7.

5.1 Alaskan salmon

In one of MSC's earliest assessments, five species of Alaskan salmon caught with four major gear types were certified in September 2000 by Scientific Certification Systems, Inc. (SCS) under contract with the Alaska Department of Fish and Game. Together, the five species [chum (*Oncorhynchus keta*), coho (*O. kisutch*), chinook (*O. tshawytscha*), pink (*O. gorbuscha*), and sockeye (*O. nerka*)] have thousands of individual populations across the state, each of which spawns in its own stream and is genetically distinct. In addition, the state supports numerous hatcheries to supplement wild production. Alaska does not manage each distinct population separately, but rather manages populations as groups, and bases decisions on information available on a subset of the populations. In

⁷ These are: Alaskan pollock, Australian mackerel icefish, British Columbia salmon, Chilean hake, Hastings Fishing Fleet Dover sole fishery, Hastings Fishing Fleet pelagic fishery, Mexican Baja California spiny lobster, North Sea herring, South African hake, South Georgia toothfish, Pacific halibut (Alaska, Washington, Oregon), Pacific halibut (British Columbia, Canada), sablefish (Alaska).

designing the assessment, SCS recognized the risk of less productive populations going extinct when managing multiple spawning populations as a unit and therefore examined how individual populations are accounted for within their management units.

Alaskan salmon fisheries have been relatively uncontroversial, and the assessment team received few comments from U.S. stakeholders. Nevertheless, the team identified several weaknesses and outlined the following conditions necessary for maintaining certification, including:

Principle 1:

- conducting analyses to determine appropriate target reference points;
- identifying how the fisheries will be sustainably managed in the event of a shift in ocean conditions;

Principle 2:

- implementing a program to identify bycatch in the net fisheries;

Principle 3:

- reducing the number of permits entering the fishery annually; and,
- identifying research needed to determine the effects of the hatchery program on the wild stock gene pool and reproductive fitness.

Stakeholder comments on the assessment centered around three issues: the need to address the potential of hatchery fish to dilute genetic diversity of wild stocks in order to prove sustainability of salmon management; the need to account for freshwater and upland habitat management in spawning grounds; and, concerns about Alaskan fisheries intercepting salmon originating in Canadian waters.⁸

5.2 New Zealand hoki

The New Zealand hoki fishery is one of New Zealand's largest and most valuable fisheries. Most vessels catch hoki with pelagic trawls, although bottom trawls are used in some areas. The fishery was assessed by SGS Product & Process Certification under contract to the Hoki Fishery Management Company Ltd (HFMC), a private company owned and managed by hoki quota holders. SGS recommended the fishery for certification in early 2001. The Royal Forest and Bird Protection Society (RFBPS), a major New Zealand conservation group, appealed the certification. Concerns they expressed included:

⁸ The first two comments were raised by Trout Unlimited after the assessment was completed. The Audubon Society raised concerns about the effects of hatcheries on wild stocks during the assessment process. Canadian stakeholders raised the third concern. The assessment team maintained that the Canadian groups did not provide evidence to support significant problems.

Principle 1:

- The eastern stock faced a risk of overfishing under the existing harvest levels.

Principle 2:

- No ecological risk assessment had been completed.
- There was no assessment of benthic habitat and little understanding of the habitat of seabirds and fur seals.
- There was no use of technologies such as seal excluder devices to reduce bycatch of fur seals.
- There was little understanding of ecological interactions and impacts of the fishery, even on protected, endangered, threatened, or icon species.
- There were no targets for protection of the ecosystem or other species.

Principle 3:

- The management system was not in compliance with the New Zealand Fisheries Act.
- Vessels failed to adequately report marine mammal (i.e., fur seal) and seabird deaths as required by the Wildlife Act and the Marine Mammal Protection Act (RFBPS 2001).

Many of the concerns raised relate to the numerous gaps in knowledge about the impacts of the hoki fishery on other ecosystem components. This is reflected in the fishery's lack of compliance with the New Zealand Fisheries Act. The Act requires that action be taken to avoid, remedy, or mitigate any adverse effects of fishing on the aquatic environment. However, in measuring whether the hoki fishery had unacceptable impacts on the ecosystem structure or function, on habitats, or on the populations of dependent or otherwise associated species, the assessment team determined that the information available was not adequate to comply with the requirements for full implementation of the Fisheries Act. This is consistent with a review by the New Zealand Auditor General's office, which was highly critical of the implementation of environmental requirements in the Fisheries Act (SGS 2001, 42, 60).

The facts presented by RFBPS in many of their complaints were consistent with information reported by the assessment team. However, the team allowed the fishery to pass certification with 10 "minor corrective actions" to address deficiencies. As part of the MSC Objections Procedure at the time, an Appeals Panel that included two scientists with expertise in fisheries management was formed to consider the objection. The two scientists on the panel conducted a technical review of the certification. In its conclusions, the Panel "identified several aspects of the SGS assessment concerning Principle 2 which would have justified a refusal of certification as at the date of the assessment" (MSC 2002b). In short, they would have given the fishery a failing grade. However, in considering developments in the fishery since its initial assessment, they upheld the certification. They also added several recommendations for improving management. The Appeals Panel did not address the legal compliance issues in its decision.

The hoki fishery received final certification in 2001. The major national environmental groups in New Zealand including RFBPS and ECO, a coalition of over 50 conservation organizations in the country, continued to publicly protest the certification and demanded that MSC revoke the certification. As one participant from WWF wrote about the certification:

The final result of the assessment of the NZ hoki fishery was that it occurred, according to one participant, 'during the worst constellation of the planets'. All those involved, the certifier, the MSC, WWF, the national environmental and conservation organizations, the industry and many from the government agencies were disappointed with the management of the process, and it failed to meet many of the expectations and requirements of the stakeholders and the MSC itself (Short 2003).

The continuing contention over fur seal and threatened seabird bycatch in the fishery have raised some fears over public perception of the fishery, especially in Europe where the possibility of public protests may have affected plans for hoki marketing (Short 2003). The hoki appeal caused MSC to establish the appeals procedure now in place and dissatisfaction with the stakeholders process contributed to MSC's decision to draft a specific guidance for certifiers on the topic.

Since final certification, SGS has conducted four audits to follow up on the status of the corrective actions. However, it is difficult to determine exactly what has, and has not been accomplished. No single report on what the HFMC is required to do was issued after the Appeals Panel issued its decision, and individual audit reports are not comprehensive.⁹

5.3 South Georgia Patagonian Toothfish

Patagonian toothfish (also known to U.S. consumers by the more appetizing appellation, Chilean sea bass) is a deep water fish species found in southern waters near Antarctica. Aggressive marketing of the species has produced a frenzy of illegal fishing estimated at more than 50% of the total catch (Lack and Sant 2001; CCAMLR 2001). Management of the overall toothfish fishery is directed ultimately by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), a multinational organization which has responsibility for fisheries management systems for all Southern Ocean waters. The South Georgia toothfish fishery, about 8% of the larger global toothfish fishery, is managed by the Government of South Georgia and the South Sandwich Islands, which puts into effect the conservation measures including annual catch limits set by CCAMLR. The islands are considered an overseas territory of the United Kingdom and, hence, the Foreign and Commonwealth Office of the UK

⁹ MSC summarized the accomplishments to date in a recent report (MSC 2003a). These accomplishments largely reflect the planning or development of plans and assessments to address concerns raised in the report or by the Appeals Panel. Actual development or implementation of many of these had not yet occurred. While it appears that the HFMC has implemented a mechanism for reducing fishing pressure on the eastern stock, other on-the-water accomplishments cannot be expected until plans and assessments are completed and implemented.

represents the interests of the Government of South Georgia and the South Sandwich Islands on CCAMLR matters. Argentina disputes UK sovereignty over these islands. Moody Marine Ltd. assessed the fishery under contract to the Government of South Georgia and the South Sandwich Islands.

Despite the prevalence of illegal fishing in the overall region, illegal fishing of toothfish within the South Georgia fishery appears to occur at a very low rate. Similarly, bycatch of threatened seabirds in the South Georgia fishery -- another major concern associated with longline toothfish fisheries -- is quite low due to fishing practices instituted within the South Georgia management regime. However, the assessment team acknowledged that the illegal fleets outside the fishery are unlikely to adopt many of the conservation measures required in the legal fishery to reduce seabird bycatch. They recommended the fishery for certification in September 2002 (Moody Marine 2002).

The certification report was peer reviewed by four scientists. Two of the scientists gave a favorable review. The other two scientists repeatedly recommended that some scores be lowered to the “minimum” level (Dunn 2002; Fanta 2002). If the certifier had applied their recommendations, the combined weight of these minimum scores would have failed the fishery under Principle 2. The weaknesses identified by these reviewers included lack of knowledge on the significance of ray bycatch, the role of toothfish in the food web, and the effects of the fishery on benthic flora and fauna.¹⁰ The assessment team did not incorporate these revised scores in its final report, and it is unclear how the report was changed in response to the reviewers’ comments.

The National Environmental Trust, The Antarctica Project, Greenpeace, the Natural Resources Defense Council, and the Sierra Club jointly appealed the decision, asserting that:

- the assessment of any toothfish fishery must be made within the context of widespread international trade in illegal fish;
- certification of the South Georgia fishery “will lend a false patina of sustainability to all toothfish fisheries and will lead to increased illegal fishing of toothfish,” thus threatening toothfish stocks and increasing the already unsustainable bycatch of threatened seabirds in the Southern Ocean;
- the wisdom of certifying a fishery to the point of landing is questionable when it seems unlikely that the fishery could obtain a Chain of Custody Certification;
- certification could trigger a disruption in CCAMLR’s consensus-based decision-making process, because of Argentina’s sovereignty dispute with the UK over

¹⁰ In addition, one of these reviewers suggested that if seabird mortality from all illegal fishing were considered in the assessment, one of the scores should be below the minimum required for certification, thus automatically failing the fishery (Fanta 2002). Even assuming that this indicator did meet the minimum level for certification (a score of 60), applying the other reductions in scores recommended by this reviewer would still cause the fishery to fail.

these islands and its fear that certification will be viewed as a further claim to sovereignty by the UK.

