



# **Consultation Document: Guidance for the assessment of the management of fisheries on straddling and highly migratory stocks, including RFMO-governed fisheries.**

Consultation Dates: 1<sup>st</sup> November-8<sup>th</sup> November, 2011

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**FOR CONSULTATION**

## **Introduction**

As more highly-migratory species and species managed by RFMOs come under MSC assessment, consideration is required on the effectiveness of how the MSC certification requirements and guidance capture the international and multi-jurisdictional management of these resources, and how consistently these requirements are being applied by certifiers in MSC fishery assessments. This is particularly the case for Principle 3 requirements focusing on stock management and the governance of the fishery.

## **Purpose**

The purpose of this policy development effort is to ensure the consistency of MSC fisheries assessments for fisheries on straddling stocks or fisheries governed by a Regional Fisheries Management Organization (RFMO). The MSC is proposing further guidance in the Guidance to Certification Requirements (GCR) pertaining to the assessment of fisheries against Principle 3 to more precisely specify how certifiers should handle these situations.

## **Recommendation**

Additional guidance for the GCR is initially proposed as follows:

- Additional text in GCR4.0 on General requirements for Principle 3, clarifying the issues that should be considered under the P3 components of Governance and Policy, and Fishery-Specific Management.
- An additional section (GCR4.0.5) providing specific guidance on assessing straddling stocks and highly migratory stocks, including examples of fisheries management scenarios.
- Additional guidance for PI 3.1.1 (GCB4.2.2a, AGCB4.2.4), PI 3.1.2 (GCB4.3.1), PI 3.1.3 (AGCB4.4.1), and PI 3.1.4 (GCB4.5.2), providing additional guidance on assessments of straddling stocks and highly migratory stocks, as well as additional guidance on the focus of the P3 components.

See Appendix 1 for proposed amendments to Guidance to the MSC Certification Requirements.

This guidance has been developed in line with thus far *ad hoc* advice provided to certifiers at training events and through correspondence pertaining to specific fisheries. No amendments to the Certification Requirements are currently being recommended. Following a period of monitoring of the effect of this additional guidance on consistency of interpretation, we will determine if further revisions to documentation, including requirements, are necessary to achieve the desired assessment consistency.

## Considerations

An analysis was undertaken to assess how assessment teams have considered issues relating to P3 for straddling stocks and regionally managed fisheries. Similar scores should be expected from teams on regional management (RFMO) issues, even potentially across fisheries, as the teams would be scoring the same issue. However, the treatment of Principle 3 performance indicators has been different among assessment teams.

One important reason appears to be the weight given to the international management under the RFMO and the national management which applies flag state control or jurisdiction within the EEZ or jurisdiction at the landings site. Overall, it appears that the wide range of scores given imply that different expectations were being applied in interpreting the scoring guidelines and cannot thus be fully justified from differences among the fisheries.

Appropriate scoring will depend on the definition of the fishery and the wider management system on which it depends. It is quite possible that dependence on the international system will vary from fishery to fishery. The local management framework may be below, equal to or exceed the requirements under the international framework. How the scoring of this performance indicator in the international context has been dealt with by the assessment team has not been clear in all cases.

According to the FAM the 'Fishery Specific Management System' (all 3.2 performance indicators) should focus the certification body on the management system directly applied to the fishery undergoing assessment. This depends on what is defined as the "fishery" which the assessment team will need to decide; it should include but not be limited to the unit of certification. On the whole, this appears to have been applied fairly consistently among the assessments.

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### Appendix 1: Proposed changes to Guidance to the certification requirements.

The proposed changes are identified with a footnote referencing next Technical Advisory Board (TAB) 20. The formatting shown is as follows:

Insertions: **Bold and underlined** bearing a footnote TAB 20

Deletions: ~~**Bold, strikethrough and underlined**~~ bearing a footnote TAB 20

The parts of the GCR that are in bold with a footnote referencing TAB 19 are the changes approved at the previous TAB 19 meeting.

## GCB4 Principle 3

### GCB4.0 General requirements for Principle 3

GCB4.0.1 The intent of P3 is to ensure that there is an institutional and operational framework, appropriate to the size and scale of the fishery, for implementing P1 and P2 that is capable of delivering sustainable fisheries in accordance with the outcomes articulated by P1 and P2.

GCB4.0.2 **‘Governance and Policy’** captures the **broad, high-level context of the fishery management system within which the fishery under assessment is found.**<sup>1</sup> Performance elements within this component include:

- a. The legal and/or customary framework that overarches the fishery, and possibly other fisheries under the same management framework.
- b. The consultation processes and policies.
- c. The articulation of the roles and responsibilities of people and organizations within the overarching management system.
- d. Other overarching policies supporting fisheries management.

