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Analysis of the Marine Stewardship Council's policy on shark finning and the opportunity for adoption of a 'Fins Naturally Attached' policy in the MSC Fisheries Standard Review

Prepared by Dr. Iris Ziegler (*Sharkproject International)*, Amy Hammond (*Seahorse Environmental)*, Susan Millward (*Animal Welfare Institute*), Katie Woodroffe (*Shark Guardian*), Courtney Vail (*Oceanic Preservation Society)*, Dr. Leonardo Guida (*Australian Marine Conservation Society*), Alex Hofford (*WildAid UK*), Randall Arauz (*Fins Attached Marine Research and Conservation)*

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Executive Summary

- Shark and ray (hereafter referred to collectively as ‘sharks’) populations globally are on the brink of collapse, with more than 30% of all known shark species threatened with extinction due to industrial overfishing. While sharks are often caught as bycatch in the tuna and other teleost fisheries, they are also targeted for their meat and liver oil. However, the lucrative shark fin trade remains a main driver for fisheries to retain only the fins when targeting sharks and to retain the fins of incidentally caught sharks, including from species that are illegal to retain. In particular, oceanic shark species and some coastal ray species are most prone to be affected by the shark fin trade due to the high value of their fins and their endangered status. Out of 31 oceanic shark species, 16 are now classified as endangered or critically endangered by the IUCN and the global abundance of oceanic sharks and rays has declined by 71% since 1970 due to an 18-fold increase in relative fishing pressure.[1]
- In light of the severe and urgent threats faced by sharks, numerous but not all jurisdictions have implemented bans on finning to stop this unsustainable exploitation of sharks for their fins. However, the implemented methods to operationalise finning bans vary substantially showing varying degrees of effectiveness.
- This report analyses the effectiveness of the various methods and the reasons for their implementation in different jurisdictions, concluding that a Fins Naturally Attached (FNA) policy, when accompanied by adequate monitoring and surveillance measures to ensure compliance with the regulation, is now well-established as the only effective method to eliminate shark finning. Eliminating shark finning, alongside catch limits, retention bans, and bycatch reduction measures, will be an essential objective to prevent the extinction of many shark species, and the destabilising impact this will have on marine ecosystems.
- While several alternative policy options have been tested and remain in place in many regions, all of them contain substantial inadequacies and loopholes and create complexities in monitoring and enforcement. The report analyses those alternatives, including fin-to-carcass ratios, and fins artificially attached regulations.

[1]Pacoureau et al. (2021) Half a century of global declines in oceanic sharks and rays *Nature* 589

- This report also examines frequently used counter-arguments claiming that 'Fins Naturally Attached' (FNA) could not possibly be introduced for all fisheries and discusses the real drivers behind such claims. The derived conclusion demonstrates that none of those alleged barriers present viable impediments to adoption of a strict FNA policy in all fisheries interacting with sharks.

- The report reviews the policy on finning of the Marine Stewardship Council (MSC), who are among the world's leading marine ecolabels, and outlines why this has to date failed to achieve its intended outcome. Such a conclusion has also been reached by an increasing number of stakeholders. Although MSC publicly claims that the Standard requires fisheries to have a FNA in place at SG80 (the scoring level needed to maintain certification beyond the first five years) this claim is neither supported by the text of the Standard nor by real-life practice, and fisheries are routinely certified and recertified without having an FNA policy in place.

- MSC's failure to require FNA as a prerequisite for certification, i.e. at the entry level, is inconsistent with its stated 'zero tolerance' approach. Almost ten years after announcing its ban on finning, MSC is today still out of step with global trends in preventing finning from happening in its certified fisheries. FNA is required and implemented by a growing number of jurisdictions around the world, and demonstrated to be workable and effective in the respective jurisdictions. Given the escalating trend of FNA adoption around the world, this contradicts even with MSC's perception of its own position as being just behind the 'crest of the wave'.

- Consumers relying on MSC as an ecolabel for sustainable seafood should be able to expect with confidence, that shark finning is not happening in a certified fishery.

- The MSC's ongoing Fisheries Standard Review arguably represents the last opportunity for much-needed and long-overdue reform of its shark finning policy and MSC must seize this opportunity to strengthen its requirements. In the MSC's recent public consultation, only four of 35 respondents felt that MSC's requirements currently reflected best practice in prevention of shark finning and 20 of 35 stated that no policy other than FNA could deliver a similar level of confidence that finning was not taking place.

2 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/msc-fisheries-standard-review-consultation-summary-report---preventing-shark-finning---(october-2020).pdf?sfvrsn=f41b38c0_11

- Therefore, MSC should implement FNA as a prerequisite for certification of any fishery interacting with sharks – not allowing for any exemptions. Compliance with this FNA requirement should be ensured through adequate monitoring and surveillance measures, which support compliance but which should not be considered as a surrogate to replace the need for a FNA regulation in place as a baseline.

- The authors of this report conclude that MSC should translate its 'zero tolerance' claim into the practice of certification by introducing the best possible measure existing to prevent finning from happening and to detect incidences of finning when happening.

- While recently provided preliminary feedback[3] from MSC on proposed revision of the Standard reflects widespread stakeholder support for introduction of FNA at the entry level of SG60, the proposed exemptions allow certification based on alternative measures if effectiveness of such alternatives is confirmed by the relevant fisheries management authority. Such a flexible approach undermines the very definition and principle of a 'zero tolerance' on finning and the announced intent to "set a clear performance bar for all MSC certified fisheries [recognising] the increased adoption of Fins Naturally Attached policies worldwide".[4] Furthermore, this report demonstrates how the exemptions and interpretations of what is considered adequate or effective currently in place for SG80 have continuously failed to support a ban on finning in the past, as evidenced in a number of fisheries.

3 https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions
4 https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions

In particular the following improvements in line with the findings of the report are therefore provided as a summary recommendation:

- Any fisheries interacting with sharks as primary, secondary or ETP species must, as a prerequisite and minimum requirement, have a FNA policy with no exemptions in place at the time of first certification. This must apply to all scoring guideposts, i.e. at SG60, 80 and 100, as a baseline to reflect the proclaimed ‘zero tolerance’ against finning.
- A fishery which does interact with sharks should then be subject to an assessment of the risk (low, medium, high) of finning occurring, based on objectively verifiable criteria such as fishing region, vessel and catch size, gear type, duration of trips, landing ports, transhipment at sea, and a history of finning incidences in the region or fishery.
- The fishery should then be scored requiring an escalating intensity of independent/external verification corresponding to the probability and extent at which finning might occur in the specific fishery; increased levels of monitoring and surveillance required for SG60, 80 and 100 provide a framework to incentivise fisheries to make improvements in terms of independent verification of compliance.

Analysis

1. Do the MSC's certification requirements regarding shark finning reflect the organisation's stated 'zero tolerance' approach?

This report analyses the effectiveness of various fisheries management measures in enacting shark finning bans. It also evaluates the implementation of the Marine Stewardship Council's (MSC) 2011 shark finning ban and analyses why the MSC's approach has so far failed to deliver its intended outcome.

This analysis includes an assessment of recent changes made to the MSC's Fisheries Certification Process (FCP), a document which details the requirements that Conformity Assessment Bodies follow in order to assess fisheries against the MSC Fisheries Standard such that they can become or remain MSC-certified. Changes to the FCP were initiated in response to stakeholder complaints[5] about ongoing incidences of finning in certified fisheries and systemic deficiencies of the Standard in achieving the MSC's stated "zero tolerance"[6] on finning.

Finally, the report reviews outcomes of the MSC's 2020 public consultation on "identifying further solutions to ensure MSC-certified fisheries are not involved in shark finning", one of 16 topics being reviewed as part of the current Fisheries Standard Review (FSR).[7] The stated aim of that consultation is to determine whether current shark finning requirements deliver the required confidence that shark finning is not occurring in MSC-certified fisheries or whether a revision of the Standard may be required.[8]

In analysing the evidence provided by MSC and stakeholders with regards to best practice in the prevention of shark finning, this report identifies opportunities for strengthening the current MSC requirements and presents recommendations for doing so.

5 Make Stewardship Count (2018) letter and accompanying annex. Series of joint letters 2018-2020 from groups of up to 80 stakeholders - October 2018, April 2019, January 2020 and October 2020. https://www.oceanographicmagazine.com/news/shark-finning-action-mcs/.
6 MSC (Sep 2020) Clarification of shark finning conviction scope requirements and the approach to take when there is evidence of shark finning in the UoA/ UoC (FCP v2.2 7.4.2.10; Fisheries Standard v2.01 PIs 1.2.1.e, 2.1.2.d, 2.2.2.d, SA2.4.3–SA2.4.7, SA3.5.2, SA3.8.2) https://mscportal.force.com/interpret/s/article/Clarification-of-shark-finning-conviction-scope-requirements-and-the-approach-to-take-when-there-is-evidence-of-shark-finning-in-the-UoA-UoC
7 MSC (2019) *Fisheries Standard Review: List of topics prioritised for review* https://www.msc.org/docs/default-source/default-document-library/stakeholders/msc-fisheries-standard-review---list-of-topics-2019.pdf?sfvrsn=2a3b4a6e_4
8 MSC *Shark finning: identifying further solutions* https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions

2. Commercial fishing and finning as major threats to shark populations

Further to the Intergovernmental Science-Policy Platform On Biodiversity and Ecosystem Services' warning that more than 30% of shark and ray species face extinction within decades (IPBES, 2019),[9] the December 2020 update of the IUCN's Red List of Threatened Species found 316 species of sharks and other chondrichthyans (sharks, rays, skates and chimaeras) are now considered to be threatened with extinction, many as a direct consequence of overharvesting for their meat, fins and oil.[10]

The collapse of shark populations also has significant, wider implications as sharks are known to play a vital role in maintaining balanced and functioning ecosystems, and also to contribute to the ocean's carbon sequestration potential,[11] thus helping to hold climate change in check. Therefore, conservation organisations have long highlighted shark conservation as a top priority for governments, Regional Fisheries Management Organisations (RFMOs), fishery managers, the retail sector and civil society, to safeguard seafood supplies, the future of our oceans and indeed the entire planet.

Since the 1950s, the biggest threat facing sharks globally has been industrial fishing.[12] Sharks are both targeted specifically by fishers and also caught in huge numbers as bycatch by fishing gear such as longlines, gillnets, trawls or associated purse seines (especially when associated with drifting Fish Aggregating Devices = dFADs). Consequently, an estimated 63—273 million sharks are killed each year by fishing activities.[13] Sharks are particularly vulnerable to overfishing because many species are slow-growing, late to mature and have low reproductive rates, many populations of these vulnerable top predators are now at the brink of collapse.[14]

As the overfishing of shark species is fuelled in large part by the high demand for shark products including fins,[15] a key element of safeguarding shark populations must be eliminating the inhumane and unsustainable practice of shark finning — the process of cutting off the fins of a shark and discarding its body at sea, often while the animal is still alive.