- certifying one fishery at a time while illegal fishing is commonplace across the Southern Ocean discourages an ecosystem management perspective by failing to protect the ecosystem of the Southern Ocean (National Environmental Trust et al. 2002).

The toothfish appeals panel has not yet made its conclusions public.

5.4 Eastern Bering Sea and Aleutian Islands pollock

The pollock fisheries in Alaska are among the world's largest fisheries and represent over one-third of catch by volume of all U.S. fisheries (NMFS 2003). Roughly half of the catch is processed as surimi and sold in Japanese markets; the remainder is sold in U.S. markets for products like fish sandwiches in McDonalds and Burger King and, increasingly, in European markets (J. Gilmore, personal communication). Pollock are caught in the Eastern Bering Sea and Aleutian Islands by pelagic trawl, and are managed by the North Pacific Fishery Management Council and the National Marine Fisheries Service (NMFS). Scientific Certification Systems (SCS) assessed the fishery under contract to the At-Sea Processors Association, a trade group representing factory trawlers in Alaska's pollock fisheries. In September 2003, SCS issued a draft report recommending the fishery for certification (SCS 2003). The draft report is undergoing peer review and public comment before being issued in final form.

Sweeping changes to the Bering Sea ecosystem, detected in the last few decades, have attracted much public and scientific concern. These changes include severe reductions in some marine mammal and seabird populations accompanied by dramatic shifts in some fish populations as well as changes in climate, water masses, nutrients, and plankton. As the largest fishery in this system, the possible ecosystem effects of the pollock fishery have emerged as a logical but inconclusive source of scientific inquiry (NRC 1996).

The pollock fishery has also been a source of high-profile public controversy involving all branches of the federal government at the highest levels. Since 1998, four federal court decisions have found the pollock fishery out of compliance with federal law for failure to take into account the fishery's possible effects on endangered species or the overall marine environment.¹¹

¹¹ In lawsuits against NMFS, the court has found the pollock fishery out of compliance with the U.S. National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). *Greenpeace v. NMFS*, 55 F. Supp.2d 1248 (W.D.Wash.1999) (NMFS out of compliance with NEPA and ESA for inadequate study of pollock fishery); *Greenpeace v. NMFS*, 80 F. Supp. 2d 1137 (W.D. Wash. 2000) (ESA Biological Opinion on pollock fishery's effect on endangered marine mammals inadequate); *Greenpeace v. NMFS*, 106 F. Supp. 2d. 1066 (W.D. Wash. 2000) (injunction ordered to exclude trawl fishing from critical habitat for Steller Sea Lions); and, *Greenpeace v. NMFS*, 237 F. Supp. 2d 1181 (W.D. Wash. 2002) (additional challenges to Biological Opinion upheld). Currently, the revised document necessary to comply with NEPA (a Programmatic Supplemental Environmental Impact Statement) is in draft form. However, until this document is finalized and determined to have satisfied the law, the agency is not in full compliance.

At the political level, the pollock fishery also has been a hot potato issue. Senator Ted Stevens, the longest serving Republican Senator in Congress and the chairman of the powerful Senate Appropriations Committee, has attempted to make major changes to North Pacific fisheries management (including the pollock fishery), often through controversial appropriations riders that do not receive committee hearings or public scrutiny (“Alaskan Outrage” editorial in *The Washington Post*, Nov. 10, 2003, A 24). One such rider on the pollock fishery was so controversial it actually delayed passage of the entire \$1.8 trillion U.S. federal budget (“Congress Ends Session with a Budget Deal,” *The Washington Post*, Dec. 16, 2000, A.01.). Both the conservation organizations involved in the pollock certification as well as the applicant have been active in these political disputes for years. As an indication of how intertwined the players have sometimes become, Sen. Stevens’ senior fisheries staff person left his office to become the head of the At Sea Processors Association.

In the draft report, SCS acknowledges that there are competing theories about the decline of Steller sea lions and that the true cause is unclear (SCS 2003). They also note:

- concerns about mortality of northern fur seals in pollock fishing gear,
- a decline in harbor seals which also feed on pollock, and
- unexplained increases in jellyfish and arrowtooth flounder.

The team notes that all of these trends are consistent with effects that might be anticipated from a large-scale pollock fishery, but that it is impossible to know if the fishery is the cause because of the “remarkable lack of understanding” about the impact of the fishery. The assessment team acknowledges the vast amount of high quality research conducted in the Bering Sea and Gulf of Alaska ecosystems, but criticizes the management system for not having a directed research strategy to answer key questions about the impact of the fishery. To address these deficiencies, the draft report outlines conditions that require significant research to answer these questions and requires fisheries managers to incorporate the results into their management decisions as appropriate. However, it concludes that current levels of knowledge and action are sufficient for certification.

Many of the litigants in the court cases around the pollock fishery have been involved in the pollock certification, offering comments as stakeholders. In conducting the assessment, SCS has voluntarily gone beyond the stakeholder involvement required under the current MSC process, proactively soliciting input from groups via multiple routes and meeting with representatives of some groups multiple times. On substance, however, these conservation stakeholders appear to remain dissatisfied with the draft certification and are in the process of filing comments on the draft assessment (Trustees for Alaska 2003).

6 MSC as a Consortium Organization

During the 1990s, a new kind of non-profit, sometimes called a consortium organization, emerged to bring diverse interests together for a common purpose (Updegrave 1995). These organizations formed to establish communications standards on the internet (International Packets Communications Consortium), energy standards for architectural designs (U.S. Green Building Council), standards for fair trade in agriculture products (TransFair USA), and responsible forest management standards (Forest Stewardship Council). In all cases the goal of the consortium was to arrive at a consensus from diverse stakeholders around these issues because the resulting outcomes would be more powerful solutions than those devised by more traditional methods.

Effective consortium organizations have these characteristics:

- *A clear mission and understanding of their role as the center of a consortium.* The consortium organization exists to bring diverse parties together for a consensus-based solution. A clear statement of its mission and role is critical.
- *Transparent processes and decision-making.* These organizations often have complex structures involving boards, staff, special committees and stakeholder groups. The stakeholders frequently come from groups that have had competing and even conflicting agendas. The consortium organization represents the common ground and a ‘safer’ place for dialogue. Because the agendas of the stakeholders are not the same, any attempt by one group to control the program and outcomes of the consortium organization will be met with suspicion and efforts to halt the action of the consortium organization. The remedy for overcoming historical distrust is to have open and transparent processes and decision-making.
- *Acting as conveners of stakeholders.* The consortium organization’s primary responsibility is to create an environment that is welcoming to those that are interested in genuine debate and consensus-based solutions. While the consortium organization need not accept those it regards as not seeking a consensus solution, it errs to the side of dialogue and always brings together as wide a stakeholder group as possible.
- *Balanced stakeholder representation within its governance structure.* This issue touches on both a way to build trust and to ensure that the discussion of an issue has fair representation of various views.
- *A Board of Trustees that is accountable to the stakeholders.* The consortium organization’s board leadership needs accountability to its membership base, using membership in the broadest sense (either formal or informal). The Board in a consortium organization understands that its right to govern is premised on achieving the goals of its diverse stakeholders. A lack of accountability will alienate

stakeholders and risks defusing a results-oriented culture. This accountability to stakeholders is why consortium organizations are board-led and not staff-led institutions for development of the organization's vision, goals, objectives, and strategy.

- *Consensus and results oriented.* The organization is focused on solutions that are acceptable to its broad stakeholder base. The standards development process and overall organizational policy-making process should have a balance of interests. Participants from diverse interest categories need to be sought with the objective of achieving balance across the decision-making bodies. Just as important, the organization must stay focused on results or participants will lose interest and walk away.
- *Pushing the practical edge of science and continually incorporating new knowledge.* Consortium organizations are not associations of like-minded groups that tend to arrive at a lowest common denominator approach to agreed-upon standards. The diverse make-up of its stakeholders tends to push the scientific edge and its interpretation accompanied with a realization that it cannot leave a large percentage of its stakeholders behind. The board is responsible for ensuring this balance of inclusiveness and best available science.
- *A business model that can withstand discontinuous progress.* While any business or NGO benefits from diverse revenue streams and adequate cash reserves, it is especially important for consortium organizations seeking consensus on contentious topics. A business model premised on rapid progress that may undermine the consensus building process ultimately condemns itself to failure through the lack of credibility with key stakeholders.
- *Staff leadership with the skills to convene, seek consensus, and implement solutions.* The day-to-day management of the organization falls to a leadership that must operate in a highly complex and dynamic environment. The leadership's success is premised upon good guidance from the Board with a high degree of flexibility to respond to changing conditions and a mind-set that is oriented toward bringing diverse interests together for a common solution.

MSC is a consortium organization in the making. As noted in Section 3, MSC developed its standards in an open, transparent, and credible way. Following the adoption of the Principles and Criteria, MSC began to shape its own structure as it moved from being a project-based initiative to becoming a stand-alone non-governmental organization. As a governance model, MSC decided to adopt an independent, self-perpetuating board with members chosen for their expertise rather than affiliation with a particular sector. This was complemented with a stakeholder advisory committee appointed by the board. In choosing this structure, MSC hoped in part to avoid the hyper-democratic paralysis of another consortium organization, the Forest Stewardship Council (FSC) while still getting adequate stakeholder buy-in to the overall organization through a more business-like approach.

This structure was discussed at the workshops along with the draft Principles and Criteria (MSC 1997d). Numerous questions about the MSC governance model were raised during this process (MSC 1997a; MSC 1997c; MSC 1997d). These questions continued through MSC's early years, especially related to governance, transparency, and the role of stakeholders, particularly from the conservation sector. In 2001, MSC conducted a governance review that served as the basis for changes to the MSC governance structure into its current form (MSC 2003a):

- *Stakeholders Council*. Half its members were initially appointed by the Board and half by the Stakeholders Council itself. The co-chairs of the Council serve on the Board of Trustees and are invited as observers to the Technical Advisory Board.
- *Technical Advisory Board (TAB)*. Appointed by the Board for their expertise, TAB members advise on the technical aspects of MSC's certification system. The TAB chair sits on the Board of Trustees.
- *Board of Trustees*. The Board of 14 members is self-perpetuating with the exception of the three sitting members from the Stakeholders Council and the TAB.