GCB4.0.3 **‘Fishery Specific Management System’** focuses the team on **the management system directly applied to the fishery undergoing assessment.**<sup>2</sup> PIs under this component consider:

- a. The fishery-specific management objectives (i.e. fishery management objectives for the fishery under assessment, specifically).
- b. The decision-making processes in the relevant fishery.
- c. The fishery’s compliance and enforcement system and implementation.
- d. Research planning and monitoring.
- e. Evaluation of the performance of the fishery’s management system.

GCB4.0.4 A unit of certification might include only a sub-set of fishers (vessels, fleet operators, and individual fishermen) within a wider fleet of fishers fishing for the same biologically distinct stock, using the same method, under the same or similar management system or arrangements. However, it is the management of the wider fleet which denotes the specific “fishery” for the purposes of this component and is the subject of assessment under the fishery-specific management system PIs. Special or additional management arrangements or features unique to the vessels in the unit of certification may be considered and reflected in the scores under the fishery-specific management system PIs.

### **Straddling stocks and highly migratory stocks**<sup>3</sup>

**GCB4.0.5 Fisheries that include straddling or highly migratory stocks should consider both national/local management and international management as required to deliver sustainable outcomes in P1 and P2. International management includes bilateral/multilateral arrangements and Regional Fisheries Management Organisations and international arrangements with similar intent.**

**GCB4.0.6 The team should consider all management systems that apply to the stock, relevant to the size and scale of the fishery and the impact that these systems have on the capacity for the fishery to deliver sustainable outcomes for P1 and P2.**

**GCB4.0.7 The relative importance of international and national management can vary between PIs and P1/P2 scoring issues. When multiple management regimes have relevance to a fishery, the team should be explicit in their consideration of the management systems and their relevance to P1/P2 scoring issues, and justify their decisions appropriately.**

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<sup>1</sup> TAB 20, date of application immediate

<sup>2</sup> TAB 20, date of application immediate

<sup>3</sup> TAB 20, date of application immediate

**GCB4.0.8 The key consideration should be, at all times, whether the national and international management systems work together to ensure long-term sustainability of P1 and P2. For example, if there are 3 states that take 95% of the catch of a stock, with another 10 states that take the remainder, and the fish stock is effectively and jointly managed on a precautionary basis by the 3 states, it may be sufficient to consider only the management of these 3 states as main management entities. In making such judgements, the CAB should consider the effectiveness of cooperation between states as required by UNCLOS Articles 118 and 119, including as appropriate membership of an RFMO, bilateral/multilateral or regional arrangement.**

**GCB4.0.9 For example, fictional Fishery X is targeting a highly migratory species covered under domestic law and requirements under a RFMO. The effective management at the domestic level, and the significant proportion of Fishery X's catch of the stock, result in effective management and sustainable outcomes under P1 and P2. Cooperation between the two levels of management, evidenced by Country X's membership of the RFMO and cooperation as required by UNCLOS Articles 118 and 119, ensure that management is sufficiently comprehensive. Therefore, in consideration of P3 Pls, a different relationship between the two management regimes pertains, but still results in effective management of the stock, and importantly still results in sustainable outcomes under P1 and P2.**

**Assessing informal and/or traditional management systems against Principle 3**

**GCB4.1.5 A key characteristic of management mechanisms and measures in traditionally managed or self governing fisheries is that they may be undocumented or may not be formally ratified.**

**GCB4.1.6 The CAB could use semi-structured interviews or other participatory tools to collect information.**

**GCB4.1.7 Multiple stakeholder participatory approaches can be used to cross check opinions and views from different segments of the stakeholder community.**

**GCB4.1.8 Both GCB4.1.6 and GCB4.1.7 could be used by the CAB to support the rationale and validate the conclusions provided for the scores as required in clauseCB4.2.<sup>4</sup>**

## ***GCB4.2 Legal and/or Customary Framework PI (PI 3.1.1)***

**GCB4.2.1 Key to determining if fisheries management occurs within a framework that both respects relevant laws and is capable of delivering sustainable fisheries in accordance with P1 and P2, is understanding what is meant by the legal and/or customary framework.<sup>5</sup>**

**GCB4.2.2 A fishery management system's legal and/or customary framework is:**

- a. The underlying supporting structure, formal or informal, that incorporates all the formal and informal practices. This includes**

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<sup>4</sup> TAB 19, date of application 14 November 2011

<sup>5</sup> TAB 20, date of application immediate

**national and international management regimes as appropriate, such as when considering straddling or highly migratory stocks.**<sup>6</sup>