9 IPBES *Media Release: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating'* https://ipbes.net/news/Media-Release-Global-Assessment
10 TRAFFIC (2020) IUCN Red List update highlights perilous state of world shark populations https://www.traffic.org/news/iucn-red-list-update-highlights-perilous-state-of-world-shark-populations/
11 Mariani et al. (2020) *Let more big fish sink: Fisheries prevent blue carbon sequestration – half in unprofitable areas* Science Advances 6(44) https://advances.sciencemag.org/content/6/44/eabb4848
12 https://www.cms.int/sharks/en/node/4224
13 Worm et al. (2013) *Global catches, exploitation rates, and rebuilding options for sharks* Marine Policy 40: 194-204 https://doi.org/10.1016/j.marpol.2012.12.034
14 Joint Position Statement for ICCAT 2020: An Emergency Call for Shortfin Mako Sharks in the Atlantic signed by 38 signatories https://www.sharkproject.org/wp-content/uploads/2020/10/Joint_Statement_ICCAT_PLEN_Oct21_2020_final.pdf
15 Dulvy et al; IUCN SSG; accessed in Nov. 2020 https://www.iucnssg.org/uploads/5/4/1/2/54120303/rl_assessment_results_190124.pdf

Shark fins © Marcin Kilarski

Dried shark fins © Hendrik Luecke

Shark finning is a wasteful and cruel practice, which also makes effective fisheries management impossible[16] as neither the real numbers nor the species caught can be accurately identified. Consequently, it has been banned in many jurisdictions since the 2000s, albeit with varying levels of requirements in place to operationalise those bans.[17] Unfortunately, despite its illegality in many jurisdictions and its violation of the UN FAO's Code of Conduct for Responsible Fisheries, shark finning continues in many areas: a recent review reported that nine of the 43 nations with highest levels of shark fishing had no finning ban at all and bans could not be verified for a further nine.[18] Furthermore, weak enforcement and the high monetary incentives associated with the fin trade impede compliance with existing bans.

While eliminating shark finning alone will not guarantee the conservation of shark populations, without doing so there is little chance of saving the ocean's top predator: while a lucrative market still exists for their fins, there is little incentive to reduce shark catch or bycatch.

16 The Shark Trust *Shark Threats* https://www.sharktrust.org/shark-threats#:~:text=The%20biggest%20threat%20to%20sharks,vital%20roles%20in%20marine%20ecosystems
17 Shark Research Institute *Shark Finning Legislation* https://www.sharks.org/shark-finning-legislation
18 Brautigam, A. (2020) *Best Practice in the Prevention of Shark Finning. Published by the Marine Stewardship Council* https://www.msc.org/docs/default-source/default-document-library/stakeholders/best-practice-in-the-prevention-of-shark-finning-report.pdf?sfvrsn=3f26ac1c_4

3. A review of existing legislation: Weaknesses in ratio-based approaches

In light of the severe threats faced by sharks, a significant number of jurisdictions[19] have now implemented bans on shark finning, alongside other measures. However, jurisdictions with existing bans on shark finning have applied a variety of different requirements to operationalise and enforce those bans. Some rely upon a fin-to-carcass ratio, which allows fishers to remove shark fins at sea, as long as the total weight of fins landed does not exceed a certain percentage (usually 3.5—5%) of the total green weight (i.e. weight before processing) of bodies. As fishers prefer removal of fins at sea because it enables more efficient storage, ratio-based policies are often intended as a compromise.[20]

However, a number of ambiguities and loopholes have been identified in the literature, making ratio-based approaches an ineffective means of operationalising a ban on shark finning:

1. Ratios tend to compare the weight of fins to the whole-body weight of sharks. However, sharks are usually landed gutted and beheaded, rather than whole. In such cases, weights cannot be assessed against the ratio directly and monitoring must rely on conversion factors,[21] leaving scope for interpretation and ambiguity.

2. Both ratios and conversion factors are difficult to determine, for reasons including that:

    a. Individual nations or fleets may use different fin-cutting procedures which can affect the fin-to-carcass ratio.[22] Additionally, most harvest only the primary fin set but some harvest secondary fins as well,[23] which also affects ratios.

    b. Different shark species have considerably different fin-to-carcass ratios.[24] A review found mean ratios ranging from 1.06% (nervous shark *Carcharhinus cautus*) to 10.90% (smalltooth sawfish *Pristis pectinata).*[25]

    c. Even where a species-specific ratio is established, monitoring would require that observers be able to identify species by carcass or fins alone, which is very difficult and therefore makes enforcement challenging.[26]

19 Animal Welfare Institute (2020) *International Shark Finning Bans and Policies* https://awionline.org/content/international-shark-finning-bans-and-policies
20 Biery and Pauly (2012) A global review of species-specific shark-fin-to-body-mass ratios and relevant legislation Journal of Fish Biology 80:1643-1677 http://www.fao.org/3/a-bh072e.pdf
21 Oceana (2011) *Shark Finning and the EU* https://eu.oceana.org/sites/default/files/oceana_finning_feb_2011_11.pdf
22 Oceana (2010) *Transforming shark finning bans: towards a real and effective finning ban in ICCAT* https://oceana.org/sites/default/files/euo/ICCAT_Shark_Finning_English.pdf
23 and 24 Cortés and Neer (2006) *Preliminary reassessment of the validity of the 5% fin to carcass weight ratio for sharks* https://www.researchgate.net/publication/254006867_Preliminary_reassessment_of_the_validity_of_the_5_fin_to_carcass_weight_ratio_for_sharks
25 and 26 Biery and Pauly (2012) (as above)

3. Removing fins onboard and landing them separately from carcasses also precludes the collection of critical catch data such as species identification and species-specific estimates of maturity, length and sex, all of which are essential for assessing population trends and informing effective management.[27]

4. In allowing separation of fins from carcasses, ratio-based policies provide an opportunity for ‘high-grading’. This is where fishers mix carcasses and fins from sharks of different species or sizes, e.g. combining higher-value fins with smaller carcasses that occupy less hold space.

Where ratios are set too high, this leaves space for undetected finning to take place as it can occur while the weights of landed fins and carcasses may still produce an ‘acceptable’ ratio. All of this is almost impossible to verify through inspections at sea or at the point of landing, or even by on-board observers who may not be able to observe 100% of all activities on board.[28]

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26 Biery and Pauly (2012) (as above)
27 Oceana (2011) (as above)

4. A Review of existing legislation: Why 'Fins Naturally Attached' is acknowledged as the only effective means of preventing finning

Given the above flaws, fin-to-carcass ratios are generally considered inadequate to prevent finning and it is increasingly acknowledged that in combination with complementary management measures, such as catch limits and comprehensive monitoring to ensure compliance, "the only guaranteed method to avoid shark finning is to land sharks with all fins attached".[29] A comprehensive review paper also acknowledges that "*Due to the complications presented by the development and enforcement of species- and fleet-specific regulations, finning bans which require that sharks be landed with fins attached are ideal. When sharks are landed with fins attached, it is easier for trained observers at landing sites to record the number, mass and species of sharks landed, making data collection and monitoring more straightforward and accurate.*"[30]

A FNA policy is one which stipulates that fishers cannot land a shark without all of its fins naturally intact on the body and cannot possess, trans-ship or land fins that are not naturally attached to the corresponding carcass. Over the past 15 years or so, a growing number of governments and RFMOs have adopted 'Fins Naturally Attached' (FNA) policies, in line with scientific and management best practice as the only way to effectively enforce a shark finning ban.

To date, FNA policies are in place in a growing number of jurisdictions including the EU (2013), US (2010), UK (2009), India (2013), Costa Rica (2006), South Africa (1998), Brazil (2012), Cabo Verde (2014), El Salvador (2012), Sierra Leone (2019) and Canada (2019),[31] as well as several RFMOs including NEAFC (2014), NAFO (2016) and GFCM (2018). The EU's (2013) shark finning resolution[32] also notes that the United Nations General Assembly's annual resolutions on sustainable fisheries since 2007, the 2008 IUCN Global Policy against shark finning, and the 2010 meeting of the Fish Stocks Agreement all called on nations to take measures to require that all sharks are landed with FNA, demonstrating that this policy has been recognised as a desirable target for almost two decades now.

28 Oceana (2011) (as above)
29 Cortés, E. and Neer, J.A., 2006. *Preliminary reassessment of the validity of the 5% fin to carcass weight ratio for sharks*. Collect. Vol. Sci. Pap. ICCAT 59(3): 1025-1036.
30 Biery and Pauly (2012) (as above)
31 https://awionline.org/content/international-shark-finning-bans-and-policies
32 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0605&from=FR

Most FNA regulations allow for partial slicing of fins to fold them over for storage with the fins remaining attached, as well as bleeding, gutting, skinning and beheading of sharks to facilitate storage and preservation of the meat. Some have, however, endorsed stricter requirements preventing the beheading and skinning of sharks at sea to facilitate identification of species at landing (GFCM 2018).[33] In addition to supporting vital data collection, FNA policies significantly facilitate enforcement: if such a policy is in place, there can be no ambiguity — if fins are discovered, for example during an inspection at sea or at port, it is clear that a breach has taken place and action is required.

A recent report commissioned by the MSC and authored by an independent expert Amie Bräutigam[34] also highlighted that "*there has been a steady evolution over the past decade at least towards a FNA requirement for fisheries landing sharks, and FNA is widely considered to be 'best practice' not only in ensuring that shark finning is not occurring but also in enabling fisheries monitoring at the level necessary to support adaptive management of these vulnerable species*", finding that 19 of the world's 43 foremost shark fishing nations (i.e. 44%) had a FNA policy in place for at least some fisheries under their jurisdiction. Notably, this work also found that these 19 nations represent 90% of the total 21 countries examined where finning was banned in legislation.