The MSC's ability to act as the driving force behind a market-focused marine conservation tool is a direct function of its ability to act as an effective consortium organization with the fundamental support of its stakeholder base. This support is the essence of its credibility. MSC's governance review demonstrated the ability of the MSC to re-define itself in becoming a more effective consortium organization and is a healthy sign of board leadership. Despite this progress continual improvements are needed as noted in Section 7.5 below.

7 Findings and Recommendations

Our findings and recommendations are organized below in five categories. Section 7.1 looks at broader issues of MSC certification as a tool for marine conservation. In Section 7.2, we examine MSC's sustainability claim. The next two sections, 7.3 and 7.4, explore MSC's Principles and Criteria and how they are applied through the accreditation and certification process. And, in section 7.5, we evaluate MSC as a consortium organization. Each section begins with a summary text box followed by more detailed findings (marked with □) and specific numbered recommendations under each finding.¹²

¹² Cross-references to specific recommendations in the text are noted as R1, R2, etc., corresponding to the number of the recommendation.

7.1 MSC Certification as a Marine Conservation Tool

MSC certification could become an important tool for marine conservation but in the short term MSC's viability is threatened by an internal weakness: lack of credibility from the conservation community, a key segment of MSC's stakeholder base. As an overarching recommendation, MSC's board should recognize that MSC faces a challenge to restore its credibility in the next 18 months to prevent the organization's failure by addressing the key issues outlined in this report (R1). At the same time, until MSC establishes this credibility and a track record for measurable marine conservation improvements in fisheries, we find that MSC certification may conflict with other conservation efforts in specific fisheries. MSC should recognize that it bears the burden of proof to establish that its certification system will enhance marine conservation efforts (R2) and that marine conservationists should be aware of possible conflicts with fisheries management reform efforts in specific fisheries and make decisions about participation with MSC appropriately (R3). We find that MSC also faces an external strategic challenge from the development of FAO guidelines for certification of marine fisheries and should review its organizational strategy to adjust if necessary (R4).

- OVER THE LONG TERM, MSC CERTIFICATION COULD BECOME AN IMPORTANT TOOL FOR MARINE CONSERVATION. HOWEVER, INTERNAL WEAKNESSES THREATEN MSC'S VIABILITY IN THE SHORT-TERM.

MSC's strategy of improving fisheries management through market forces continues to hold promise over the long term. However, MSC's credibility with a key sector of stakeholders – the conservation community -- is severely weakened and must continue to be addressed. Our interviews found that a large segment of the conservation community regardless of geographic focus is disenchanted with MSC. Without greater support from this sector of stakeholders, MSC runs the risk of failure in the near future.

Recommendation 1. The MSC Board of Trustees should recognize that the organization faces a critical tipping point in the next 18 months and must act expeditiously to address the key issues outlined below in order to restore its credibility and prevent the organization's failure.

- UNTIL MSC ESTABLISHES A TRACK RECORD FOR USING MARKET FORCES FOR MEASURABLE MARINE CONSERVATION IMPROVEMENTS, MSC CERTIFICATION MAY CONFLICT WITH CONSERVATION POLICY REFORM EFFORTS IN SPECIFIC FISHERIES.

MSC promotes its certification scheme as the only existing market-based way to improve fisheries management. A key question is how does the certification process interact with other efforts to reform fisheries management policy. In Australia, MSC's Principles and Criteria appear to have provided a very positive boost to stronger policy standards by providing the model for Australia's Guidelines for the Ecologically Sustainable Management of Fisheries (MSC 2003a). Similarly, one European official told us that MSC's Principles and Criteria are a positive contribution to raising the bar for the proposed FAO's guidelines (discussed further below). In addition, if MSC improves its procedures to require measurable conditions (R26-27) on certifications, then one would

expect certification to lead to measurable improvements in fisheries management in specific fisheries.

However, in other cases, we found that MSC certification appears to conflict with some fisheries management reform policy efforts:

- For South Georgia Patagonia Toothfish, conservationists contend that certification of this stock will interfere with their efforts to stigmatize illegally caught toothfish from other stocks.
- In the New Zealand hoki fishery, the two major national conservation organizations protested certification of this deep water trawl fishery because of fur seal and sea bird bycatch that the MSC's label now proclaims part of a sustainable fishery.
- For Alaska pollock, numerous conservation organizations contend that MSC certification labeling more than a third of all fish caught in the U.S. as sustainable would give the powerful factory trawlers association political cover for sweeping under the rug significant ecosystem, bycatch, and habitat concerns in this fishery.

Where such conflict exists, the question becomes which avenue is more likely to achieve conservation outcomes. While it is true that conservationists are not always going to achieve their goals, it is equally true that MSC does not have the ability yet to make the case that certification will achieve them either. And because of its lack of credibility with the conservation sector, MSC will not be given the benefit of the doubt.

MSC's problems here likely will increase in the future for three reasons. First, fisheries management reform efforts by conservationists are being stepped up in the U.S. and around the world. This is clearly a growing issue of concern for the public. Second, science is likely to find more ecosystem effects of fishing over time, meaning that MSC's label cannot be seen as a static green shield a fishery can hide behind when new information and societal understandings shift over time. Third, MSC's business model apparently is driving it to certify larger fisheries like pollock which are most likely to already have mature conservation reform efforts underway.

Recommendation 2. MSC needs to recognize that it has the burden of proof to establish that its certification system will enhance marine conservation efforts and not provide an undeserved "green shield" for inadequate fisheries management.

Recommendation 3. Marine conservationists and funders should acknowledge that, in the short term, MSC certification may conflict with fisheries management reform efforts in specific fisheries and make decisions about participation appropriately.

- THE DEVELOPMENT OF FAO GUIDELINES FOR CERTIFICATION OF MARINE FISHERIES POSES A POSSIBLE EXTERNAL CHALLENGE FOR MSC.

The FAO is considering adopting international guidelines for eco-labeling of fish that may change MSC’s strategic positioning. The recently released draft guidelines appear to sanction somewhat weaker standards than MSC’s Principles and Criteria (especially for ecosystem considerations) and raise troubling confidentiality issues (FAO 2003). The draft also explicitly provides a framework for creation of eco-labeling programs that could be created by governments (or others) desiring to dilute MSC’s influence in the market place with weaker standards. Moreover, the draft would allow governments or other parties to appeal a certification decision covered under the guidelines – including MSC decisions -- to a panel created by FAO. MSC is tracking the development of the FAO guidelines. Although the complexities of international law make the situation far from clear, in our opinion FAO’s guidelines may encourage aggressive fishing nations or reluctant industry components to promote weaker certification schemes sanctioned under the guidelines or to use appeal procedures to challenge MSC decisions. In either case, the draft guidelines appear to pose an external strategic challenge to MSC.

Recommendation 4. MSC should review its organizational strategy to recognize FAO guidelines on eco-labeling of fish as a potential strategic challenge.

7.2 The MSC Claim of Sustainability

A standard-setting organization such as MSC is only as credible as the claim for which its label of approval stands. The MSC claim is that fisheries it approves are both well managed and sustainable. We find that the claim of sustainability is not justified and should be removed. Instead, MSC should recognize that it is certifying best practices with the understanding that these will continuously improve toward a long-term goal of achieving sustainability (R5). In addition, MSC needs to tighten application of its standards to ensure that best practices are applied before certification (R6-8). Finally, MSC needs to implement a system to continue to raise the bar for what constitute best practices for new fisheries entering the system at the same time that it develops incentives for already certified fisheries to continuously improve beyond their initial best practices score (R9-10).

- MSC’S CLAIM OF CERTIFYING SUSTAINABLE FISHERIES IN MOST CASES IS NOT JUSTIFIED UNDER THE DEFINITION ESTABLISHED BY THE PRINCIPLES AND CRITERIA.

MSC clearly states that when a consumer buys a fish with the MSC logo, it is from a fishery that is ecologically sustainable.¹³ However, this is not generally the case for three

¹³ The Principles and Criteria for Sustainable Fishing begins with an explicit definition of sustainable fishing and goes on to use the word sustainable over a dozen times (MSC 2002a). MSC’s most recent major publication continues this usage, stating that the MSC eco-label is “awarded to sustainable fisheries...” (MSC 2003a).

reasons. First, as discussed in Section 7.3 below, meeting Principle 2 as written is probably unrealistic for any fishery given current levels of information. Second, most certified fisheries are scored with some indicators below the 80% best practices level (with conditions applied to pull them up to this level). Third, although MSC loosely describes its system as a “continuous improvement model,” it has no established procedures to move fisheries from the 80% level to a higher score over time.

We found MSC’s claim of sustainability to be a major complaint of stakeholders in the conservation community. They feel the performance levels required for certification as “sustainable” are clearly not sustainable and have little faith that conditions placed on these certifications to bring them up to even a best practices level will actually be implemented in a meaningful way. They fear that consumer confusion over this issue weakens the chance of making conservation improvements within the MSC system and risks slowing down improvements that could be gained through more traditional advocacy avenues by suggesting that these fisheries are operating sustainably. Strikingly, many – although not all – of these critics would support recognition of many of these same fisheries as well managed compared to similar fisheries in the rest of the world.

This is not a new issue for MSC. Problems with the use of the word sustainability in the claim were recognized and debated at the very first meeting of experts who drafted the Principles and Criteria (J. Nelson, personal communication). Over time, MSC has attempted to deal with the issue by diluting the claim to include both sustainability and best practices expressed sometimes as “the best environmental choice in seafood” or as “well managed fisheries” (MSC 2003a, 8). In our opinion, this is a strategic error because it creates ambiguity and confusion about its claim and opens up MSC to criticism from all sides.¹⁴

Recommendation 5. MSC should remove sustainability from its claim and instead recognize that it is certifying well-managed fisheries or best practices in the fishing industry, understanding that these will continuously improve toward a long-term goal of achieving sustainability.