- b. Procedures and instruments that control, or have an impact on, a fishery. This includes policies and practices of both government and private sectors, including (but not limited to):
  - i. Implementing agencies (e.g. fisheries agencies, conservation agencies).
  - ii. Fishery business groups (e.g. catch sector cooperatives, industry associations).
  - iii. Fishing vessel owners.
  - iv. Indigenous groups.
  - v. Local civil society or community groups.
- c. The government sector includes all applicable government systems, the courts and the relevant parliamentary and regulatory bodies. The management system is not limited to government legislation, nor to industry or customary practice, but is the complex interaction of all such elements, controls and practices that are used in a fishery and result in 'hard' (law) or 'soft' (accepted practice) controls over actual 'on-water' catching practices.

GCB4.2.3 There are four scoring issues to be considered under the Legal and/or Customary Framework PI:

- a. Capability of delivering sustainable fisheries in accordance with P1 and P2.
- b. Respect for laws.
- c. Observing legal rights created explicitly or by custom of people dependent on fishing for food or livelihood.
- d. Dispute mechanisms.

**Consistency with laws or standards**

GCB4.2.4 The first scoring issue for this PI relates to the presence or absence of an appropriate and effective legal and/or customary framework that is capable of delivering sustainable fisheries in accordance with P1 and P2.

**AGCB4.2.4 Fisheries that include straddling or highly migratory stocks should consider the appropriateness and effectiveness of both national/local management and international management. International management includes bilateral/multilateral arrangements, Regional Fisheries Management Organisations, and international arrangements with similar intent and function.**<sup>7</sup>

GCB4.2.5 Scoring this part of the PI means focussing on the existence of a framework itself *and* if it is capable of delivering sustainable fisheries. This may be determined by examining:

- a. The presence or absence of the essential features of an appropriate and effective structure within which management takes place.
- b. If those features are hard or soft.

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<sup>6</sup> TAB 20, date of application immediate

<sup>7</sup> TAB 20, date of application immediate

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- c. If the framework has a focus on long term management rather the short term.
- d. How it manages risk and uncertainty.
- e. If the framework is transparent and open to scrutiny, review and adaptation as new information becomes available.

GCB4.2.6 Guidance to Annex CB4.2 The essential features needed to deliver sustainable fisheries are defined by their relevance to achieving sustainable fisheries in accordance with P1 and P2 appropriate to the size and scale of the fishery, and may include:

- a. Establishing when and where people can fish.
- b. Who can fish;
- c. How they may fish.
- d. How much they can catch;
- e. What they can catch.
- f. Who they talk to about the 'rules' for fishing.
- g. How they might gather relevant information and decide what to do with it.
- h. How they know that people are abiding by whatever 'rules' are made and.
- i. How they catch, sanction or penalise wrongdoers.

With these features the operational framework could be said to be *generally consistent* with local, national or international laws or standards.

### **Respect for laws**

GCB4.2.7 Another scoring issue under the Legal and/or Customary Framework PI relates to the issue of 'respect for laws' through the presence or absence of actual legal disputes.

GCB4.2.8 This part of the PI is concerned with of the fishery is operating within the legal or customary framework and if there is any evidence that it is not.

GCB4.2.9 The MSC Board of Trustees has determined that the precedent set by the Bering Sea/Aleutian Islands Pollock Fishery objection decision it made in 2004 will guide interpretation of this part of the PI:

- a. Respect for laws is different to compliance with laws and this part of the indicator does not require that a fishery management system be in perfect minute-to-minute compliance with every single piece of substantive or procedural law that may govern a fishery. This would elevate form over substance to set the bar so high.
- b. Rather, should a fisheries management agency be subject to court challenges, it is the record of repeated violation of the same law or regulation, the timely attempts to comply with binding judicial decisions or acting proactively to avoid legal disputes that are important in determining the level of performance against this part of the PI.
- c. When assessing the importance of any evidence relating to this issue, the team should consider if any violations of the same law or regulations compromise the ability of the management system to deliver sustainable fisheries in accordance with the outcomes intended by P1 and P2.

**Observing legal rights created explicitly or established by custom of people dependent on fishing for food or livelihood**

GCB4.2.10 Issues and disputes involving allocation of quota and access to marine resources are outside the scope of an assessment against the MSC's Principles and Criteria.

GCB4.2.11 Guidance to Annex CB clause CB4.2.4. Decisions of legislatures (through statutes or national treaties relating to aboriginal or indigenous people), or courts will establish if rights have been conferred upon any particular group or individual. The main consideration in relation to performance against this scoring issue is whether a suitable framework exists or does not exist to address the legal rights created explicitly or established by custom of people dependent on fishing for food or livelihood, not on the effectiveness or results (e.g. allocation of access) of such a framework.