Given the extent of uptake ("*there has been – and continues to be – evolution in the adoption of FNA, not only by an increasing number of fishing entities but also in its being expanded to a wider fleet or greater number of fisheries under the jurisdiction of individual fishing entities*"), **it appears that Fins Naturally Attached is no longer just 'best practice' in both a scientific and management sense of the term, but is increasingly considered to be a minimum requirement or prerequisite for sustainable fishery management. Certainly, it is the preferred global method for operationalising finning bans, such as the ban that MSC has in place.**

33 Project Aware *Stronger Finning Ban Agreed for Mediterranean Sharks* https://www.projectaware.org/news/stronger-finning-ban-agreed-mediterranean-sharks
34 Brautigam, A. 2020. *Best Practice in the Prevention of Shark Finning*. Published by the Marine Stewardship Council https://www.msc.org/docs/default-source/default-document-library/stakeholders/best-practice-in-the-prevention-of-shark-finning-report.pdf?sfvrsn=3f26ac1c_4
35 As above

5. Review of Marine Stewardship Council requirements for the assessment and surveillance of shark finning

The MSC resolved at its December 2011 Board Meeting that shark finning should not be undertaken in certified fisheries, effective from March 2013.[36] As such, MSC clearly opposes the cruel and wasteful practice of finning, which has been one of the main drivers of the dramatic decline in shark populations over the last 50 years. However, it is unclear whether the MSC has achieved its stated intent of ensuring that fisheries engaged in shark finning are not eligible for certification. Nearly ten years later, MSC has yet to implement strong enough requirements in its certification standard. Specifically, it still lags far behind in not implementing the 'best practice' of Fins Naturally Attached as a minimum requirement for certification, given that at least six fishing nations and three RFMOs have implemented Fins Naturally Attached since 2013.[37]

In 2018, the MSC initiated a new Fisheries Standard Review (FSR) to review the current Fisheries Standard v2.01, which details requirements a fishery must meet in order to claim its fish come from a well-managed and sustainable source. The Fisheries Standard is reviewed on a five-yearly basis. The topics covered by the present review were published by MSC in a Terms of Reference in January 2019[38] and include a review of the implementation and outcome of the shark finning requirements in the Standard.

The MSC's decision to include shark finning in the FSR may have been influenced by several calls for reform from shark conservation NGOs, the Make Stewardship Count Coalition,[39] and a broad group of signatories from academia, conservation, retail and industry that has written several open letters to the MSC[40] over the last three years.

Those letters highlighted the continuation of finning in MSC-certified fisheries and deficiencies in the Standard and certification process with regards to finning, including the lack of a precautionary approach during the assessment of fisheries, the lack of consistency in assessing and scoring the occurrence of finning during certifications, and the impact of this inconsistency on consumers. They also demonstrated that these concerns were supported by various examples of MSC-certified tuna fisheries, highlighting a number of fisheries certified since 2012 despite available evidence of finning or without sufficient proof that finning does not take place. In particular, serious concerns were raised around the 2018 recertification of the PNA fishery despite 429 reported incidences of finning between 2012—2015 (2015 was the most recent data available at the time)[42] and no proof of adequate sanctions.

36 MSC (2011) MSC Board statement on shark finning https://www.msc.org/media-centre/press-releases/msc-board-statement-on-shark-finning-
37 Brautigam (2020) (as above)
38 https://www.msc.org/docs/default-source/default-document-library/stakeholders/fsr-terms-of-reference.pdf?sfvrsn=c8d8b5b9_12
39 https://www.make-stewardship-count.org/wp-content/uploads/2018/02/Annex-to-Open-Letter-to-MSC_FINAL_January-2018.pdf
40 Series of joint letters 2018-2020 from groups of more than 80 stakeholders - October 2018, April 2019, January 2020 and October 2020.
41 Open Letter from 55 stakeholders sent to the board of MSC on 5 April, 2019 https://www.sharkproject.org/wp-content/uploads/2020/02/shark-finning-letter-April-5th-2019_final.pdf
42 PNA Western and Central Pacific skipjack and yellowfin, unassociated/non FAD set, tuna purse seine fishery, Public Certification Report; March, 2018; p 59 (Table 16)

5.1. Shark finning requirements under Fisheries Standard v2.01

Conservation groups have been requesting stronger requirements and the implementation of a Fins Naturally Attached policy since the MSC's 2011 decision to ban finning. For example, in their submission to the 2019 shark finning consultation[43] the Make Stewardship Count coalition noted that "the consultation starting point in 2011 was to implement 5% for SG60 and Fins Naturally Attached for SG80 — the global best practice. However, in the third round of discussion in late 2012, MSC significantly shifted from this clear line, mystifying stakeholders as to the decision-making process and resulting in the complicated scoring with loopholes that are in the Standard today."[44]

Nevertheless, the requirements implemented at that time and in effect today through v2.01 of the Fisheries Standard (see below)[45] still do not require Fins Naturally Attached even at higher-scoring levels. In a recent interview, Head of Fisheries Standards Operation at the MSC Tim Davies stated that "*whatever we decide, we're not going to be changing the requirement that FNA is required at SG80 level*".[46] However, this claim is at odds with the current text of the Standard and certification practice, which are as follows –

The Scoring Guideposts (SGs) set out in the Fisheries Standard for shark finning Performance Indicators (PIs) are:

- SG60: 'it is likely that shark finning is not taking place'
- SG80: 'it is highly likely that shark finning is not taking place'
- SG100: 'there is a high degree of certainty that shark finning is not taking place'.

To score the fishery at **SG60** (**the minimum required score for certification**) on the shark finning scoring issue**,** the Fisheries Standard outlines[47] that one of the following should apply:

1) SA2.4.5.1: If fins are cut on board:
    a) There are regulations in place governing the management of sharks;
    b) Shark fins and carcasses shall be landed together in compliance with a ratio specifically relevant for the species, fishing fleet and initial post-catch processing; and
        i) The team shall document the justification for using the specific ratio.
    c) Good external validation of the vessels' activities is available to confirm that it is likely that shark finning is not taking place.

43 MSC (2019) *MSC opens consultations on unit of assessment and shark finning* https://www.msc.org/media-centre/press-releases/press-release/msc-opens-consultations-on-compartmentalisation-and-shark-finning
44 MSC (2019) *Shark finning consultation feedback table* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/msc-shark-finning-consultation-feedback-table-march-2019.pdf?sfvrsn=38d73cfe_2
45 MSC (2018) MSC Fisheries Standard v2.01 (31 August 2018) https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v2-01.pdf?sfvrsn=8ecb3272_13
46 Does the MSC's policy on shark finning have enough bite? World ocean Initiative, December 4 2020 https://www.woi.economist.com/does-the-mscs-policy-on-shark-finning-have-enough-bite/
47 MSC (2018) MSC Fisheries Standard v2.01 (31 August 2018); page 20 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v2-01.pdf?sfvrsn=8ecb3272_13

2) SA2.4.5.2: If sharks are processed on board:

   a) There are regulations in place governing the management of sharks;

   b) There is full documentation of all shark bodies and body parts; and

   c) Some external validation of the vessels' activities is available to confirm that it is likely that shark finning is not taking place.

To score the fishery at **SG80 (the level described by MSC as 'best practice'[48] which is required to maintain certification after fulfilment of the conditions issued at the time of certification)** on the shark finning scoring issue, the expectation shall be that one of the following sub-paragraphs applies:

1) SA2.4.6.1: All sharks are landed with fins naturally attached;

2) SA2.4.6.2: If sharks are processed on board:

   a) There are regulations in place governing the management of sharks;

   b) There is full documentation of the destination of shark bodies and body parts; and

   c) Good external validation of the vessels' activities is available to confirm that it is highly likely that shark finning is not taking place.

To score the fishery at **SG100 ('state of the art'[49] meaning that no further improvement is required)** on the shark finning scoring issue, the expectation shall be that one of the following sub-paragraphs applies:

1) SA2.4.7.1: If sharks are landed with fins naturally attached, there is some external validation such that there is a high degree of certainty that shark finning is not taking place;

2) SA2.4.7.2: If sharks are processed on board:

   a) There are comprehensive regulations in place governing the management of sharks;

   b) There is full documentation of the destination of all shark bodies and body parts; and

   c) Comprehensive external validation of the vessels' activities is available to confirm with a high degree of certainty that shark finning is not taking place.

48 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/survey/msc-shark-finning-consultation-workshop-materials-jul-2020.pdf?sfvrsn=b4864772_2 (p. 4)
49 As above

Within the accompanying Guidance[50] to the Standard, which states that "[t]he assessment team should use their expert judgement concerning the actual validation methods available and their ability to confirm the likelihood that shark finning is not taking place", some additional advice is also provided. For example, the Guidance states that:

- At SG60 "some external validation" should be understood to indicate a validation level equivalent to a nominal observer coverage of 5% of effort, although the CAB may accept other rates and alternative measures/evidence (e.g. dockside monitoring) with sufficient justification that the same scientific outcome (likely confidence that finning is not taking place) is delivered.
- At SG80 "good external validation" should be understood to indicate a validation level equivalent to a nominal observer coverage of 20% of effort, although the CAB may accept other rates and alternative measures/evidence with sufficient justification that the same scientific outcome (highly likely confidence that finning is not taking place) is delivered.
- At SG100 "comprehensive external validation" is required. This gives consideration of the continuity of data collection, precision and accuracy of information, and any bias, etc., that is capable of supporting the measures in place given the level of precaution that is implicit in the measures and the ability of the measures for detecting any changes.

The Guidance also acknowledges that "[t]he MSC considers that a policy requiring the landing of all sharks with fins naturally attached is the most rigorous approach to ensuring that shark finning is not occurring,"[51] yet this policy is not even mandated for SG80 or SG100 with an accommodation that "in some fisheries this may be practically difficult to achieve when sharks are destined for processing and utilisation, and therefore also recognises that landing fins and other shark parts separately, including as meal, may be allowed if adequately regulated and observed". An accommodation to the Fins Naturally Attached requirement Mr Davies obviously did not want to highlight when saying, "[w]e recognised when we introduced it that it is the most rigorous way of limiting the opportunity for shark finning to occur, and it gives us the confidence that shark finning doesn't happen on a vessel."[53]

50 MSC (2018) *Fisheries Standard v2.01* (p. 37 of the accompanying guidance) https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v2-01.pdf?sfvrsn=8ecb3272_13
51 and 52 MSC (2018) *Fisheries Standard v. 2.01* (p 36 of Guidance section)
53 Does the MSC's policy on shark finning have enough bite? World Ocean Initiative, 4 December 2020 https://www.woi.economist.com/does-the-mscs-policy-on-shark-finning-have-enough-bite/

5.2. Shark finning requirements under the Fishery Certification Process v2.2.

The Fishery Certification Process outlines the process that CABs (Conformity Assessment Bodies) must comply with during the assessment and certification of a fishery. Following documented evidence of incidences of finning in certified fisheries and continued criticism from stakeholder groups that the existing Fisheries Standard requirements are not adequate to prevent shark finning, a consultation was conducted in 2019[54] on two options for the new version of the Fishery Certification Process (FCP v2.2[55]). The two options consulted on were:

- a further review of the requirements as part of the upcoming FSR with a target release in 2021 and three- year implementation period, or
- the introduction of a new scope requirement for certification as part of FCP v2.2, with target release in March 2020 and a six months' implementation period. The proposed scope change would require that "Individual legal entities that have been successfully prosecuted for incidences of shark finning within the last two years will be deemed 'out of scope' for MSC certification and will not be eligible for inclusion within a Unit of Certification."[56]

A number of stakeholders stated in their submissions at the time that neither option was satisfactory. 12 of 30 submissions[57] expressed a wish to see clear improvements from MSC, 11 rated the proposed scope change (Option 2) as unacceptable and eight found the proposed measure ineffective to prevent finning from occurring. When asked which other options should be considered, eight respondents explicitly named a FNA policy, although this had not been offered as an option for consultation. MSC nonetheless adopted the proposed scope change (Option 2), rewording the requirement for implementation as follows: "from September 2020, the vessel of any company or fishery *convicted* [emphasis added] of shark finning will not be eligible to apply for MSC certification for at least two years."[58] Many stakeholders, including WWF,[59] Sharkproject[60] and a large group of signatories[61] from NGOs, retail and academia, subsequently expressed dissatisfaction with the outcome of the consultation, for reasons including that prosecutions and convictions of finning incidents are extremely rare. It is generally difficult to detect incidences of finning in the first place, even in jurisdictions where finning is officially prohibited, for reasons including low observer levels, few inspections at sea and in port, or intimidation of observers. Furthermore, even where cases are identified and followed up, many result in fines rather than prosecutions, let alone convictions, as evident in the MSC-certified PNA fishery.[62]

54 https://www.msc.org/media-centre/press-releases/press-release/msc-opens-consultations-on-compartmentalisation-and-shark-finning
55 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-v2-2.pdf
56 MSC March 2019 Shark Finning consultation survey; submitted by Make Stewardship Count https://www.make-stewardship-count.org/wp-content/uploads/2019/04/Shark-Finning_Consultation_submitted.pdf
57 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/msc-shark-finning-consultation-feedback-table-march-2019.pdf?sfvrsn=38d73cfe_2
58 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-2-2-summary-of-changes.pdf (p.7)
59 WWF statement on MSC's lack of reform; 1 April 2020 https://www.wwf.mg/en/food/?uNewsID=361757
60 Press Release from Sharkproject International; 4 February 2020 https://www.sharkproject.org/presse/
61 Open Letter sent to MSC Board on 31 January 2020 https://www.sharkproject.org/wp-content/uploads/2020/02/31-January-2020-Letter-to-MSC-Board-Shark-Finning.pdf
62 PNA Western and Central Pacific Skipjack and Yellowfin Unassociated/non FAD set tuna purse seine fishery, 1st surveillance report 2019, MSC-SA Template 2.01 LR 20190402, page 43 https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin- unassociated-non-fad-set-tuna-purse-seine/@@assessments

5.3. The role of the MSC's interpretation log in the assessment of shark finning

Alongside the introduction of FCP v2.2, the MSC also withdrew its previous interpretation[63] on shark finning, which allowed CABs to accept "rare and isolated cases of shark finning" as long as it was not systematic within the fishery. According to this interpretation, which was not made publicly available until 2018, "[i]f only one or two cases have been reported, for example, and the vessel/s involved have been appropriately sanctioned, then the team may still conclude that it is likely or highly likely that shark finning is not taking place in any significant way."

This interpretation provided the justification for the recertification of the PNA fishery, as concluded by the Independent Adjudicator who upheld the determination for the recertification of the fishery in 2018 against the objection filed by IPNLF[64] in 2017. When the interpretation log was made public in 2018, it was criticised by stakeholders not being in line with, or indeed contradicting, the MSC's finning ban.[65] It can therefore be suggested that the withdrawal of this interpretation, rather than the changes made in FCP v2.2, represents the strongest positive step towards "strengthening requirements against finning."[66] After removal of this interpretation, a CAB can no longer justify scoring a fishery at SG80 claiming that 'no systematic finning' has occurred[67] as was the case during the recertification of the PNA fishery in 2018, despite clear evidence of hundreds of cases of shark finning.

The previous interpretation has now been replaced with a new one, which outlines guidance with regards to the FCP v2.2 scope change and its application during a fishery assessment or when the CAB is provided with evidence of finning occurring in a fishery.[68] It remains to be seen how this guidance will be applied in practice, for example whether the new FCP and interpretation will result in *only* convictions being considered as evidence, or how it will be revised by further interpretations in the future. The current assessment of a scope extension for the PNA fishery to include the FAD part of the fishery into the MSC certification may therefore provide a showcase example on the effectiveness or otherwise of the new scope requirement in the FCP v.2.2 and this new interpretation log.

63 MSC Interpretation Log (25.09.2020) RETRACTED: Shark finning requirements (FCR v 2.0 – Annex SA PI 1.2.1, 2.1.2, 2.2.2, SA2.4.3-7) https://mscportal.force.com/interpret/s/article/Shark-finning-requirements-1527262010507

64 Marine Stewardship Council Independent Adjudication in the matter of PNA Western and Central Pacific Skipjack and Yellowfin Unassociated/ Non-FAD Set Tuna Purse Seine Fishery *Final Decision of the Independent Adjudicator 28 February 2018*

65 https://www.sharkproject.org/wp-content/uploads/2020/02/31-January-2020-Letter-to-MSC-Board-Shark-Finning.pdf; and https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/msc-shark-finning-consultation-feedback-table-march-2019.pdf

66 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-2-2-summary-of-changes.pdf

67 Marine Stewardship Council Independent Adjudication in the matter of PNA Western and Central Pacific Skipjack and Yellowfin Unassociated/Non-FAD Set Tuna Purse Seine Fishery *Final Decision of the Independent Adjudicator 28 February 2018*

68 MSC Interpretation Log (08.09.2020) Clarification of shark finning conviction scope requirements and the approach to take when there is evidence of shark finning in the UoA/UoC (FCP v2.2 7.4.2.10; Fisheries Standard v2.01 PIs 1.2.1.e., 2.1.2.d, 2.2.2.d, SA2.4.3-SA2.4.7, SA3.5.2, SA3.8.2) https://mscportal.force.com/interpret/s/article/Clarification-of-shark-finning-conviction-scope-requirements-and-the-approach-to-take-when-there-is-evidence-of-shark-finning-in-the-UoA-UoC

6. Do existing MSC requirements reflect a 'zero tolerance' approach to shark finning?

This paper argues that a 'zero tolerance' on finning is not currently reflected in the MSC Standard and Guidance, as a degree of uncertainty with regards to the occurrence of finning is considered to be acceptable at SG60 through to SG100 (as outlined above with reference to the requirements set out in the Fisheries Standard), despite the known risks and the challenges of compliance monitoring or enforcement. Some key concerns are as follows:

During the assessment of a fishery, finning is evaluated either in PI 1.2.1 under Principle 1 ('target fish stocks') when sharks are a target (primary) species or in PI 2.1.2 under Principle 2 ('environmental impact') when sharks are a bycatch (secondary) species. However, **the risk of finning occurring does not have to be scored at all if the shark falls under MSC's definition of Endangered, Threatened or Protected (ETP) species**. This appears inconsistent with 'zero tolerance' as those species assigned ETP status are the most vulnerable species requiring the highest protection and are often also the most valuable species in the international fin trade due to their large fins and the scarcity of their availability, thereby providing potentially higher commercial incentives for fisheries to retain their fins.

The Guidance advises CABs conducting fishery assessments that, regardless of a fishery's performance against the Performance Indicators relating to shark finning, CABs should not certify or maintain the certification of a fishery when there is "objective verifiable evidence that indicates shark finning is taking place."[69] Objective evidence is defined in MSC guidance as "any documented statement or fact based on observations, measurements or tests which can be verified",[70] a definition that is clearly much broader than just the *convictions* referred to in the scope requirement of the FCP. But this still leaves considerable scope for interpretation by the CAB. The CAB itself also has little opportunity to detect or verify incidences or evidence itself and is therefore heavily dependent on the fishery client to reveal such incidences, other than those in the public domain when prosecutions or convictions have taken place, which are comparatively rare.

69 MSC Fisheries Standard (p36 of Guidance section)
70 MSC Fisheries Standard (p36 of Guidance section)

Concerns with regards to the application of a 'zero tolerance' approach and the new interpretation log on finning are also apparent in the case of the announced (December 2020) scope extension for the PNA Fishery, including FAD sets into the certification. The CAB notes with regards to observer data for 2018 and 2019 provided for the scope extension reports on shark interactions and fate codes that "*[o]ne incidence of fins being retained and the trunk discarded was reported for 2018 (fate code 'DFR'). The 'Solomon Opal', as the vessel involved, is no longer eligible to fish on the PNA certificate (client, pers. comm.). In 2019 (and January 2020), seven incidences were recorded involving five vessels. […] The client has followed up on the recent cases and reported that they are unsubstantiated and that at this stage there are no grounds to remove these vessels from their MSC certificate.*"[71] Based on this communication, the CAB recommends scoring the fishery at SG80 for shark finning[72] without elucidating how many sharks have been finned during those recorded seven incidents in 2019 and 2020.