- MSC’S UNDERMINES ITS OWN CREDIBILITY BY CERTIFYING FISHERIES WITH INDICATORS THAT SCORE BELOW BEST INDUSTRY PRACTICES.

Under MSC’s current system, a fishery with indicators that score between 60% (minimum score) and 80% (best practices) is granted certification with conditions to bring those indicators up to the 80% level. (The weighted average of all indicators in a Principle must score 80% or higher). Because of this, fisheries certified by MSC not only do not meet MSC’s own definition of sustainability, they also may not meet MSC’s definition of best practices if critical indicators score below 80%.

¹⁴ The experts who drafted the Principles and Criteria for MSC noted: “In order to provide incentive to the buyer in the market place, the claim must be simple and clear; achievable; demonstrably credible, and as invulnerable to criticism as possible” (MSC 1997, 4).

MSC's claim – as we propose it in R5 above: to certify well-managed fisheries -- would be more credible if it ensured that all indicators met the 80% standard *before* certification. Alternatively, MSC may be able to identify a set of indicators, called “fatal flaws” in other certification systems, that are so important that certification should not be granted in advance of achieving a best practices score of 80% for them. Establishing such fatal flaws would give certifiers and fisheries seeking certification a much clearer idea of key indicators for achieving certification under MSC's system.

Recommendation 6. MSC should require fisheries to achieve the best practices level of 80% for all indicators or critical indicators before granting certification.

Recommendation 7. In conjunction with the Stakeholder Council, the TAB should consider developing a fatal flaw methodology by identifying indicators that (1) clearly are fatal flaws; (2) clearly are not fatal flaws; and, (3) are site-specific to a fishery and should be decided by the certifier after discussion with appropriate stakeholders. The methodology could be developed separately for different categories of fisheries as needed.

- MSC PLACES TOO MUCH EMPHASIS ON THE PUNITIVE THREAT OF LOSING CERTIFICATION AND NOT ENOUGH ON THE POSITIVE INDUCEMENT GRANTING CERTIFICATION PROVIDES.

MSC explicitly says that it has adopted the current procedure because it believes that the fear of revoking certification once granted will be a strong motivator for a certified fishery to bring indicator scores up to best practices (MSC 2003a, 24). We think this reliance on punitive action to cause a fishery to change is misplaced. One of the strengths of a certification system is that it can cause better fishing management by giving industry a positive market incentive rather than through negative signals (such as government or court action). The initial granting of MSC certification is a powerful pull for fisheries looking for distinction. MSC could better use this positive incentive by establishing pre-conditions to pull indicators up to the best practices level.

Recommendation 8. MSC should use pre-conditions to require a fishery to meet the best practices standard for all indicators or critical indicators before granting certification.

- MSC WILL CONTINUE TO BE CHALLENGED TO PUSH THE PRACTICAL EDGE OF CONTINUALLY INCORPORATING NEW SCIENTIFIC KNOWLEDGE IN ORDER TO NOT CERTIFY STATUS QUO FISHERIES MANAGEMENT.

Even after making the changes recommended above to make sure that its claim is accurate, MSC faces the challenge of continually improving both the application of its standards over time and fisheries that are already certified. In the first case, MSC will need to incorporate new scientific understanding about the effects of fishing on the marine environment so that what is scored as best industry practices changes over time. In the second case, MSC needs to provide an incentive to fisheries that have already received certification to improve beyond their initial score.

The TAB is doing a good job in continuing to look for ways to apply measurable standards to difficult concepts related to sustainable fishing. However, in this dynamic field of study it will always be a challenge for MSC to not lock in current paradigms of “pretty good fishing” at the same time that governments, scientists, stakeholders, and fishers are looking for better ways to get fish to market with less impact on marine ecosystems.

The board’s decision to put the TAB chair directly on the board has been a great step forward in improving communication between these key bodies. In addition, the invitation for the Stakeholder Council co-chairs to observe the TAB meetings is a very helpful development since the TAB is appointed for expertise, not representation of stakeholder interests. The board will need to continue to assess the TAB workload, build appropriate mechanism for budgets and time, and ensure that the Stakeholder Council is appropriately involved and apprised of the TAB’s work. More and more will be asked of MSC regarding science well into the foreseeable future

Recommendation 9. MSC needs to develop a vision for its certification as the practical edge of science, acknowledging that best industry practices standards applied to fisheries must continue to improve over time as new marine knowledge is gained.

Recommendation 10. MSC needs to develop a system for driving continuous improvement in all fisheries, regardless of their initial certification score, particularly emphasizing improvements beyond the 80% best practices level in re-certifications. The TAB should ensure procedures for reviewing the latest science and periodically revisiting the MSC standards and procedures as appropriate in conjunction with the Stakeholders Council.

7.3 Principles and Criteria

MSC’s Principles and Criteria and their application are the heart of MSC’s certification system. We found that Principle 2, requiring fishing operations to maintain the ecosystem functions on which the fishery depends, routinely is not met in certifications. Our recommendations to fix this problem include: a blue ribbon panel to establish appropriate minimum thresholds for the ecosystem effects of fishing (R11); using certification to leverage no take zones to buffer the ecosystem effects of fishing (R12); and, tightening the ecosystem research requirements of certifications (R13-14). We also found two gaps in Principle 3 that need to be filled. First, fisheries and their management system should be required to be in compliance with national laws (R15). Second, a stronger definition of controversial fisheries is needed to ensure certification takes place in a stable management climate (R16). Finally, we find that MSC and stakeholders would benefit from a common understanding of how the precautionary approach is used in MSC certification (R18).

- ❑ PRINCIPLE 2, REQUIRING FISHING OPERATIONS TO MAINTAIN THE STRUCTURE, PRODUCTIVITY, FUNCTION, AND DIVERSITY OF THE ECOSYSTEM ON WHICH THE FISHERY DEPENDS, ROUTINELY IS NOT MET. MSC HAS A LEADERSHIP OPPORTUNITY TO DRIVE BEST PRACTICES TOWARD ECOSYSTEM MANAGEMENT.

The application of Principle 2 is problematic for several reasons. First, the effects of fishing on ecosystems are not well known. As science develops more information about ecosystem effects, evidence is increasing that the effects of fishing can be great – raising the bar on the consequences of acting without full knowledge. Second, fishery management systems are only beginning to develop ways measure and control ecosystem impacts.¹⁵ Third, in the absence of detailed direction from MSC, the certifiers have applied widely different standards sometimes calling for further research with little requirement to wrap research findings into specific management action.

Measuring the ecosystem effects of fisheries in Principal 2 were the most contentious element of the hoki, toothfish, and pollock certifications we studied. For example, the hoki Appeals Panel would have failed the fishery based on Principle 2, noting “(a)t the time of the original assessment, the information used to assess these impacts was poor to non-existent... Where impacts on ecosystem components were known or suspected, little had been done to ameliorate them” (MSC 2002b). In the toothfish assessment, the recommended scores of two of the peer reviewers gives the fishery a failing score specifically for Principle 2 (Fanta 2002; Dunn 2002).¹⁶ And, in the pollock fishery, ecosystem impacts are a primary point of concern in how the fishery is managed. Indeed, the same issues were present in the very first fishery certified by MSC.¹⁷

¹⁵ As the draft pollock assessment noted:

“The use of single-species fish stock assessment and management has been well established over many decades by the fisheries science community... In contrast, ‘Ecosystem Approaches’ to management of fisheries are at a relatively early stage of development. Although there is a wide literature emphasizing the importance of ecosystem approach ...rather few fisheries have ecosystem considerations explicitly incorporated into their management” (SCS 2003, p.74).

¹⁶ Although they recommended lower scores, apparently the reviewers did not calculate a revised score based on them. Had the certifier done so by incorporating the reviewers’ changes, the fishery would have failed.

¹⁷ Despite believing the fishery to be well-managed, an Australian environmentalist wrote that labeling it sustainable was misleading:

“...[T]he MSC was in error in certifying Western Australia’s western rock lobster fishery. It certified the fishery as meeting a sustainability standard which it has never been found to achieve, and its certification is both inaccurate and misleading. The consequences for the MSC and its supporters are, firstly, that they risk their credibility for honesty in labeling and hence, risk undermining their very objectives. Secondly, and equally damaging, is the potential for certification to undermine other conservation initiatives, and thirdly, and possibly most disturbing, is the MSC’s apparent determination to ignore the problem” (Sutton 2003).

Principal 2 sets a high standard that represents a worthy goal, but that current best practices do not approach.¹⁸ With so many unknowns about a fishery's impact on the greater environment, certifying it as sustainable is almost impossible. However, MSC has the opportunity to help drive best practices towards this high standard through continuous improvement. To do so in a credible way, MSC should acknowledge that certification represents current best practices, not sustainability; apply meaningful preconditions and conditions to certifications; follow up with annual audits to ensure that conditions are met, and continually revise standards as new science emerges.

Recommendation 11. *MSC should convene a blue ribbon panel -- similar in stature and make-up to the original experts convened to draft the Principles and Criteria and including leading marine scientists with expertise in ecological interactions -- to provide advice on how to best satisfy Principle 2 by identifying appropriate minimum thresholds for ecosystem effects of fishing. As part of its work, the panel should jointly review selected certifications with the Accreditations Committee to see how Principle 2 is actually applied.*

Recommendation 12. *MSC or the blue ribbon panel should also consider implementing recommendations for using certification to help establish no-take zones (criterion 10e of Principle 3) as key components for ameliorating ecosystem effects of fishing. Because no-take zones are often a contentious management tool, MSC's multi-sector approach could be a good place for crafting solutions on this issue.¹⁹*

Recommendation 13. *Where conditions or pre-conditions (R8) for satisfying Principle 2 call for research, they should outline the questions that need to be answered and require that management bodies take appropriate action to incorporate research findings into management decisions.*

¹⁸ For example, participants in the assessment of MSC's first certification, western rock lobster, observed:

“Another key issue that unfolded during the MSC assessment of the western rock lobster fishery was that the MSC principles and criteria had to be ‘operationalized’ by establishing a set of performance measures (now known as indicators) and decision rules (now known as scoring guideposts). Doing this for MSC Principles 1 and 3 was generally straightforward as the performance requirements indicated by the principles was in line with best practices for fisheries in many other parts of the world. However, *when operationalizing MSC Principle 2, it was found that the language used by the MSC suggested a higher environmental standard in fishery performance than most other parts of the world and one that was scarcely likely to be achievable by any fishery. This meant that the evaluation team had to operationalize MSC Principle 2 with indicators and decision rules that properly reflected a level of performance that could be attributed to best practice in highly developed fisheries around the world*” (Phillips et al. 2003, 102) (emphasis added).