**Assessing informal and traditional approaches in PI 3.1.1**

**Consistency with laws and standards**

**GCB4.2.1 For management systems which are less clearly articulated, as for example in informal and traditional management systems evidence of the extent to which this scoring issue is met, could be through:**

- a. **Accepted norms,**
- b. **Commonly held values,**
- c. **Beliefs**
- d. **Agreed rules across the fishing communities of which the fishery under MSC assessment is part of.**

**GCB4.2.13 To obtain evidence of compliance with the requirements of this scoring issue, CABs may need to use semi-structured interviews with a range of stakeholders.**

**GCB4.2.14 The interviews could be used to:**

- a. **Obtain information on customs, traditions, culture, practices, social mechanisms or internal statutes and protocols that lend themselves to sustainable use of fisheries resources.**
- b. **Determine the extent to which these informal arrangements and practices combine to achieve sustainable fisheries.**

**GCB4.2.15 As required in CB4.1.3, CABs should provide evidence demonstrating how they have drawn valid and robust conclusions from such semi-structured interviews. For example, this could be achieved doing both, obtaining opinions from different stakeholder and using different tools to collect information**

**Resolution of disputes**

**GCB4.2.16 When there are no immediately obvious structures for dispute resolution, the use of participatory techniques could be used to:**

- a. **Identify and evaluate the presence of dispute resolution mechanisms used in the fishery.**
- b. **Obtain information on these dispute mechanisms.**
- c. **Assess the effectiveness of such mechanisms.**

**GCB4.2.17** Including participants and/or interviewees from a wide variety of stakeholder types and from stakeholders operating outside the fishery under assessment, will minimise the likelihood of subjectivity. Fishers may be able to draw up charts or use other visual or non-textual means to help explain or demonstrate the process for resolving conflicts in the fishery.

**GCB4.2.18** The level of transparency and effectiveness of the systems can be determined by:

- a. Information on the proportion of stakeholders that are aware of the existence of any dispute resolution arrangements.
- b. The history and stories of how disputes have been dealt with in the past.
- c. Ascertaining whether the presence or absence of unresolved disputes can be considered significant indicators of the existence and/or effectiveness of dispute resolution mechanisms.

#### **Approach to disputes**

**GCB4.2.19** Assessment of fisheries against this issue may consider the extent to which there may be other or higher authorities to whom fishers or other stakeholders may appeal if they are dissatisfied with fishery rules or their implementation in the fishery by local managers.

**GCB4.2.20** If any such appeals have been made, the responsiveness or otherwise of local ‘managers’ or leaders should be considered and scored in accordance with the guideposts.

**GCB4.2.21** Semi-structured interviews may be used by CABs to determine the extent to which stakeholders believe that local ‘managers’/leaders respect or otherwise, any judgements or decisions made by any higher or other authority.

**GCB4.2.22** The interviews can also be used to determine the extent to which:

- a. Managers implement their own rules.
- b. Stakeholders believe the management system is sufficiently proactive to avoid disputes.

**GCB4.2.23** CABs may consider collective, participative and publically accountable involvement in management of the fishery by a broad spectrum of local stakeholders of the fishery as potential evidence of the presence of proactive avoidance of legal disputes. Supporting evidence may come from cross and multiple checked, semi-structured interviews from a range of stakeholders representing different interests within the community.

#### **Respect for rights**

**GCB4.2.23** Evidence of consistency with this requirement can be determined by using field observations and structured interviews with fishers and fishing community leaders to ascertain the following:

- a. The extent to which fishery participants are aware of established rights
- b. Responses in the past within the fishery to disputes over established rights

- c. **Accepted norms and practice across the fishery that is supportive of such established rights.**<sup>8</sup>

## **GCB4.3 Consultation, Roles and Responsibilities PI (PI 3.1.2)**

### **Roles and responsibilities**

**GCB4.3.1** Consideration of the roles and responsibilities of the fishers within the broader management system<sup>9</sup> in relation to their cooperation with the collection of relevant information and data, where relevant and/or necessary, can<sup>10</sup> be included in scoring this PI. In doing so, this will take account of MSC's Criterion P3,B17 which relates to fishing operations assisting and cooperating with management authorities in the collection of catch, discard, and other information of importance to the effective management of the resources and the fisheries<sup>11</sup>.

### **Consultation process**

**GCB4.3.2** Guidance to Annex CB clauses CB4.3.1 and CB4.3.2

GCB4.3.2.1 The main point of the PI's consultation section is that the management system is open to interested or affected parties and stakeholders and that any information that is viewed as important by those parties can be fed into and be considered by the process in a way that is transparent to the interested or affected parties and stakeholders.