Furthermore, five incidences of finning had been reported in 2017 (data reported subsequent to the 2018 recertification of that fishery) and included two incidences in the FAD-associated part of the fishery.[73] Those incidences were not mentioned by the CAB in its December 2020 report, suggesting that the new FCP v2.2 scope requirement and the interpretation log are applied during assessments in such a way that only incidences that have happened within the last two years are considered and reviewed. A more holistic assessment of all existing evidence by the CAB would seem necessary in order to evaluate "objective verifiable evidence that indicates shark finning is taking place".[74]

It can therefore be suggested that a 'zero tolerance' approach would entail considerably more scrutiny in such evaluations. In particular, as this relates only to *reported* cases: there is a chance that additional cases may have gone unnoticed for example when no observer is present, as 100% observer coverage cannot be interpreted to mean that 100% of activity is observed. It should also be noted that there are numerous reports of observers being exposed to intimidation and threats, including in the WCPFC region.[75,76,77]

69 MSC Fisheries Standard (p36 of Guidance section)
70 MSC Fisheries Standard (p36 of Guidance section)
71 PNA Western and Central Pacific skipjack, yellowfin and bigeye tuna purse seine fishery all set types (FAD and non-FAD sets); Announcement Comment Draft Report; 18 December 2020 ; p62 https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-yellowfin-and-bigeye-tuna-purse-seine-fishery-fad-and-non-fad-sets/@@assessments
72 PNA Western and Central Pacific skipjack, yellowfin and bigeye tuna purse seine fishery all set types (FAD and non-FAD sets); Announcement Comment Draft Report; 18 December 2020 ; p102 https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-yellowfin-and-bigeye-tuna-purse-seine-fishery-fad-and-non-fad-sets/@@assessments
73 https://www.msc.org/uk/media-centre/press-releases/99-reduction-in-shark-finning-in-the-pna#:~:text=This%20research%20has%20provided%20the,across%20the%20non%2Dcertified%20fleet
74 MSC Fisheries Standard (p 36 of Guidance section)
75 Stuff *Death on the high seas; the mysterious death of a humble fishing observer* 12 April 2020
76 PACNEWS; 18 Papua New Guineans working as observers missing without a trace, 14 February 2018
77 Human Rights at Sea (2020) *Fisheries Observer Deaths at Sea, Human Rights and the Roles and Responsibilities of Fisheries Organisations* https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/

7. The current Fisheries Standard Review: An opportunity to make FNA a certification prerequisite

Almost ten years after announcing its ban on finning, MSC today appears to be out of step with the global trend in preventing that practice: with FNA required and implemented by a growing number of jurisdictions around the world, and demonstrated to be workable and effective in those, it could be concluded that MSC's policy of not requiring FNA in place even at the highest scoring level is inconsistent with its 'zero tolerance' approach, and, given the escalating trend of FNA adoption, even with MSC's perception of its own position as being just behind the "crest of the wave".[78]

Given the flaws and loopholes associated with ratio-based approaches, more and more stakeholders are questioning[79] why these are still allowed at any scoring level in a supposedly gold standard ecolabel which set out to define sustainable fisheries management and drive up standards across the sector.[80] With shark populations globally under huge pressure, these stakeholders have criticised the MSC for lagging years behind others (such as the EU's implementation of FNA requirements without exemptions) rather than leading on sustainability reform.

In announcing the Fisheries Standard Review, the MSC acknowledged that there are "*still concerns that the current requirements do not reflect global best practice or lead to consistent outcomes*", and therefore that the objective for this review is to determine whether "*our current shark finning requirements deliver the needed confidence that shark finning is not occurring in an MSC-certified fishery*" and to "*make sure we have the right incentives for fisheries seeking certification to actively improve their efforts to prevent shark finning*".[81] For the reasons covered in this report, its inclusion of shark finning was welcomed by many stakeholders[82] as the last opportunity to secure much-needed and long-overdue[83] reforms in this area, and specifically to address the MSC's much-criticised failure to require all sharks be landed with fins naturally attached as a prerequisite for certification, in line with the general trend of global fisheries management and as repeatedly called for by an increasing number of stakeholders.

78 During the 9 July finning workshop, Gonzalo Banda-Cruz (MSC Fisheries Assessment Manager, Seattle) stated that "we try to be on the crest of the wave and what we mean with that is just like even though we want to be obviously this changing force in the oceans, in the fisheries we also do not want to be too far ahead from what is happening in the world right now." https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf (p 28)

79 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

80 Watchdog Group Warns Certifier Over its Fisheries Standard Review; Press release Make Stewardship Count; 15 June 2020; https://www.make-stewardship-count.org/wp-content/uploads/2020/06/Press-ReleaseEnglish15June2020-1.pdf

81 MSC (2020) *Shark finning: identifying further solutions* https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions

82 For example, Make Stewardship Count (June 2020) *Watchdog Group Warns Certifier Over its Fisheries Standard Review* https://www.make-stewardship-count.org/wp-content/uploads/2020/06/Press-ReleaseEnglish15June2020-1.pdf

83 Several participants in the MSC's July 2020 consultation process highlighted how long they have been calling on MSC to address this, e.g.: "*We have been engaged with MSC on this issue since 2009. MSC's consultation documents in 2011 were also aimed at addressing the intention of the board to ensure no finning occurs in MSC fisheries. The consultation report at that time presented very similar evidence and discussion that requiring fins naturally attached policies was the best way to get at this intention. MSC's 2011 consultation report concludes that fins-attached methods are preferable from scientific perspectives, conservation perspectives, and for regulatory monitoring... We note this history as context and see this consultation as part of a long, ongoing discussion on this topic with MSC and an opportunity for MSC to course correct*.

In light of the long implementation periods which certified fisheries are given to adapt to new MSC requirements (the FSR timeframe has recently been extended and will not conclude until 2022[84] and fisheries will have until 2035 to close out conditions on certification[85]), there appears to be an obvious urgency for improvements being made now if they are to demonstrate effectiveness before shark populations collapse.

This ask was most recently summarised in an open letter signed by more than 80 individuals from NGOs, academia and industry, stating that **"evidence of shark finning *must* preclude a fishery from entering the certification process and all fisheries interacting with sharks as primary, secondary or ETP species must have a FNA policy with no exemptions in place as a prerequisite for certification. The fishery must also demonstrate compliance with the policy prior to, and throughout, certification with a level of monitoring and surveillance proportionate to the risk of finning occurring in that specific fishery.**"[86]

Alongside required policy changes, significant improvement was requested from MSC in terms of the involvement of stakeholders in policy and decision-making such that input is not limited to short windows of public consultation on predefined topics and questions and so the full range of perspectives and expertise can be incorporated into the policy development process to produce a stronger outcome, and perhaps do so more rapidly. The signatories also requested continued involvement in the next steps of Standard development in the form of observer status for upcoming TAB and STAC meetings and offering to present an alternative proposal to discuss with the Board. However, this was denied[87] by the MSC, as was a similar request from the Make Stewardship Count Coalition. Those denials might be considered to raise further concerns about the transparency and accessibility of the Standard Review to all stakeholders because the MSC's published terms of reference would have allowed for observers to participate.[88]

84 MSC (2020) *MSC to extend Fisheries Standard Review by 6 months* https://www.msc.org/media-centre/news-opinion/news/2020/10/06/msc-to-extend-fisheries-standard-review-by-six-months
85 MSC *The Fisheries Standard Review* https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review
86 https://www.sharkproject.org/wp-content/uploads/2020/11/Fins_Naturally_Attached_Letter_to_MSC-26102020.pdf
87 https://www.sharkproject.org/wp-content/uploads/2020/12/Letter_to_Signatories_Oct_2020_MSC_response26Oct.pdf
88 Eyes on the MSC Review – Big Blue Future or Big Blue Failure?, Press Release, Make Stewardship Count; 30 November 2020; https://www.make-stewardship-count.org/wp-content/uploads/2020/11/PressRelease30_11_2020.pdf

8. MSC public consultation in 2020 demonstrated broad support from stakeholders for the introduction of a Fins Naturally Attached policy

The MSC's 2020 public consultation process[89] indicated a significant degree of stakeholder support for a Fins Naturally Attached requirement. The MSC has published online the full transcripts of workshops held in July 2020 and the responses submitted to a subsequent online survey; the following section presents a summary of these resources. 35 stakeholders participated in the online survey and 49 stakeholders in the two consultation workshops held on 7 and 9 July 2020 (participation by stakeholder group summarised in Table 1).

Table 1. Stakeholder participation in MSC's public consultation on best practice in the prevention of shark finning as part of the FSR in July 2020[90]

Online Survey	July 7th Workshop	July 9th Workshop	Online Survey	Total
Non-governmental organisation	4	15	11	30
Conformity assessment/accreditation	2	5	3	10
Commercial wild harvest fisheries	3	3	3	9
Governance/management	4	0	2	6
Seafood supply chain	2	0	9	11
Comms/media	1	0	1	2
Academic/scientific	0	3	1	4
Other	4	2	0	6
Unknown	1	0	5	6
Total	21	28	35	84

89 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

90 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/msc-fisheries-standard-review-consultation-summary-report---preventing-shark-finning---(october-2020).pdf?sfvrsn=f41b38c0_11

Table 2 summarises responses to the seven most relevant questions from the survey, which revealed that 25 out of 35 respondents do not believe MSC requirements currently reflected best practice in management for prevention of shark finning, 30 of 35 believe there is a need for MSC to revise requirements related to the prevention of shark finning, and 20 of 35 do not believe that any policy other than FNA could deliver a similar level of confidence. Furthermore, 20 respondents stated that they were not aware of any instances that might prevent the implementation of a FNA policy in a fishery.[91]

Table 2: Summary of responses to MSC's recent public consultation[92]

Question	Yes	No	Don't know
In your opinion, do MSC requirements currently reflect global best practice in management for prevention of shark finning?	4	**25**	5
Do you think there is a need to revise the requirements related to the prevention of shark finning in the MSC Standard?	**30**	4	0
Are there instances in fisheries management where implementing a FNA policy is not possible or feasible?	5	**20**	8
Other than FNA, are there other policies that could deliver a similar level of confidence?	2	**20**	13
Open Questions			
Which types and levels of evidence you would expect to have in place from a fishery interacting with sharks, to provide confidence that shark finning is not occurring at a 'minimum acceptable level' (i.e. SG60).	**18** requested FNA at SG60		
How would you expect a zero-tolerance policy on shark finning to be implemented in the MSC Standard?	**16** requested at least having FNA in place		
What characteristics would you use to determine that a fishery is at 'high risk' of being engaged in shark finning?	**18** requested verifiable, objective risk criteria including inter alia target species, gear type/modifications, fishing region, transhipment, landing ports, vessel/catch size, history, overlap with shark hotspots, trip duration		

In response to open questions made as part of the survey, 20 of the 35 respondents also stated that they were not aware of any instances that might prevent the implementation of a FNA policy in a fishery, with 18 participants therefore requesting FNA at SG60 level in combination with verifiable, objective criteria to identify high-risk fisheries for finning, while 16 considered FNA as mandatory for a zero-tolerance policy.[93] Selected statements made in support of an FNA policy are listed in Box 1 below.

91 MSC (2020) *Annex IV: Feedback received to the online consultation form on evaluating MSC's requirements for the prevention of shark finning — questions 11, 12, 13, 14, 16, 20 and 22* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf
92 As above
93 and 94 MSC (2020) *Annex IV: Feedback received to the online consultation form on evaluating MSC's requirements for the prevention of shark finning — questions 11, 12, 13, 14, 16, 20 and 22* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

Box 1: A selection of comments made by stakeholders in public consultation responses also expressing widespread support for FNA among most stakeholders[94]

"MSC must implement the globally acknowledged best practice to prevent finning from taking place and this is without doubt FNA. It is not a nice to have but an absolutely mandatory requirement to demonstrate finning is not acceptable in MSC-certified fisheries."

"...consumers that buy MSC products *assume* that finning has not occurred in MSC-certified fisheries. If MSC extends its certification to fisheries that do not strictly enforce FNA, it is undercutting the value of its certification and misleading consumers."