¹⁹ A newly crafted FSC standard in Canada for the boreal forest requires timber companies and stakeholders to devise protected areas on forest tenures as part of the certification process. Several large companies are in the process of conservation area design in their tenure in order to meet this requirement (Domtar and WWF 2003).

Recommendation 14. Annual audits and re-certifications should determine whether the management system has practiced adaptive management in response to research conditions for Principle 2 and take this into account in determining continued certification status.

- PRINCIPLE 3 DOES NOT REQUIRE FISHERIES MANAGEMENT SYSTEMS TO BE IN COMPLIANCE WITH NATIONAL LAWS. FISHERIES THAT ARE NOT IN COMPLIANCE WITH THE LAW CAN BE, AND HAVE BEEN, CERTIFIED.

MSC states that “compliance” with national laws is the minimum floor from which certification builds (May et al. 2003, 18). However, the actual language in Standard 3 merely requires that a fisheries management system “respects” local, national and international laws.²⁰ We found that in both the hoki and pollock fishery certification was recommended despite reviewers and certifiers (as well as the courts and a government agency) acknowledging that those fisheries did not fully comply with national environmental laws. MSC is right when it says that credible certification should take compliance with national laws as a given. In order to rebuild credibility, MSC needs to ensure that on important issues like compliance with national laws, its statements match its performance.

Recommendation 15. MSC should modify Principle 3 to require substantial compliance with the law. Small technical violations should be easily resolvable and therefore not prevent certification. Substantive violations indicate that fisheries should achieve compliance before certification.

- MSC HAS NARROWLY INTERPRETED THE MEANING OF “CONTROVERSIAL” FISHERIES IN WAYS THAT REDUCES ITS FLEXIBILITY AND ABILITY TO GUIDE ITS OWN FUTURE.

An important footnote to Criterion A5 under Principle 3 states: “Outstanding disputes of substantial magnitude involving a significant number of interests will normally disqualify the fishery from certification.” While on its face, this sounds like a way for MSC to ensure that it can keep certification from becoming embroiled in intractable political controversies, MSC has narrowly defined controversies that make fisheries ineligible for certification as those where the controversy or dispute so overwhelms the fishery’s management system that it does not have the ability to meet the standards. The rationale is that stakeholders should not be able to “simply lodge any number of law suits to

²⁰ Principle 3 requires that “(t)he fishery is subject to an effective management system that *respects* local, national, and international laws and standards and incorporates institutional and operational frameworks that require use of the resources to be responsible and sustainable” (MSC 2002). In contrast, FSC certification requires that “Forest management plans and operations *comply with* applicable Federal, state, county, tribal, and municipal laws, rules, and regulations” (FSC 2001, *emphases added*). Likewise, the draft FAO guidelines for fish eco-labeling programs would require fisheries “...to operate *in compliance with* the requirements and standards of local, national, and international law” (FAO 2003, 16, *emphasis added*).

attempt to prevent an outcome they didn't support" in order to prevent certification (MSC 2003b).

This position fails to acknowledge the considerable difference between hypothetical frivolous suits filed merely to prevent a certification and cases where certification walks into a years-long legal and political struggle without being able to take into account the instability present. For example:

- In the pollock fishery, four federal court judgments have held that the fishery was not in compliance with environmental standards at the heart of Principle 2 and political controversy over the fishery has reached the highest levels of the U.S. government.
- In the toothfish fishery, the government of Argentina officially disputes UK sovereignty of South Georgia and has protested the certification of South Georgia toothfish as a unilateral action in the face of this controversy (CCAMLR 2002). Stakeholders participating in the certification raised the specter of Argentina's dispute with UK sovereignty over these islands disrupting the regional management regime and quota system.

The problem with MSC's narrow interpretation is that it restricts MSC's ability to guide its own future by building up credibility through certification of relatively non-controversial fisheries. Over time, with its certification system recognized by enough stakeholders as balanced and fair, MSC would be able to rely on its credibility to weather the occasional storm. As it is now, a fishery like pollock is the "perfect storm" for MSC – and the organization has tied its own hands to steer through it.

While changes in management regimes and fishing practices after certification ideally should be identified through annual audits and re-certifications, highly controversial fisheries increase the likelihood that the management regime will be significantly altered. Given the current general requirements for annual audits it is not clear to what extent such changes will be consistently identified. For example, stakeholders could help identify such changes, but there is no clear requirement that certifiers consistently seek out stakeholder input in annual audits.

Finding the proper balance between these two extremes – the mere existence of controversy versus a multi-year legal and political battle or significant sovereignty disputes – will always be somewhat of a judgment call. However, we believe that MSC should grant itself the tools to guide its own future and to involve itself in controversies in a thoughtful way.

Recommendation 16. *MSC should task the Stakeholder Council and the TAB with restoring a more robust definition of controversial fisheries. As a starting point we recommend considering making the footnote to Criterion A5, Principle 3 a central part of MSC’s policy on controversial fisheries. Certifiers should use the definition of controversial fisheries as guidance during pre-assessments to advise clients that are unlikely to satisfy this criterion.*

Recommendation 17. *MSC should require certifiers to seek out stakeholder input in annual audits, particularly where fisheries management may be unstable. “Red flags” that suggest an unstable management system include a pattern of court judgments, high-level political activity destabilizing the policy environment, and sovereignty disputes.*

- MSC HAS NOT CLEARLY DEFINED ITS INTERPRETATION OF A “PRECAUTIONARY APPROACH” LEADING TO MISUNDERSTANDINGS ABOUT HOW CERTIFICATION SHOULD RESPOND IN THE FACE OF UNCERTAINTY.

In applying the Principles and Criteria, assessment team members appear to use their own definitions of precautionary. MSC guidance does not define how this term should be applied in assessments. Conservationists seeking to apply a precautionary approach focus on shifting the burden of proof, so that when uncertainty about the impact of an activity exists, the activity is not allowed to occur. Scientists think of it in the context of risk assessment. For example, if there is high scientific uncertainty and there is serious or irreversible harm that could result, then the situation warrants a high level of risk aversion to avoid the harm. In the absence of a definition from MSC, this unstated difference can exacerbate disagreements over certification decisions.

Recommendation 18. *The TAB and the Stakeholder Council should work together to develop a definition of precautionary to apply in certifications.*

7.4 MSC Accreditation and Certification Process

Our findings agree with MSC’s own recognition that certifiers need more guidance on how the Principles and Criteria are applied. We recommend that MSC continue to develop this guidance with a special emphasis on a consensus-based approach with the TAB and the Stakeholder Council for identifying acceptable thresholds for certification (R19). In looking at current certification procedures, we list six easily-fixed weaknesses identified in the past that should be corrected (R20-25). We also recommend that MSC require certifiers to prepare conditions that emphasize measurable outcomes rather than process results (R26), and, use these measurable outcomes to credibly document positive changes in fisheries resulting from certification (R27).

- CERTIFIERS HAVE TOO MUCH FLEXIBILITY IN DETERMINING HOW THE PRINCIPLES AND CRITERIA ARE APPLIED, INCLUDING THE THRESHOLDS FOR COMPLIANCE, ALLOWING FOR INCONSISTENCIES AND LOW THRESHOLDS. RECOGNIZING THIS, MSC IS TAKING STEPS TO PROVIDE GREATER INTERPRETATION AND GUIDANCE TO CERTIFIERS.

Throughout much of its history, MSC has provided limited substantive guidance to certifiers beyond the Principles and Criteria themselves.²¹ Documents such as the Fisheries Certification Methodology outlined the overall assessment process, but provided few specifics. Yet to conduct an assessment, assessment teams must interpret the Principles and Criteria, identify indicators to measure how well the Principles and Criteria are being met, establish scoring guidelines and weights for each indicator, and then score the indicator. The assessment process relies heavily on expert judgment at each of these stages. The flexibility in the system means that different experts can reach entirely different conclusions about acceptable practices, while still following the MSC methodology.²²

In response to criticisms, and as a result of several years of experience certifying fisheries, MSC has embarked on a multi-faceted project to clarify the interpretation of its Principles and Criteria and provide more guidance to certifiers. Much of this work focuses on standardizing the processes required; however, some of it will also touch upon decision-making. The project is led by the TAB and includes:

- Revising the Fisheries Certification Methodology to clarify what is required in fisheries assessments. (Recommended by TAB for approval by Board of Trustees in Nov. 2003.)
- Issuing Directives from the TAB to respond to inquiries for clarification of the application of the Principles and Criteria. (Four were finalized in Nov. 2003.)
- Preparing a guidance document for certifiers on carrying out assessments, providing explanations about what they must do and why. (Currently in draft form.)
- Preparing a guidance document for certifiers on obtaining adequate stakeholder input. (Currently in draft form nearing finalization.)
- Revising MSC's Accreditation Manual (to begin in 2004)
- Increasing opportunities for MSC to provide input into the certification process

²¹ This was flagged as an issue of concern at MSC's second meeting of experts devising the Principles and Criteria:

“They were particularly concerned that there be sufficient guidance to minimize the extent to which certifiers would be in a position where they would have to determine thresholds for acceptability with respect to compliance with a given principle or criteria” (MSC 1997, 4).

²² This is illustrated by both the hoki and South Georgia toothfish assessments. Based on a technical review of the assessment, the Appeals Panel determined that the hoki fishery should not have been certified at the time of the assessment. Similarly, two of four peer reviewers of the toothfish fishery significantly disagreed with the assessment team on several scores, which ultimately would have failed the fishery. These two cases suggest that there is too much flexibility in interpreting whether a fishery has satisfied the MSC Principles and Criteria.