GCB4.3.2.2 SG80 and SG100 under the PI's consultation section introduce the added elements of demonstrating that *whatever* information is gathered, it is considered and that there is transparency about its use or lack of use.

GCB4.3.2.3 SG100's demonstration may not necessarily be additional reporting beyond what may already occur in a fishery management system. For example there may be any of the following:

- a. Regular newsletters, broadcasts or reports that go out to interested or affected parties or stakeholders.
- b. Information pages published and distributed.
- c. The minutes of meetings put on the public record for people to see, electronic mail or other e-technologies may be used.
- d. If dealing with stakeholders who don't have access or ability to read reports, watch broadcasts or use computers there may be report back meetings or other such means to report what happened.

GCB4.3.2.4 Teams will need to be satisfied that what evidence is offered does meet the standard of demonstrating consideration of the information (being transparent) and also explains how the information was or was not used. If a fishery management system does not currently do this, then it cannot score 100 without implementing some form of transparency about how information is used or not used.

**GCB4.3.3** Guidance to Annex CB clause CB4.3.3

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<sup>8</sup> TAB 19, date of application 14 November 2011

<sup>9</sup> TAB 20, date of application immediate

<sup>10</sup> Standards Director, date of application immediate, typo.

<sup>11</sup> Standards Director, date of application immediate, typo.

GCB4.3.3.1 Effective consultation processes within the management system must be appropriate to the scale, intensity and cultural context of the fishery. For example, but importantly not confined to, consultation at the level of broad policy development and at the level of research planning.

GCB4.3.3.2 Affected parties, depending on the context, may include (but are not limited to) individuals, mandated representatives, and/or participants in the fishery.

#### **GCB 4.3.4 Local knowledge**

GCB4.3.4.1 Local knowledge may be long-term knowledge held by many fishers or community members, it might be place-based, i.e., local to a particular geographical area, and may have social, economic or ecological dimensions. It will reflect the knowledge and opinions about issues held by individuals and groups local to relevant fisheries. Local knowledge can be valuable first-hand experience that might inform any fisheries management process, including fisheries research, data collection and resource assessment, monitoring, control and surveillance operations, policies and processes, and fisheries management policies, practices and/or decisions.

GCB4.3.4.2 Evaluation of the relative value and robustness of local knowledge in the management process may form part of the process of being transparent about how information is considered and used or not used under SG80 and SG100.

GCB4.3.4.3 Individuals or groups as referred to in CB4.3.4 could include, but not be limited to, fishers, indigenous people, local community representatives or groups, local civil society groups like local NGOs, local fishing businesses and/or their representatives, local government representatives or politicians.

#### **Assessing informal and traditional approaches in PI 3.1.2**

##### **GCB 4.3.5 Roles and responsibilities**

**GCB4.3.5.1 In some traditionally managed fisheries or fisheries under self-governance, specific roles and responsibilities may not always be clearly articulated or immediately apparent. This does not mean that different institutions or organisations do not undertake specific and agreed roles. A range of entities, ad-hoc committees and other groups with a variety of labels including NGOs may have responsibility for different fishery management roles. The arrangements may not be formally codified but may be widely understood across the fishery.**

**GCB4.3.5.2 To verify the extent to which roles and responsibilities are defined across the management system, CABs may need to work with stakeholders to prepare simple governance, institutional or system maps.**

**GCB4.3.5.3 The maps can provide a visual representation of the different groups and organisations involved in the fishery, how they function, which aspects of the management process they are responsible for, and how they relate to one another.**

**GCB4.3.5.4 The extent of consistency with the requirement for this performance indicator is based on how well entrenched the entities are**

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in their roles and the extent to which key areas of responsibility are covered.

#### **GCB 4.3.6 Consultation process and participation**

**GCB4.3.6.1** In the absence of a documented consultation procedure, evidence to verify the extent and transparency of consultation processes can be demonstrated by alternative means.

**GCB4.3.6.2** This can include identifying the existence, content and relative frequency of invitation letters to meetings. It can also include a consideration of activities of fisheries extension officers, how well local announcements are used, the use of posters, and the extent of awareness of fishers about meeting agendas, meeting content and outcomes.

**GCB4.3.6.3** CABs may need to interview fishers about selected case studies to determine how information collected from stakeholders has been used in the past.

**GCB4.3.6.4** Information from such interviews may be considered representative of how the information collected from stakeholders is generally used, providing the CABs demonstrate that valid and rigorous methods were used. Conducting interviews with different stakeholder and cross checking the information is one way of validating the results.