"It remains the case that FNA is the minimum requirement needed to ensure MSC's intention is achieved. Fin-to-carcass weight ratios are rightly criticized as insufficient… The current MSC scoring and guidance allows for exceptions even to the fin-to-carcass ratio policy methods and, we argue, has undermined momentum towards more widespread adoption of Fins Naturally Attached policies in many jurisdictions."

"FNA is globally acknowledged best practice to prevent finning from happening and ensures that consumer confidence in MSC label can be upheld. An absence of FNA at the SG60 level is contradictory to MSC's 'zero tolerance' policy to shark finning and risks public credibility and trust in MSC."

"By not requiring Fins Naturally Attached policies, MSC lags behind the curve of global fisheries management rather than serving to drive improvements within that space as it should do."

"At [organisation name redacted], we don't believe that MSC requirements currently reflect global best practice in management for the prevention of shark finning. To be honest, it's astonishing that we are now in 2020 and still having this conversation 'Fins Naturally Attached' (FNA) policies are now a mainstream trend, having been adopted by many governments and even RFMOs. Clearly the MSC is failing in the conservation of shark species and is falling far behind global fisheries management best practice."

"I am aware that SG60 usually represents a minimum acceptable standard and SG80 would be considered global best practice. However in the exceptional case of shark finning where MSC has a zero-tolerance policy, I see no good reason why a FNA policy should not be considered a minimum acceptable standard given that it has already been global best practice for a decade. FNA should enter at SG60. This is the only appropriate response for a sustainability standard."

"Should the MSC truly want to reach its advertised (but increasingly questioned) vision 'of the world's oceans [to be] teeming with life', it should be blazing the trail in terms of global standards, not dragging its feet and responding to developments in fisheries management years after they've been well-established elsewhere. It is vital that a requirement for FNA policies in place in all fisheries interacting with sharks is introduced as part of the FSR accompanied by improved monitoring and compliance and greater standardisation and technical oversight by the MSC."

"FNA is the globally recognized best practice. Requiring that all sharks be landed with fins attached prevents finning at sea by prohibiting the practice of harvesting fins and discarding the body. It also helps with monitoring and enforcement, as it eliminates the ability for fishing vessels to exploit the system through the inconsistencies and loopholes of fin-to-carcass ratios. It is worth noting that a blanket FNA policy also relieves pressure on human fisheries observers (many of whom face tremendous pressures and even threats to their lives in the course of doing their work) by establishing a clear standard for transporting and landing shark fins — a standard that largely removes the ability to participate in shark finning."

"All policies other than FNA are open to loopholes, room for interpretation and difficulties in ensuring compliance. FNA is simple and effective and I cannot think of a valid reason why a fishery or the MSC would be resistant to adopting an FNA as a minimum acceptable standard."

Similarly strong opinions were made during the July 2020 workshops. This was particularly evident in the 9 July workshop where support for a FNA policy without exemptions at SG60 was favoured by a majority of participants. Kate Dewar, Fisheries Assessment Manager at MSC, summarised the first breakout discussion as follows: "*So we need to update all aspects of it particularly related to Fins Naturally Attached being best practice and possibly looking at implementing that across the board from SG60 upwards. There was a point that observation and external validation is a pretty key part of this. Those requirements need to be updated but there was a stress that actually this shouldn't just rely on observers per se but there should be other forms, consider electronic monitoring, for example.*"[95]

MSC Fisheries Assessment Manager Gonzalo Banda-Cruz added to this the following summary from another breakout group discussion: *"Besides from the fact that it will definitely reduce uncertainty, something else that was mentioned here was that there is the perception from some of the members that our guidance is creating loopholes that may help circumvent the best practice, or the intent of the MSC in this case, so that guidance is probably something that needs to be clearer and help to deal with. And there is also an issue regarding that maybe consumers are not so clear or they have not been made aware about exactly how this tender and the shark finning practices in this tender has these different levels and they are probably believing that shark finning is not occurring at all or at any level with complete certainty that shark finning is not occurring at all so that those grades of certainty are probably something that makes the standard all a bit not transparent… also something that was mentioned here is that those non-feasibility complaints that the industry has put on before at least in some of the participant's experience eventually when it's mandated by the state the industry adapt to them."*[96]

At the conclusion of the workshop Kate Dewar reported the outcome of discussions as follows: "*So everyone in our group seemed to be on the same page that Fins Naturally Attached should be a minimum entry criteria and then if we were going to continue those scoring guideposts then that would need to look at increasing the external validation over the scoring guideposts but fins naturally attached would be a constant throughout.* [underlined for emphasis] *But we did then touch on risk and how to manage that and there were similar points to you looking at indicators such as gear type, catch, incentives, look at regions... there was one point that actually if we want a zero-tolerance policy and stakeholders are expecting that, consumers expect that, it would be just simpler to just have a single scoring guidepost whereby all fisheries have to perform at that level and the last point was that just that the simpler it is the better it is, and reflecting on that I think also links to what people representing conformity assessment bodies have been saying in this session as well, that it needs to be auditable so something clear."*[97]

The discussion at the first workshop, on 7 July 2020, was not as conclusive, arguably due to lower NGO participation and greater seafood supply chain representation (see Table 1), with justifications made for the status quo and concerns voiced that FNA could impact the quality of catch or reduce profitability.

95 Annex IIIb: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning held on 9 July 2020 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf p 41

96 Annex IIIb: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning held on 9 July 2020 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf p 42

97 Annex IIIb: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning held on 9 July 2020 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf p 65

But during this workshop too, Kate Dewar reported back from a breakout group discussion that the conversation had "*also focused on the need for full utilisation as a key for that sustainability angle of the standard. And essentially, the group was a bit divided in whether the requirements need updating or not, but those that thought it did need updating, they were saying both the policies in place should be revised, looking at specifically a Fins Naturally Attached policy as that reflects best practice*"[98] [underlined for emphasis]. MSC's Adrian Gutteridge reported back from another discussion group the concerns of some participants that "*a Fins Naturally Attached policy might not be applicable for all fisheries. We have, you know, a fairly overwhelming perspective, in our breakout room, that external validation is the key and that it really is strong monitoring, control and surveillance is one of the things needed and that goes along with compliance*."[99]

In this context, however, it should be noted that many nations still do not have finning bans in operation (e.g. 18 of the 43 nations with highest shark fishing activities, either have not banned finning at all or the implementation of a ban is unknown/can't be verified[100]). Furthermore, concerns regarding the extent of monitoring and surveillance measures at sea and at port are numerous and even the mostly unambitious target levels of RFMOs for human observer coverage are still not met by many fisheries. For example, IOTC reported in 2020 that compliance with the requirement to carry out inspections for at least 5% of all landings and transhipment was very poor and several member states also did not have an observer programme at all or still don't meet the requested 5% coverage for human observers at sea in their fisheries.[101]

Although the outcomes of the first workshop may have been less conclusive than the second workshop, an ad hoc online polling conducted by the MSC during the workshop, resulted in nine out of 21 participants confirming that MSC requirements currently do not reflect global best practice for prevention of shark finning and ten out of 21 agreed that the requirements in the MSC Standard to prevent finning need to be revised.

During the workshop on 9 July, agreement in the ad hoc polling was even higher with 13 out of 23 respondents denying that MSC requirements currently reflect global best practice, with only three saying it does and 18 out of 18 respondents stating that revised Standard requirements are needed to prevent shark finning (Figure 1).

98 Annex IIIa: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning held on 7 July 2020 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiia--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(7-july-2020).pdf p 40

99 Annex IIIa: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning held on 7 July 2020https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiia--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(7-july-2020).pdf p 39/40

100 https://www.msc.org/docs/default-source/default-document-library/stakeholders/best-practice-in-the-prevention-of-shark-finning-report.pdf?sfvrsn=3f26ac1c_4

101 IOTC 2020. Report of the 17th Session of the Compliance Committee. By correspondence, 1—2 October 2020. IOTC–2020–CoC17–R[E], p 10

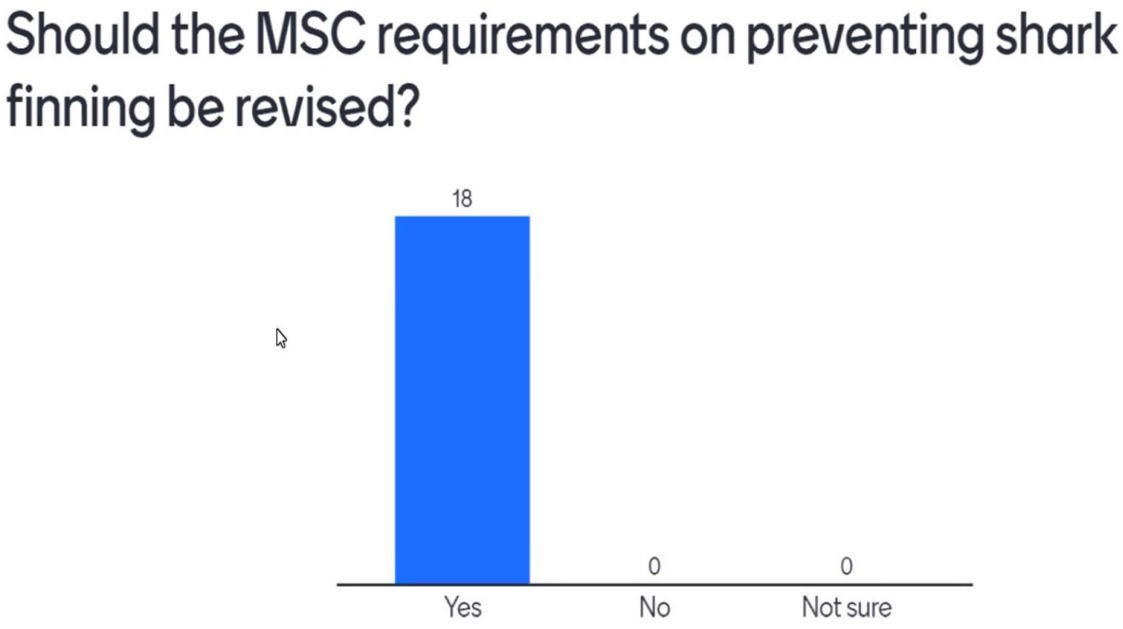

Figure 1: Results of ad hoc polling of participants during 9 July workshop

9. Evaluating arguments against Fins Naturally Attached

Despite the overall strong support for Fins Naturally Attached as best practice, reflected during the above consultation, there is a degree of disagreement on the topic between civil society and the industry as also revealed during the workshops. In particular, industry stakeholders pointed to potential logistical or financial challenges they could face in implementing FNA and concerns are often raised around the compatibility of FNA with on-board processing.