- Describing the intent of the Principles and Criteria in more detail, potentially outlining issues that must be addressed under each criterion for all fisheries, and exploring the feasibility of core common indicators based on different categories of fisheries. (Expected over the next 12-18 months.)
- Developing a narrative description of the meaning of best practices (80% scoring level) and the minimum level required for certification (60%). (Expected over the next 12-18 months.)
- Potentially undertaking future work to address requirements in annual audits.

Other evidence of MSC's increased attention to these issues includes the extensive stakeholder input sought in connection with the pollock certification and revisions to the Objections Procedure. In addition, the Stakeholder Council recently formed a working group to specifically examine thresholds for certification.

Recommendation 19. MSC should continue to focus on clarifying the narrative intent of the Principles and Criteria, identifying issues that must be addressed, and describing best practices and the minimum level required for certification. This effort should include a consensus-based approach for identifying acceptable thresholds for certification in which the Stakeholder Council works hand in glove with the TAB to ensure that satisfactory thresholds are established in a transparent way (see recommendation 7).

- MSC'S PROCESS OF CERTIFICATION HAS SEVERAL OTHER EASILY-FIXED WEAKNESSES THAT UNNECESSARILY DETRACT FROM ITS CREDIBILITY.

In the course of our interviews and in reviewing the four case study fisheries, we identified a number of concerns related to the fisheries assessment process, many of which have been raised in the past in other fora. While MSC's current initiatives may address many of them, we highlight some of them here as a reminder of their importance.

Recommendation 20. Ensure that all certifiers undertake sufficient and appropriate levels of stakeholder involvement in all assessments. Stakeholders are an important source of information and perspective beyond that provided by the client fishery.

Recommendation 21. Clarify the role of peer reviewer comments in assessments, what input reviewers should be providing, and the assessment teams' responsibility to respond to these comments.

Recommendation 22. Ensure transparency in all documents and decision-making as much as possible.

Recommendation 23. Require certification reports to clearly document the rationale and reasoning of the assessment team.

Recommendation 24. When final results can be confused because of subsequent Appeals Panel decisions, provide a single final decision document as the benchmark for stakeholders, the fishery, and certifiers.

Recommendation 25. Be vigilant about conducting adequate annual audits and making results public. Audits should be sufficiently rigorous and substantial to ensure that all Principles and Criteria and conditions are being met despite potential changes in the management system.

- CONDITIONS ESTABLISHED IN CERTIFICATIONS TO RAISE A FISHERY'S ENVIRONMENTAL PERFORMANCE LEVEL OFTEN EMPHASIZE PROCESS RATHER THAN OUTCOMES, MAKING CLAIMS OF IMPROVEMENTS STEMMING FROM CERTIFICATION DIFFICULT TO SUBSTANTIATE AND UNDERMINING MSC'S CREDIBILITY IN THE MARKETPLACE.

The strength of MSC's certification standard over ISO and others is that it is outcome-oriented rather than process-oriented. However, many conditions placed on certifications focus on obtaining information or call for research, but do not hold fisheries accountable for results. For example:

- The toothfish assessment requires the fishery to develop population estimates of rays from bycatch and survey data and conduct ongoing surveys to provide points of reference to interpret the effects of bycatch on populations of these species but does not require that appropriate mitigation measures be taken based on the research (Moody Marine 2002, 42);
- The hoki assessment outlines weaknesses related to seal bycatch, benthic habitat mapping and risk assessment that need to be corrected but does not require action to be taken based on the information (SGS 2001, 64-65);
- The pollock assessment requires that appropriate action be taken as a result of research required under numerous conditions, but there are almost no timelines attached (SCS 2003, 209-218). The lack of timelines creates a fuzzy benchmark for measuring progress.

Recommendation 26. MSC should require that certifiers include conditions that focus on achieving outcomes, include timelines for completion, and require revising management practices as appropriate.

Recommendation 27. In auditing the performance of certifiers, MSC should examine outcomes and measure the positive changes in fisheries (in partnership with stakeholders) resulting from certification.

- ❑ OFF-PRODUCT USE OF THE MSC LOGO INCREASES CONCERNS ABOUT ILLEGALLY-CAUGHT FISH.

The South Georgia toothfish fishery raises important issues about the risks associated with certifying a fishery that could be confused with illegal fishing surrounding it. These risks relate to the possibility of illegally-caught fish being identified as certified fish, thus undermining the integrity of the logo and inadvertently supporting illegal fishing. “Off-product” use of the MSC logo increases this concern. Entities can display the MSC logo on marketing materials without a chain of custody certification if they enter into an off-product license agreement with MSC. For example, if a restaurant wishes to make a general statement of support for the MSC, it could display the logo without a chain of custody certification, so long as it does not identify specific fish products on its menu as being from MSC-certified fisheries. This increases the possibility of confusion on the part of consumers and thereby could inadvertently support illegal fishing in cases such as toothfish, in which over half the fish on the market may have been illegally caught and only about 8% is from South Georgia.

Recommendation 28. MSC should review its current policy on off-product use, specifically examining the benefits of retaining this option against problems of consumer confusion and loss of confidence by some stakeholders.

7.5 MSC as a Consortium Organization

Overall, we find that MSC is not viewed as credible by most of the marine conservation community and conclude that MSC risks failure if it does not seek more balanced support among stakeholders. In order to restore its credibility, MSC’s board needs to assert leadership on this issue by recognizing the problem and taking action (R29) including: broadening board membership from the Stakeholders Council (R30) and individual stakeholders (R31), establishing an executive committee and rotating board leadership (R33), emphasizing consensus-building especially around key issues (R35-36), improving transparency about its decision-making on accreditation (R38-39), reviewing its business plan (R40), and holding staff leadership responsible for re-building stakeholder confidence (R41-43).

- ❑ MSC IS NOT YET VIEWED AS A CREDIBLE CONSORTIUM ORGANIZATION BECAUSE STAKEHOLDERS DO NOT FEEL THAT MSC’S MISSION INCLUDES THEM IN A SUBSTANTIVE WAY.

Quite simply, MSC will succeed or fail on whether it becomes a true consortium organization where enough stakeholders from different sectors feel the organization offers them a chance to achieve important outcomes that are not possible outside of a consensus-based stakeholder system. Across the many stakeholders we interviewed there did not appear to be a common sense of MSC’s mission. In addition, our interviews found that currently a large segment of the conservation community regardless of its geographic focus is alienated from MSC and feels it is not integrated into the MSC structure in a meaningful way. Although some MSC staff and board blamed this alienation on over-strident advocacy of U.S.-based conservation organizations, our

interviews confirmed skepticism about MSC from this sector in Europe, North America, and Oceania.²³ In addition, MSC leadership should find it very disturbing that distrust from the conservation sector seemed to increase with familiarity with MSC as an organization or through a specific certification. Quite simply, without greater support for MSC from this component of its stakeholder group, MSC runs the risk of failure in the near future.

Recommendation 29. The Board needs to revisit and, if necessary, clarify MSC’s mission as a consortium organization – i.e., one that convenes diverse interests seeking consensus. Equally important, it should communicate to and engage with stakeholders in discussions over the MSC mission.

- MSC HAS MADE IMPORTANT DECISIONS IN THE LAST TWO YEARS TO INCREASE BROADER STAKEHOLDER REPRESENTATION ON THE BOARD BUT MUST CONTINUE THIS TREND TO RESTORE THE ORGANIZATION’S CREDIBILITY.

Two years ago, MSC made an important decision to broaden representation on the Board of Trustees from an entirely self-selected committee to one that includes the chairs of the TAB and Stakeholder Council. Nevertheless, all but three members of the board are still self-appointed. In our interviews, we found a high degree of lingering mistrust, ignorance, and suspicion about board selection and performance. In order to regain trust and become more effective, the organization needs to continue in the direction of increasing board accountability. MSC could benefit by clarifying and specifying the prescribed balance of its governance structure in the by-laws. The current language vests too much control in the hands of the current Trustees especially when the Trustees are not prescribed to be chosen from the active stakeholders.²⁴

Furthermore, a reading of the minutes from the Board meetings does not adequately capture what may have been a wide ranging and vigorous debate. They leave too much to speculation and charges that views were not heard.

The following recommendations are meant to complement and take further the initial actions that resulted from the governance review.

Recommendation 30. Change the articles of association to specify that 8 of the 15 Board members will be chosen by the Stakeholder Council (they may or may not be members of the Stakeholder Council). In addition, special consideration will be given to ensure a balance of economic, environmental, and social interests.

²³ The notable exception in the conservation community is the support WWF continues to express for the organization it helped create.

²⁴ Article 29: “The Trustees shall prepare and, in appointing trustees, committees, the initial Technical Advisory Board and the initial Stakeholder Council pursuant to these Articles, at all times *take into consideration and so far as reasonably possible give effect to guidelines for maintenance of the balance between the various groups and entities which properly and actively take an interest in the activities of the Charity*” (emphasis added).

Recommendation 31. Draw additional high quality Trustees from the broad stakeholder groups whose trust MSC must earn and maintain in order to carry out its mission. These board members would not represent the Stakeholder Council, but rather apply their own judgment and expertise on decisions.

Recommendation 32. Choose board members that can help the MSC raise money from a broader set of potential donors. This recommendation would also help to ensure a more stable business model.

Recommendation 33. Rotate the board leadership positions while maintaining the knowledge of past leaders. MSC should consider forming an Executive Committee comprised of the current Chairman, the Chairman Emeritus, and the Treasurer. Distributed leadership such as this would sidestep issues of special interests and ensure rotating leadership representing various stakeholder interests.

Recommendation 34. Expand the minutes to ensure that they convey balance in consideration of alternative perspectives and solutions.

- ❑ AS ONE OF THE FEW NON-GOVERNMENTAL, MULTI-STAKEHOLDER ORGANIZATIONS IN THE OCEAN POLICY ARENA, MSC HAS HUGE POTENTIAL TO BECOME A CONVENER OF DIVERSE INTERESTS THAT CRAFT SOLUTIONS TO DIFFICULT ISSUES. HOWEVER, BY NOT PLACING ENOUGH EMPHASIS ON CONSENSUS-BUILDING, MSC IS CURRENTLY MISSING THIS OPPORTUNITY.