**GCB4.3.6.5** Evaluation of effectiveness of consultation processes might consider the general absence of discrimination against any individuals and/or organisations from any known consultations as part of the measure of performance against this scoring issue. However, any such conclusions need to be supported by demonstrably valid information collected by rigorous and robust means.<sup>12</sup>

#### ***GCB4.4 Long Term Objectives PI (PI 3.1.3)***

**GCB4.4.1** The emphasis of this PI is about the presence or otherwise of long term objectives which guide decision-making that is consistent with MSC's Principles and Criteria and the precautionary approach (defined below) either:

- a. Long term objectives implied within management policy (SG60).
- b. Clearly set out in management policy (SG80).
- c. A requirement of management policy that decision-making pursues explicit long term objectives (SG100).

**AGCB 4.4.1 Fisheries that include straddling or highly migratory stocks should consider how the objectives of both national/local management and international management work together to deliver sustainable fisheries in accordance with P1 and P2. International management includes**

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<sup>12</sup> TAB 19, date of application 14 November 2011

### **Precautionary approach**

GCB4.4.2 Guidance to Annex CB clause CB4.4.2. The intention is that scoring focuses on the consistency of any long term objectives within overarching management policy with the notions of being cautious when information is uncertain etc., and taking action even when information is inadequate.

The definition of the precautionary approach given in CB4.4.2 was derived from Article 6, UN Agreement for the implementation of the provisions of UNCLOS of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks; also known as the “Fish Stocks Agreement”.

GCB4.4.3 It is not intended that this PI be a second opportunity to score fisheries on the use or otherwise of target and limit reference points which are scored under P1 of the default tree, nor to point teams towards Article 6, Annex II of the Fish Stocks Agreement for a prescriptive list of what must appear in management policy *per se* in relation to the precautionary approach. Nor should it direct teams towards re-scoring management strategies or outcomes covered both in P1 and P2 or decision-making processes covered in a separate PI under P3 where precaution and the precautionary approach are also mentioned.

GCB4.4.4 This PI forms an important part of the overall understanding of the use or otherwise of a precautionary approach in the fishery but is not concerned with the operational implementation of the precautionary approach within the ‘day-to-day’ management of the fishery itself.

GCB4.4.5 This PI deals *only* with the high or broad management policy context – perhaps within overarching legislation, perhaps policy or custom that applies to many or all fisheries within a broader management system – and with if laws, policies, practices or customs at that high or broad level imply or specify and/or require long term objectives that are consistent with a precautionary approach as defined above, as well as with the pursuit and achievement of outcomes consistent with P1 and P2.

### **Assessing informal and traditional approaches in PI 3.1.3**

#### **Objectives**

**GCB4.4.6 The CAB could infer consistency with requirements in the scoring issue by the practices operating within the fisheries covered by the management system.**

**GCB4.4.6 The CAB could use the following to evaluate how the fishery is considered to perform against this scoring issue:**

- a. A review of the factors that have influenced recent decisions in the fishery**
- b. Knowledge of the extent to which such factors are consistent with achieving sustainability**
- c. The application of the precautionary approach**

**GCB4.4.6 The CAB should consider if the decisions have been taken on the basis of the ecological health of the fishery and associated ecosystems, or for**

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<sup>13</sup> TAB 20, date of application immediate.

### **GCB4.5 Incentives for Sustainable Fishing PI (PI 3.1.4)**

GCB4.5.1 This PI gives effect to Criterion P3, A6.

GCB4.5.2 When considering if the **broader**<sup>15</sup> fishery management system *provides for incentives* that are consistent with achieving the outcomes expressed by P1 and P2 (SG60 and SG80), the key issue in this part of the SG is to score the system with reference to if it 'opens the door' for the possibility for positive incentives. Does the system have attributes, policies or principles that would tend to incentivise fishers to fish sustainably, that engender a sense of stewardship of the resources?

For example, policies that attempt to provide stability and/or security for fishers amid the uncertainties that come with complex and dynamic systems. This may involve, but not be limited to:

- a. The system providing for reducing information gaps and uncertainties for fishers.
- b. Providing for strategic or statutory management planning to give certainty about the rules and goals of management.
- c. Providing for mechanisms and opportunities to gain support for the management system from fishers; or fishery management system features that encourage collective action while allowing individual choice such that individual decisions are steered towards public good.
- d. Providing for the clarification of roles, rights and responsibilities of the various stakeholders; engenders a sense of ownership (possibly, but not necessarily, through rights-based measures).
- e. Providing for a participatory approach to management, research and other relevant processes.