Similar arguments have been discussed extensively in the past. For example, the pros and cons of various alternatives were compared during the review of EU finning regulation, when one analysis concluded that "*prohibiting the removal of shark fins on board vessels is the only fail-safe, most reliable, least expensive means to prevent finning and measure compliance; this method is viable for freezer vessels and can facilitate the collection of much-needed, species-specific catch data*".[102]

It is also important to note that concerns raised are evidently not insurmountable as FNA policies have already been successfully implemented by a number and range of governments and RFMOs. For example, all US commercial shark fisheries other than smooth dogfish must operate with a Fins Naturally Attached requirement in place, as do all EU vessels within and outside EU waters.

The following section examines and evaluates some of the common arguments used to rebut calls for Fins Naturally Attached.

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102 Fowler, S. and Séret, B. 2010. Shark fins in. Europe: Implications for reforming the EU finning ban. European Elasmobranch Association and IUCN Shark. Specialist Group p 27 http://www.sharkadvocatesinternational.org/shark_fin_report_final.pdf

9.1. Could the same outcome be achieved using other approaches?

First, it should be noted that a finning ban alone will not eliminate the threats to shark populations and that science-based catch limits and effective bycatch reduction measures are also critically important. Working from the starting point of an existing ban on finning (such as the MSC has in place) there are two other major alternative approaches, asides from Fins Naturally Attached, to operationalising a ban: a) ratio-based approaches, and b) Fins Artificially Attached.

The scientific literature (as outlined above), as well as comments made by participants in the recent MSC workshops and consultations, indicate ambiguities and enforcement difficulties associated with both of these. These likely explain why 20 of 35 respondents to the July 2020 consultation felt no policies other than FNA could deliver a similar degree of confidence or equally facilitate auditing and assessment.[103] One participant in the 9 July 2020 workshop summarised this succinctly: "*… the truth is the only efficient way to avoid shark finning especially on board is to mandate the fins to be landed attached to the shark. Any other way of separating the fins on the body you're opening the door to shark finning.*"[104]

Ratio-based approaches: the shortcomings of these have been well-documented in an earlier section of this paper and largely explain the general drift away from these and towards FNA in global fisheries management, which is well-exemplified by the EU's policy development process. Following its 2003 ban on shark finning (Council Regulation (EC) No. 1185/2003), EU Member States were still allowed to issue 'special fishing permits' permitting fins to be removed from dead sharks on board. Permit holders were however required to keep records of the weight of shark fins and the remaining parts of sharks retained on board, transhipped or landed demonstrating a correlation between the weight of shark fins and carcasses landed (based on a 5% fin-to-carcass ratio). However, it was recognised that this regulation was insufficient to eliminate high-grading and, due to differences in fin-cutting techniques and the variability of fin size and weight of different shark species, its use could potentially lead to finning going undetected and was undermining data collection required to inform management. Recognising that countries (notably Spain and France) which had requested the exemptions to the removal of fins under 'special fishing permits' had not reported the required data, the EU decided to remove the possibility to apply for those exemptions. Consequently, the Regulation was amended by Regulation (EU) No. 605/2013, implementing a Fins Naturally Attached policy without exemptions.[105]

103 From July 2020 workshop transcripts: "*from an auditing standpoint obviously… a Fins Naturally Attached policy is the easiest, the most straightforward to assess… But really when it's the easiest to audit is when it's underpinned by Fins Naturally Attached policy because like others have raised in the plenary the whole percentages thing is just fraught with the ability to interpret and to argue, and… if you see a fin that's separated from a shark under any other circumstance you can explain it away but you can't really explain it away when fins are required to be attached to the trunk*."

104 MSC (2020) *Annex IIIb: Transcript from the online workshop on evaluating MSC's requirements for the prevention of shark finning 9 July 2020* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf

105 Regulation (EU) No 605/2013 of the European Parliament and of the Council of 12 June 2013 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0605

Fins Artificially Attached: Participants in the July 2020 MSC workshops also noted shortcomings with Fins Artificially Attached approaches, with comments including that "*artificial attachment can lead to high-grading. It can lead to additional material waste products out there and additional cost so depending on how you are proposing an artificial attachment, it may involve additional plastic… there's been many suggestions over the years and all of them have been found wanting and shown to have loopholes with them. So I wouldn't recommend FAA in any way as an alternative.*"[106]

An example of a Fins Artificially Attached approach is the WCPFC[107] CMM, which allows the cutting of fins at sea as an alternative to FNA. The CMM requests that fins can be clearly allocated to the corresponding carcass when cut at sea, either by putting fins and carcasses in a bag together, by binding them to the body with rope or wire, or by labelling corresponding carcasses and fins with unique tags. Upon request from WCPFC member states, exemptions from this regulation may be granted by the RFMO. This approach will be in place 2020—2023, at which point it will be re-evaluated. Therefore, while a recent MSC-commissioned report concludes that "*the FNA alternatives in CMM 19-04 and proposed waiver specifications may be instructive for the consideration of alternatives to FNA*",[108] in fact its potential effectiveness is yet to be determined. In face of the wealth of evidence available in support of FNA, there seems no justification why MSC should go down an exploratory route including a 'waiver' process, which is not in keeping with the MSC model.

A Fins Artificially Attached approach using bags or tags was one of six potential options considered when the European Union reviewed its shark finning policy but this was deemed impracticable, too complicated and too expensive given the volume of sharks caught by EU fisheries.[109] IOTC WPEB also concluded in 2008, that this method is not globally applicable and can really only be considered feasible for small-scale fisheries landing few sharks and having extensive surveillance monitoring in place.[110]

106 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiib--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(9-july-2020).pdf

107 WCPFC (2019) *CMM 2019-04 Conservation and Management Measure for Sharks* https://www.wcpfc.int/doc/cmm-2019-04/conservation-and-management-measure-sharks

108 https://www.msc.org/docs/default-source/default-document-library/stakeholders/best-practice-in-the-prevention-of-shark-finning-report.pdf?sfvrsn=3f26ac1c_4

109 and 110 Fowler, S. and Séret, B. 2010. Shark fins in. Europe: Implications for reforming the EU finning ban. European Elasmobranch Association and IUCN Shark. Specialist Group p 21 http://www.sharkadvocatesinternational.org/shark_fin_report_final.pdf

Another notable case study for the artificial attachment of fins is New Zealand, which applies a Fins Attached policy for blue sharks, requiring that fins are either folded, tied or otherwise attached to the trunk of the shark,[111] while spiny dogfish and all shark species for which no quota management system (QMS) is in place must be landed with Fins Naturally Attached. The rationale for this decision is not completely clear but it might have been a compromise to alleviate some concerns from the fishing industry by "allowing additional processing to be completed at sea so long as the fins are re-attached to enable inspection and confirmation of the 1:1 ratio"[112] and the knowledge that for "*fisheries where finning was previously common, including fisheries for the QMS species spiny dogfish and blue shark*"[113] the "*costs associated with landing dead sharks for which there is no market might create a substantial incentive to illegally discard and misreport shark catches, which may reduce the ability to accurately determine actual levels of shark mortality.*"[114]

As re-attaching fins artificially after cutting generates additional efforts and costs, it will only be effective if there is a strong incentive for the fishery or vigorous compliance monitoring in place, explaining why other approaches are in place for all other New Zealand shark species.

The impact analysis performed prior to the introduction of New Zealand's new fin ban regulation in 2014 also confirms[115] that commercial interests of the fishing industry, such as potentially lost revenues from fins, additional efforts for processing on land, reduced operational efficiency, and proclaimed reductions in product quality were the main driver for not having implemented a strict Fins (Naturally) Attached regulation throughout all shark species and especially for exempting seven of the nine species with a quota management (QMS) systems. QMS species make up the biggest part of catches, NZ$35 million of annual revenues from shark fishing, and export revenues of NZ$2.2 million from fins in 2013.[116]

Finally, Costa Rica previously initiated a Fins Artificially Attached policy after the Fishery Law of 2005 mandated the landing of sharks only if the fins were attached to sharks' bodies, thereby eliminating the fin-to-carcass ratio system that had been in place since 2003 (AJDIP/415-2003). However, on 7 June 2006, the Costa Rican Attorney General ruled that the correct interpretation of 'fins attached' required the fins to be naturally, not artificially, attached to the body (C-233-2006): according to the Attorney General's ruling,[117] allowing the separation of the fins at sea to later be attached by artificial means facilitated the circumvention of effective controls and was contrary to the spirit of a shark finning ban. Costa Rica has subsequently implemented a Fins Naturally Attached policy.

In conclusion, considering the efforts and logistics involved, a Fins Artificially Attached approach takes more time and is labour intensive, for both the crew and onboard observers, if done correctly, yet still opens up loopholes to hide finning and makes compliance monitoring and enforcement much more complicated and prone to fail delivering the desired outcomes. FNA is by far the best option.

111 http://extwprlegs1.fao.org/docs/pdf/nze155668.pdf and https://www.legislation.govt.nz/regulation/public/2001/0253/latest/whole.html ; p 35
112 https://www.mpi.govt.nz/dmsdocument/4434-Regulations-to-eliminate-shark-finning-in-New-Zealand-fisheries-Regulatory-Impact-Statement; p 15
113 https://www.mpi.govt.nz/dmsdocument/4434-Regulations-to-eliminate-shark-finning-in-New-Zealand-fisheries-Regulatory-Impact-Statement; p 15
114 https://www.mpi.govt.nz/dmsdocument/4434-Regulations-to-eliminate-shark-finning-in-New-Zealand-fisheries-Regulatory-Impact-Statement; p 24
115 https://www.mpi.govt.nz/dmsdocument/4434-Regulations-to-eliminate-shark-finning-in-New-Zealand-fisheries-Regulatory-Impact-Statement p.18/19
116 https://www.mpi.govt.nz/dmsdocument/4434-Regulations-to-eliminate-shark-finning-in-New-Zealand-fisheries-Regulatory-Impact-Statement
117 Jurado, J. 2006. Dictamen C-233-2006 del 7 de junio del 2006. Respuesta al "recurso de revocatoria con nulidad concomitante y reconsideración subsidiaria" contra el dictamen C-026-2006 interpuesta por INCOPESCA. Procuraduría General de la República. Costa Rica

9.2. Does a FNA requirement threaten product quality? Will compliance with FNA render fisheries economically unviable?

Many arguments made by industry stakeholders against FNA claim challenges for logistics and product quality, for example the freezer space required to store sharks with fins attached, the safety of fishers moving whole sharks into or out of the hold, and the possible ammoniation of shark meat due to urea content of the blood.[118]