The MSC is making progress in defining ways it can seek consensus across its myriad stakeholders. Our impression, however, is that in seeking to demonstrate progress in the marketplace, seeking consensus on difficult issues is given lower priority. The market result, even if achieved, is a Pyrrhic victory, as the credibility of the organization has been compromised. In addition, individual certifications are less valuable to industry because they do not provide a credible forum for stakeholders and applicants to resolve difficult issues.

In order to enhance the value of certification to businesses in the market place, MSC needs to place more emphasis on seeking consensus for the MSC certification system as a whole as well as at the individual certification level. Increased communication costs and the challenge of the geographic spread of stakeholders are enormous issues that need to be factored into setting expectations for all those involved. However, these must be balanced against the cost of not improving MSC's consensus building: the possibility of the collapse of its entire system.

Recommendation 35. The Board should elevate convening a broader range of representative interests around key issues and processes through the Stakeholder Council. Board and staff should make the necessary budget allocations to allow this.

Recommendation 36. The Board should identify a few high priority areas where consensus should be the standard before MSC action. We suggest revising the claim (R5), identifying thresholds for certification (R19), and defining controversial fisheries (R16) as good candidates for priority consideration.

- THE FUNCTIONING OF THE STAKEHOLDER COUNCIL NEEDS TO BE STRENGTHENED TO HELP MSC BE A BETTER CONVENER OF STAKEHOLDERS.

The Stakeholder Council is a crucial tool to help MSC overcome its severe credibility problem with the conservation sector. MSC has made important efforts to improve the functioning of the Stakeholder Council within the organization. However, additional steps should be taken to increase its effectiveness in addition to the roles recommended above. Our interviews revealed concerns over two procedural issues. First, members of the Stakeholder Council felt that more frequent meetings were necessary to maintain an adequate level of interest and involvement. Second, many members felt meetings were too weighted toward staff briefings and not enough around discussion of the issues.

Recommendation 37. The leadership of the Stakeholder Council needs to define and run its meetings using the staff as resource people. Board and staff should seek funds for convening additional meetings including considering ways to have some stakeholders pay their own way to attend meetings while still retaining satisfactory attendance.

- MSC HAS MADE IMPORTANT IMPROVEMENTS IN OPERATING IN A MORE TRANSPARENT WAY BUT NEEDS TO CONTINUE DOWN THIS PATH.

The MSC is making strides in changing systems and organizational culture to operate in a more transparent way. Transparent communication is important because it is the only way stakeholders will vest enough confidence in the organization for it to accomplish its mission. In addition, as an international organization, MSC will continue to need to be sensitive to how the demands for information and transparency vary from region to region.²⁵ The other benefit for MSC from increased transparency is to reduce criticisms of the organization resulting more from a lack of knowledge on an outsider's part than misconduct within the system. Our interviews revealed that one area that continues to be of on-going concern to stakeholders was the availability of information on a certifier's performance. Another concern is the perception of conflict of interest among certifiers hired directly by fisheries to assess their performance and the opportunity for clients to discuss results privately with certifiers before reports are made public.

²⁵ For example, U.S. cultural and legal norms in the area of access to information are much higher than almost any other part of the developed world. Yet some MSC staff and board in our interviews saw this more as unnecessary demands on the MSC system rather than as the way business is done in the U.S.

In addition, while this evaluation was not tasked with looking at WTO and ISO issues, it struck us as incongruous that a reason for a lack of transparency over some issues (such as making some portions of the annual audits of certifiers public information) was that the ISO would frown on this as being inconsistent with their policies. While we agree MSC does not want to run afoul of these important institutions, it appears that MSC has much more latitude of freedom under ISO and WTO constraints than it is choosing to exercise.

Recommendation 38. The MSC Board should review the policy around the accreditation procedure to see if the organization can publish accreditation findings or key portions that stakeholders are concerned about.

Recommendation 39. The Board needs to update its strategic evaluation of its formal and informal relationship to ISO and the potential threat or opportunity with the WTO. The resulting analysis needs to be incorporated into the strategic plan and made available to stakeholders in language that clearly articulates MSC's position.

- IT IS UNCLEAR WHETHER MSC'S BUSINESS MODEL CAN WITHSTAND THE DISCONTINUOUS PROGRESS THAT IS INEVITABLE AT THIS STAGE OF THE ORGANIZATION'S DEVELOPMENT

MSC's origins as a project of WWF and Unilever gave it the initial credibility and financial boost to establish itself as a potential conservation tool. But the shift from project to consortium organization is not complete, particularly in regard to the organization's business model. Revenues are too narrowly focused on donor inputs and it appears that there is a rush to show market gains. The business model appears to lack the flexibility that would be required when consensus on a controversial topic needs to be sought. While this consensus seeking process may create a leveling of the market gains, the long-term success of the organization will be premised on the credibility of each of its certified fisheries. As stated above, market gains that lack the credibility of consensus behind organizational policies are illusionary.

Recommendation 40. The Board of Trustees needs to review the business plan and strategy for the organization to ensure that the business model does not put the interests of showing market progress ahead of conservation gains.

- STAFF LEADERSHIP MUST CONTINUE TO PUSH ITSELF TO BE A LEADER WITHIN THE ORGANIZATION FOR CONVENING DIVERSE INTERESTS, SEEKING CONSENSUS, AND IMPLEMENTING SOLUTIONS.

The leadership of the organization has done a commendable job of building an organization of committed professionals and systems that are evolving to address many of the issues to make an effective consortium organization. But a wide swath of stakeholders expressed a desire to see the staff leadership place convening stakeholders and reaching consensus as a higher priority than what it has done historically. The

alienation of a significant number of members of one stakeholder group is indicative of a consensus problem.

Recommendation 41. Ensure that the staff leadership through his/her annual evaluation is held accountable to the Board for improved performance of MSC as an organization convening diverse interests and seeking consensus on key issues. Performance measures and indicators should be established and approved by a range of stakeholders on the Board.

Recommendation 42. Create an 18-month ombudsman position that reports directly to the Executive Committee of the Board (assuming it is created) to assist the staff in improving on this issue, to collect comments from stakeholders, and to advise the Board on specific steps for action.

Recommendation 43. Clearly communicate to stakeholders that the Board is taking its responsibility in this regard very seriously and will hold staff accountable to a higher standard than it has in the past.

Appendix A: List of People Interviewed

Lee Alverson, Natural Resources Consultants, Seattle, WA -- †
Scott Burns, World Wildlife Fund, Washington, D.C. -- *†
Chet Chafee, Scientific Certification Systems, Mountain View, CA
David Christy, Loeffler, Jonas, and Tuggey LLP, Washington, D.C.
Phil Crocombe, Marine Stewardship Council, London
Alexia Cummins, Marine Stewardship Council, London
James Estes, University of California Santa Barbara, Santa Barbara, CA
Jim Gilmore, At Sea Processor Association, Washington, D.C. -- †
Chris Grieve, Marine Stewardship Council, London
John Gummer, Marine Stewardship Council Board, London -- *
Harriett Hall, UK Foreign Office, Stanley, South Georgia.
Tom Jenson, Troutman Sanders LLP, Washington, D.C.
Hillary Khawan MSC, London
Jan Konigsberg, Trout Unlimited (formerly), Anchorage, Alaska
Lee Langstaff, Facilitation and Mediation Services, Dickerson, MD
Gerald Leape, National Environmental Trust, Washington, D.C. -- †
Jim Leape, Packard Foundation, Los Altos, CA
Meredith Lopuch, World Wildlife Fund, Palo Alto, CA
Will Martin, Marine Stewardship Council Board of Trustees, Nashville, TN -- *
Stacey Marz, Trustees for Alaska, Anchorage, AK
Brendan May, Marine Stewardship Council, London
Ransome Myers, Dalhousie University, Halifax, Nova Scotia
Jay Nelson, Oceana, Washington, D.C.
Sir Tipene O'Regan, Independent (MSC Board member), New Zealand -- *
Mike Parker, Blue Crest (MSC Board), London, UK -- *
Daniel Pauly, University of British Columbia, Vancouver
Dierk Peters, Unilever, Germany -- *
Matt Porterfield, Georgetown Law Center's Harrison Institute for Public Law,
Washington, D.C.
Jake Rice, Department of Fisheries and Oceans, Ottawa, Ontario, Canada
Keith Sainsbury, Commonwealth Scientific & Industrial Research Organization, Hobart,
Australia -- †*
Janice Searles, Oceana, Portland, OR
Bob Searles, Bridgespan, Boston, MA
Lisa Speer, Natural Resources Defense Council, New York, NY -- †
Mike Sutton, Packard Foundation, Los Altos, CA -- *
Andreas Von Gadow, German Democratic Republic, Germany
Trevor Ward, Greenward Consulting, Perth, Australia
Mike Weber, consultant, Redondo Beach, CA -- †
Barry Weeber, Royal Forest and Bird Protection Society, Wellington, New Zealand
Amy Williams, Marine Stewardship Council, London

* -- MSC Board Member

† -- MSC Technical Advisory Board

‡ -- MSC Stakeholders Council

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Appendix C: MSC Principles and Criteria for Sustainable Fishing (2002)

At the centre of the MSC is a set of *Principles and Criteria for Sustainable Fishing* which are used as a standard in a third party, independent and voluntary certification programme. These were developed by means of an extensive, international consultative process through which the views of stakeholders in fisheries were gathered.

These Principles reflect a recognition that a sustainable fishery should be based upon:

- The maintenance and re-establishment of healthy populations of targeted species;
- The maintenance of the integrity of ecosystems;
- The development and maintenance of effective fisheries management systems, taking into account all relevant biological, technological, economic, social, environmental and commercial aspects; and
- Compliance with relevant local and national local laws and standards and international understandings and agreements

The Principles and Criteria are further designed to recognise and emphasise that management efforts are most likely to be successful in accomplishing the goals of conservation and sustainable use of marine resources when there is full co-operation among the full range of fisheries stakeholders, including those who are dependent on fishing for their food and livelihood.