GCB4.5.3 Guidance to Annex CB clause CB4.5.1. For instance, management systems should not include subsidies that obviously contribute\* to unsustainable\*\* fishing. Since there is not yet international agreement on what actions should be considered subsidies and which of these may be considered "good" or "bad" under different circumstances, the team should not attempt to identify and classify all subsidies in the fishery under evaluation. Instead, they should only take note of any issues that are obviously perverse incentives contributing to, or that have significant potential to contribute to, unsustainable fishing.

\* Contribute means contributing to unsustainable fishing at the time of assessment.

\*\* Unsustainable means unsustainable in an ecological / environmental sense, not economically unsustainable.

GCB4.5.4 At SG100 the expectation is that the management system actively and explicitly considers and reviews management policies and procedures with particular attention paid to the issue of incentives to make sure they are not contributing to unsustainable fishing practices.

### **Assessing informal and traditional approaches in PI 3.1.4**

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<sup>14</sup> TAB 19, date of application 14 November 2011

<sup>15</sup> TAB 20, date of application immediate

**Incentives**

- GCB4.5.5** Assessments may consider the effectiveness of incentives for “good behaviour”, such as peer pressure, social beliefs and customs that encourage sustainable practices and long-term stewardship of fisheries resources and the marine environment.
- GCB4.5.6** Where such approaches are considered, rationale provided for scores should include information about the existence of the specific practices in the fishery that have been identified as effectively resulting in good behaviour.
- GCB4.5.7** Some rights-based measures may contribute to sustainable fishing. The effectiveness of such measures as incentives for sustainable fishing should also be taken into consideration. Examples include:
- a. Quotas (individual or otherwise),
  - b. Territorial Use Rights in Fisheries (TURFs,)
  - c. Rights of exclusion.
  - d. Other community-based or collective rights-based measures.<sup>16</sup>

***CB4.6 Fishery-specific management system PIs***

- GCB4.6.1** The ‘Fishery Specific Management System’ component focuses the team on the management system directly applied to the fishery undergoing assessment as described in GCB4.0.3<sup>17</sup>.

***GCB4.7 Fishery-Specific Objectives PI (PI 3.2.1)***

- GCB4.7.1** Guidance to Annex CB clause CB4.7.2

An example of an objective is “the impact on dependent predators will be reduced by x% over y years”.

**Assessing informal and traditional approaches in 3.2.1****Objectives**

- GCB4.7.2** In some traditionally managed fisheries, or fisheries under self-governance, objectives may not always be stated quantitatively or be expressed specific to the particular species or fishery under assessment. Objectives may specify social and/or economic objectives. In some fisheries objectives may be defined in terms of addressing further declines, rather than specifically maintaining optimum yields or biomass levels.
- GCB4.7.3** Compliance of the fishery with MSC requirements can be determined by how well these variously formulated objectives align with achieving sustainability as expressed by MSC Principles 1 and 2. Objectives that are defined to meet social needs may in some cases be consistent with achieving sustainability as articulated in Principles 1 and 2. To be considered as consistent with achieving sustainability, however, such objectives should not be designed to meet social needs at the expense of ecological considerations.

<sup>16</sup> TAB 19, date of application 14 November 2011

<sup>17</sup> TAB 20, date of application immediate

**GCB4.7.4** In evaluating such objectives for consistency with achieving outcomes in Principles 1 and 2, there will be a need to determine if the fishery under assessment is subject to considerations which may lead the emphasis on social or economic objectives to pose potential risks to achieving the outcomes required by Principles 1 and 2.<sup>18</sup>

### ***GCB4.8 Decision-Making Processes PI (PI 3.2.2)***

**GCB4.8.1** The PI states: "...decision-making processes *that result* in measures and strategies etc". In this context, the relevant performance-related issue is if the decision-making processes actually produce measures and strategies, not an evaluation of the quality of those measures and strategies which is covered elsewhere in the tree structure under P1 and P2. The assessment issue is about the decision-making processes themselves.

**GCB4.8.2** SG60, SG80 and SG100 refer to decision-making processes taking account of the wider implications of decisions. This means the processes take account of, for example, the consequences of decisions on management objectives for target species on the ecosystem, and of the impacts on those who depend on the fishery for their livelihoods (thus giving effect to the final sentence of Criterion P3, A2).