On a voluntary basis, fisheries which conform to these Principles and Criteria will be eligible for certification by independent MSC-accredited certifiers. Fish processors, traders and retailers will be encouraged to make public commitments to purchase fish products only from certified sources. This will allow consumers to select fish products with the confidence that they come from sustainable, well managed sources. It will also benefit the fishers and the fishing industry who depend on the abundance of fish stocks, by providing market incentives to work towards sustainable practices. Fish processors, traders and retailers who buy from certified sustainable sources will in turn benefit from the assurance of continuity of future supply and hence sustainability of their own businesses.

The MSC promotes equal access to its certification programme irrespective of the scale of the fishing operation. The implications of the size, scale, type, location and intensity of the fishery, the uniqueness of the resources and the effects on other ecosystems will be considered in every certification.

The MSC further recognises the need to observe and respect the long-term interests of people dependent on fishing for food and livelihood to the extent that it is consistent with ecological sustainability, and also the importance of fisheries management and operations being conducted in a manner consistent with established local, national, and international rules and standards as well as in compliance with the MSC Principles and Criteria.

Preamble

The following Principles & Criteria are intended to guide the efforts of the Marine Stewardship Council towards the development of sustainable fisheries on a global basis. They were developed assuming that a sustainable fishery is defined, for the purposes of MSC certification, as one that is conducted in such a way that:

- it can be continued indefinitely at a reasonable level;
- it maintains and seeks to maximise, ecological health and abundance,
- it maintains the diversity, structure and function of the ecosystem on which it depends as well as the quality of its habitat, minimising the adverse effects that it causes;
- it is managed and operated in a responsible manner, in conformity with local, national and international laws and regulations;
- it maintains present and future economic and social options and benefits;
- it is conducted in a socially and economically fair and responsible manner.

The Principles represent the overarching philosophical basis for this initiative in stewardship of marine resources: the use of market forces to promote behaviour which helps achieve the goal of sustainable fisheries. They form the basis for detailed Criteria which will be used to evaluate each fishery seeking certification under the MSC programme. Although the primary focus is the ecological integrity of world fisheries, the principles also embrace the human and social elements of fisheries. Their successful implementation depends upon a system which is open, fair, based upon the best information available and which incorporates all relevant legal obligations. The certification programme in which these principles will be applied is intended to give any fishery the opportunity to demonstrate its commitment to sustainable fishing and ultimately benefit from this commitment in the market place.

Scope

The scope of the MSC Principles and Criteria relates to marine fisheries activities up to but not beyond the point at which the fish are landed. However, MSC-accredited certifiers may be informed of serious concerns associated with post-landing practices.¹

The MSC Principles and Criteria apply at this stage only to wildcapture fisheries (including, but not limited to shellfish, crustaceans and cephalopods). Aquaculture and the harvest of other species are not currently included.

Issues involving allocation of quotas and access to marine resources are considered to be beyond the scope of these Principles and Criteria.

¹ Other complementary certification programmes (e.g., ISO 14000) provide opportunities for documenting and evaluating impacts of post landing activities related to fisheries products certified to MSC standards. Constructive solutions to address these concerns through appropriate measures should be sought through dialogue with certification organisations and other relevant bodies.

PRINCIPLE 1

A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery²:

Intent:

The intent of this principle is to ensure that the productive capacities of resources are maintained at high levels and are not sacrificed in favour of short term interests. Thus, exploited populations would be maintained at high levels of abundance designed to retain their productivity, provide margins of safety for error and uncertainty, and restore and retain their capacities for yields over the long term.

Criteria:

1. The fishery shall be conducted at catch levels that continually maintain the high productivity of the target population(s) and associated ecological community relative to its potential productivity.
2. Where the exploited populations are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level consistent with the precautionary approach and the ability of the populations to produce long-term potential yields within a specified time frame.
3. Fishing is conducted in a manner that does not alter the age or genetic structure or sex composition to a degree that impairs reproductive capacity.

PRINCIPLE 2:

Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.

Intent:

The intent of this principle is to encourage the management of fisheries from an ecosystem perspective under a system designed to assess and restrain the impacts of the fishery on the ecosystem.

² The sequence in which the Principles and Criteria appear does not represent a ranking of their significance, but is rather intended to provide a logical guide to certifiers when assessing a fishery. The criteria by which the MSC Principles will be implemented will be reviewed and revised as appropriate in light of relevant new information, technologies and additional consultations.

Criteria:

1. The fishery is conducted in a way that maintains natural functional relationships among species and should not lead to trophic cascades or ecosystem state changes.
2. The fishery is conducted in a manner that does not threaten biological diversity at the genetic, species or population levels and avoids or minimises mortality of, or injuries to endangered, threatened or protected species.
3. Where exploited populations are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level within specified time frames, consistent with the precautionary approach and considering the ability of the population to produce long-term potential yields.

PRINCIPLE 3:

The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.

Intent:

The intent of this principle is to ensure that there is an institutional and operational framework for implementing Principles 1 and 2, appropriate to the size and scale of the fishery.

A. Management System Criteria:

1. The fishery shall not be conducted under a controversial unilateral exemption to an international agreement.

The management system shall:

2. demonstrate clear long-term objectives consistent with MSC Principles and Criteria and contain a consultative process that is transparent and involves all interested and affected parties so as to consider all relevant information, including local knowledge. The impact of fishery management decisions on all those who depend on the fishery for their livelihoods, including, but not confined to subsistence, artisanal, and fishing-dependent communities shall be addressed as part of this process;
3. be appropriate to the cultural context, scale and intensity of the fishery – reflecting specific objectives, incorporating operational criteria, containing procedures for implementation and a process for monitoring and evaluating performance and acting on findings;

4. observe the legal and customary rights and long term interests of people dependent on fishing for food and livelihood, in a manner consistent with ecological sustainability;
5. incorporates an appropriate mechanism for the resolution of disputes arising within the system³;
6. provide economic and social incentives that contribute to sustainable fishing and shall not operate with subsidies that contribute to unsustainable fishing;
7. act in a timely and adaptive fashion on the basis of the best available information using a precautionary approach particularly when dealing with scientific uncertainty;
8. incorporate a research plan – appropriate to the scale and intensity of the fishery – that addresses the information needs of management and provides for the dissemination of research results to all interested parties in a timely fashion;
9. require that assessments of the biological status of the resource and impacts of the fishery have been and are periodically conducted;
10. specify measures and strategies that demonstrably control the degree of exploitation of the resource, including, but not limited to:
 - a) setting catch levels that will maintain the target population and ecological community's high productivity relative to its potential productivity, and account for the non-target species (or size, age, sex) captured and landed in association with, or as a consequence of, fishing for target species;
 - b) identifying appropriate fishing methods that minimise adverse impacts on habitat, especially in critical or sensitive zones such as spawning and nursery areas;
 - c) providing for the recovery and rebuilding of depleted fish populations to specified levels within specified time frames;
 - d) mechanisms in place to limit or close fisheries when designated catch limits are reached;
 - e) establishing no-take zones where appropriate;
11. contains appropriate procedures for effective compliance, monitoring, control, surveillance and enforcement which ensure that established limits to exploitation are not exceeded and specifies corrective actions to be taken in the event that they are.

² Outstanding disputes of substantial magnitude involving a significant number of interests will normally disqualify a fishery from certification.

B. Operational Criteria

Fishing operation shall:

12. make use of fishing gear and practices designed to avoid the capture of non-target species (and non-target size, age, and/or sex of the target species); minimise mortality of this catch where it cannot be avoided, and reduce discards of what cannot be released alive;
13. implement appropriate fishing methods designed to minimise adverse impacts on habitat, especially in critical or sensitive zones such as spawning and nursery areas;
14. not use destructive fishing practices such as fishing with poisons or explosives;
15. minimise operational waste such as lost fishing gear, oil spills, on-board spoilage of catch, etc.;
16. be conducted in compliance with the fishery management system and all legal and administrative requirements; and
17. assist and co-operate with management authorities in the collection of catch, discard, and other information of importance to effective management of the resources and the fishery.

Appendix D: Consultants' Qualifications

Scott Highleyman combines experience as a marine conservation leader and environmental attorney in Alaska with a subsequent consulting practice based in Bellingham, Washington centering on marine and terrestrial program design for major foundations such as The Pew Charitable Trusts and the David and Lucille Packard Foundation. For the last four years, he has participated in the design and execution of a multi-stakeholder conservation plan for Canada's boreal forest that has resulted in a unique collaboration between conservationists, First Nations, and resource extraction industries. In addition, he has conducted numerous evaluations of foundation programs including the Rockefeller Brothers' Fund marine grantmaking program and the Environmental Grantmakers Association. He holds a B.A. from Williams College and a J.D. from the University of Wisconsin-Madison.

Amy Mathews Amos evaluated federal environmental programs and policies for the U.S. Congress with the General Accounting Office (GAO) for over five years. Upon leaving GAO she worked as a policy analyst and program director for conservation groups (Sierra Club Legal Defense Fund – now Earthjustice – and Marine Conservation Biology Institute) focusing largely on marine issues. She now combines her evaluation skills with her knowledge of marine conservation as a consultant to foundations and environmental groups. She holds a B.S. from Cornell and Master's degrees from Indiana University in both Environmental Science and Public Affairs.

Hank Cauley provided the team with independent analysis and insight into certification systems based on his experience in the field. He was the President of the Forest Stewardship Council (FSC) in the U.S. for approximately four years ending in the summer of 2002. He continues to be an advisor to the Boards of both FSC International and FSC-US. He is currently a partner with Ecos Corporation developing sustainable growth strategies for major corporations including Ford, DuPont, and a variety of Australia's top banking and insurance companies. He was also the past Executive Director of the Biodiversity Conservation Network, a consortia project under World Wildlife Fund, The Nature Conservancy, and World Resources Institute that systematically examined links between business and conservation including a variety of marine-based projects and businesses. Hank holds a B.S. in Chemical Engineering from Lafayette College, an M.S. in Chemical Engineering from the University of Arizona, and an M.B.A. from Harvard Business School.

Full resumes and references are available upon request.