#### **Assessing informal approaches in PI 3.2.2**

**GCB4.8.3** **Scoring issues a to d: Decision making processes, responsiveness of decision making processes; use of precautionary approach; Transparency of decision-making**

**GCB4.8.4** **"Established" decision-making processes, should be understood to mean that there is a process that can be immediately triggered for fisheries-related issues, the process has been triggered in the past and has led to decisions about sustainability in the fishery. These processes may or may not be formally documented or codified under an official statute.**

**GCB4.8.5** **Key considerations in assessing how well established the system is, include the extent to which the system is recognised by stakeholders in the fishery and the durability or permanency of the decision-making process.**

**GCB4.8.6** **CABs may need to use semi-structured interviews with a range of stakeholders to obtain information about how any decision-making process works. This may involve selecting a case study event (e.g. fishery decline in the past, a specific observation across the fishery or other ecological change) and determining from interviews if, and how decisions were made in response to the event. As with general requirements relating to the use of semi-structured interviews, a means of cross checking views and validating CAB conclusions and scores should be evidenced.<sup>19</sup>**

### ***GCB4.9 Compliance and Enforcement PI (PI 3.2.3)***

**GCB4.9.1** At SG60, SG80 and SG100 while assessing the existence and implementation of monitoring, control and surveillance systems, efforts to inform fishers about their obligations under the fishery-specific management system may be considered, but the assessment should not be limited to this.

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<sup>18</sup> TAB 19, date of application 14 November 2011

<sup>19</sup> TAB 19, date of application 14 November 2011

GCB4.9.2 Guidance to Annex CB clause CB4.9.1

This gives effect to Criterion P3, B17.

GCB4.9.3 Guidance to Annex CB clause CB4.9.2

At SG80 and SG100, in some fisheries management systems or for particular types of fisheries, it may be difficult to demonstrate an ability to enforce relevant management measures, strategies and/or rules if violations are rare. This could be taken, in an outcome sense, to mean that monitoring, compliance and surveillance (MCS) is effective. An absence of violations (or absence of a record of sanctions and penalties for violations) does not necessarily indicate that compliance and enforcement are effective; it could mean that MCS is in fact ineffective and what is happening is an absence of detection.

**Assessing informal and traditional approaches in PI 3.2.3**

**GCB4.9.4 Assessments may consider the likelihood of infractions in a particular fishery as the basis for determining the suitability of the MCS system for the fishery.**

**GCB4.9.5 Evaluation of effectiveness of MCS in fisheries where a less formalized MCS system exists may consider the role and effectiveness of a range of factors in deterring illegal activity. These factors may include the following:**

- a. **social disapproval,**
- b. **prevailing norms**
- c. **self-monitoring**
- d. **presence of community fish watchers or wardens**
- e. **accessibility to the resource**
- f. **ability to smuggle catches onshore without detection**
- g. **mobility and homogeneity of the fisheries in the fishery**
- h. **exclusivity of access and market-related factors such as value, demand or preferences (e.g. preferences regarding size)**

**GCB4.9.6 The extent to which fishery participants are subject to fines, penalties or other repercussions, or disincentives such as public ‘naming and shaming’, for violating fishery customs, rules or regulations important for sustainability may also be considered. These may include fines and penalties imposed by community institutions or other local bodies.<sup>20</sup>**

***GCB4.10 Research Plan PI (PI 3.2.4)***

GCB4.10.1 This PI gives effect to Criterion P3, A8.

GCB4.10.2 Guidance to Annex CB clause CB4.10.2

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<sup>20</sup> TAB 19, date of application 14 November 2011

Low scores in P1 and P2 may be caused by lack of specific information or research programs to deliver them, whereas this performance indicator is concerned with the presence or otherwise of overall strategic research planning.

### ***GCB4.11 Monitoring and Management Performance Evaluation PI (PI 3.2.5)***

GCB4.11.1 This PI gives effect to the part of Criterion P3, A3 that relates to the management system having a process of monitoring and evaluating management performance, appropriate to the cultural context, scale and intensity of the fishery, and relevant to the whole system not just management outcomes

For each SG under this PI, relevant “parts” of the management system can include MCS (i.e., Compliance and Enforcement PI), research plan, feedback and response, and monitoring systems as required by the Management Strategy and Information PIs in P1 and P2.

GCB4.11.1 Guidance to CB4.11.1. Depending upon the scale and intensity of the fishery the external review for SG80 and SG100 could be:

- a. By another department within an agency.
- b. By another agency or organisation within the country.
- c. Through a government audit that is external to the fisheries management agency.
- d. By a peer organisation nationally or internationally.
- e. By external expert reviewers.

#### **Assessing informal approaches in 3.2.5**

**GCB4.11.3 Assessments against this PI may consider whether there are opportunities and/or forums for decision-makers to receive feedback on the management system. It should also consider other practices such as exchange of information between the community and the management institution. The regularity of such opportunities should be considered in scoring fisheries against this PI.<sup>21</sup>**

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<sup>21</sup> TAB 19, date of application 14 November 2011