It must be noted that all of the above concerns are evidently not insurmountable as a significant proportion of the worlds' fisheries are already operating with FNA in place, including all of the US' commercial shark fisheries (only smooth dogfish fisheries are exempt if meeting certain requirements) and the EU fleets, which land large quantities of blue and mako sharks. Indeed, the vast majority of on-board processing activities, such as freezing, beheading, skinning and bleeding can be conducted in compliance with FNA. Partial cutting and folding of fins can be done to facilitate storage and handling (advisory resources are available on such techniques[119]). However, on-board processing into fishmeal would obviously be incompatible with a FNA, which one respondent to MSC's recent consultation addressed as follows: "*if a fishery processes sharks on board into fishmeal such a fishery is almost impossible to control for compliance with all applicable CMMs — not just a FNA policy — and should therefore not be eligible for certification.*"[120]

For these reasons, the majority of respondents to MSC's recent consultation (20 of 33 respondents) did not find that there were any instances in fisheries management when implementing a FNA policy is not possible or feasible. In reality, the majority of comments stating otherwise might be driven by economic considerations. In this respect however, the underlying question is to what extent the MSC's role is to ensure that fisheries can continue operating exactly as they wish to do, versus providing an incentive for improvements. One respondent to the recent consultation summarised this issue as such: "*There is no reason a fishery cannot implement FNA. The only arguments made against FNA are at their root, economic reasons – reduced efficiency from double handling of sharks between capture and processing on land, inability to freeze large volumes of sharks on freezer vessels which land frozen product (not 'fresh'), and claims product quality suffers if unable to process (this is not the case as sharks can be gutted and bled whilst still adhering to FNA). Unwillingness to comply with FNA demonstrates a preference to benefit from MSC access (branding, social licensing, credibility, etc.) whilst maximising efficiency and profit with a reduced 'burden' of transparency in their operations. The MSC brand is first and foremost one that is publicly understood and trusted to prioritise environmental considerations over economic.*"[121]

118 New Zealand Ministry for Primary Industries (2014) *Elimination of shark finning in New Zealand fisheries* https://www.mpi.govt.nz/dmsdocument/1137/direct

119 E.g. National Oceanic and Atmospheric Administration (2017) *A guide to landing shark species with fins naturally attached* https://repository.library.noaa.gov/view/noaa/15033

120 MSC (2020) *Annex IV: Feedback received to the online consultation form on evaluating MSC's requirements for the prevention of shark finning* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

121 MSC (2020) *Annex IV: Feedback received to the online consultation form on evaluating MSC's requirements for the prevention of shark finning* https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

At present, it is not clear whether any, and if so how many, fisheries within the MSC programme would face logistical difficulties in implementing FNA. At present, there is only one MSC-certified fishery which targets sharks and which has included sharks as the Unit of Certification (UoC): the US Atlantic spiny dogfish, winter skate and little skate fishery in the Northwest Atlantic operates up to 200 nautical miles from the US coast, with the stock actively managed by the Atlantic States Marine Fishery Commission. As stated during its 2017 recertification,[122] the fishery complies with Addendum V (2014) to the Shark Conservation Act of 2010, prohibiting processing at sea, including the removal of fins. Prior to approval, states could process spiny dogfish at sea as long as the ratio of fins aboard the vessel did not exceed 5% of the weight of carcasses aboard the vessel. Several other certified fisheries possibly also target sharks but have so far not included them as part of the UoC.

As noted in the consultant's report,[123] the Kesennuma Distant-Water Fisheries Cooperative Offshore and Distant-Water Longline Blue Shark and Swordfish Fishery has implemented a Fins Naturally Attached policy in 2016 for all of its shark landings although neither WCPFC nor Japan mandate a FNA. This also demonstrates that a FNA policy can be implemented by fisheries that want to make real improvements in stepping down on finning, even if not required in a specific jurisdiction.

Finally, despite repeated requests from various stakeholders, not a single fishery has so far been disclosed by MSC, nor have specific processing operations been detailed which might objectively prevent a fishery from complying with a FNA policy.

122 U.S. Atlantic Spiny Dogfish Fishery; MSC Fishery Assessment Report; Public Certification Report; 18 May 2018; p 11; https://fisheries.msc.org/en/fisheries/us-atlantic-spiny-dogfish-winter-skate-and-little-skate/@@assessments; 123 Brautigam, A. 2020. *Best Practice in the Prevention of Shark Finning*. Published by the Marine Stewardship Council https://www.msc.org/docs/default-source/default-document-library/stakeholders/best-practice-in-the-prevention-of-shark-finning-report.pdf?sfvrsn=3f26ac1c_4

9.3. Would a FNA requirement make the MSC programme inaccessible to small-scale fisheries?

Again, it should be noted that FNA has already been successfully implemented by a large number and range of jurisdictions around the world so there is no reason to assume that such a requirement would negatively impact accessibility. Implementation of FNA is not a matter of the size of a fishery, although there might be some challenges for small-scale fisheries if having to demonstrate compliance with the policy via, for example, 100% observer coverage or expensive electronic monitoring systems. However, while a high level of external validation is important to ensure compliance and provide a high level of confidence that finning is not occurring, the appropriate means and required extent of such monitoring could be defined in correlation to the risk of finning happening in that fishery: that risk (probability x impact) is likely to be lower for small-scale coastal fisheries versus large-scale commercial fisheries consisting of many huge vessels, possibly from different flag States, fishing over extended time periods in various EEZs and the High Seas, and offloading in various ports or transhipping at sea. Such a risk-based approach was proposed by several participants in the MSC workshops and many respondents to the surveys as a means of mitigating against potential equity impacts.[124] Supporting a baseline requirement for FNA with an intensity of monitoring and data which is appropriate to the fishery-specific risk of finning occurring (based on predetermined, objectively verifiable criteria) proposes that the same level of certainty can be achieved through different levels of monitoring and surveillance.

124 See questions 16—18 of consultation survey https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

9.4. Could finning be prevented through 100% oversight and monitoring of vessels alone?

In practice, this is not possible. Firstly, the primary objective of monitoring is data collection rather than law enforcement: human observers are indispensable for scientific data collection and sampling and have to carry out those tasks as well as monitoring and reporting on several other activities during fishing and transhipment. Even if every vessel had an observer, a single person cannot possibly oversee all activities on board a vessel at all times. Furthermore, observers are open to pressure, intimidation and violence[125] and may even be at risk of losing their lives if relied upon as the sole means of law enforcement. Therefore, even 100% observer coverage cannot guarantee that finning is not happening, as documented by recorded data demonstrating the continuation of finning in the purse seine fisheries in the WCPFC region, despite the existing requirement for large purse seiners to have 100% observer coverage.

Cameras and electronic monitoring systems (EMS) can complement or even replace human observers but even these can't cover every space on board and survey all activities taking place. Furthermore, without a clearly defined system for instalment, retrieval and analysis of the footage there is little benefit in recording everything. However, there are comprehensive EMS systems under evaluation and testing in several RFMOs, which represent important improvements and which, once fully functional, will certainly improve overall monitoring and surveillance of all fishing activities and also compliance with conservation measures and a FNA regulation.

Secondly, monitoring and surveillance activities do not replace the need for strong, enforceable and unambiguous policies to be in place against which those monitoring and surveillance activities can be performed effectively and efficiently. As no surveillance and monitoring can provide 100% certainty of compliance, these should always be considered as a means of external validation for compliance with available best practice regulations in place and not as a surrogate for improving inadequate regulations. All exemptions or other modifications adding complexity and ambiguity to regulations will also reduce the effectiveness of any EMS system as no surveillance and monitoring will ever be able to provide certainty of 100% compliance at all times.

These issues were highlighted in responses to the public consultation[126] including, *"[m]y understanding is that observer programmes are careful not to put observers into a compliance role as this potentially puts them at personal risk. MSC should be careful not to complicate this situation"* and *"[i]t is worth noting that a blanket FNA policy also relieves pressure on human fisheries observers (many of whom face tremendous pressures and even threats to their lives in the course of doing their work) by establishing a clear standard for transporting and landing shark fins — a standard that largely removes the ability to participate in shark finning."*

125 https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/ 126 https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iv---feedback-tables-from-fisheries-standard-review-consultation-survey---evaluating-requirements-for-the-prevention-of-shark-finning-(july-2020).pdf

Finally, it must be remembered that even jurisdictions that are generally considered to have high regulatory compliance and good law enforcement, such as New Zealand and the European Union, in reality struggle to ensure sufficient oversight and enforcement of activities at sea. For example, Bremner et al. (2009)[127] found clear evidence of violations of fisheries legislation in the New Zealand hoki fishery, reporting on unreported discards, high-grading and other forms of misreporting and under-reporting of catches and concluded that "the catches reported by unobserved vessels contain large elements of fiction". Simmons et al. (2016)[128] demonstrated that New Zealand's reconstructed marine catch between 1950 and 2010 was 2.7 times higher than reported to the FAO: unreported commercial catch and discards accounted for the vast majority of the discrepancy with the problem being widespread, especially in the West Coast hoki fishery. And in May 2016 the Ministry for Primary Industries commissioned an independent review of three fisheries' compliance operations and associated prosecution decisions after release of footage and reports from operations 'Hippocamp', 'Achilles' and 'Overdue' that had recognised several problems in fishery practices[129] with regard to quantitative discrepancies in the reporting of small fish and bycatch between vessels with observers and those without external surveillance, and the lack of reporting of bycatch, including bycatch of critically endangered Hector's dolphins.

127 Bremner, G., Johnstone, P., Bateson, T. and Clarke, P. (2018) Unreported bycatch in the New Zealand West Coast South Island hoki fishery *Marine Policy* 33 (3): 504-5123 128 Simmons, G., Bremner, G., Whittaker, H., Clarke, P., Teh, L., Zylich, K., Zeller, D., Pauly, D., Stringer. C., Torkington, B. and Haworth, N. (2016) Reconstruction of marine fisheries catches for New Zealand (1950—2010)http://www.seaaroundus.org/doc/PageContent/OtherWPContent/Simmons+et+al+2016+-+NZ+Catch+Reconstruction+-+May+11.pdf 129 https://www.mpi.govt.nz/legal/legal-overviews-legislation-standards/fisheries-legislation/independent-review-of-prosecution-decisions/

Conclusion and recommendations

10. Conclusion

Action to combat IUU (Illegal, Unreported and Unregulated) fishing activities such as shark finning is known to be falling short of expectations across the globe. While finning is still far from being globally eradicated or banned, an increasing number of nations and all major RFMOs have by now issued bans on finning. However, the approach taken in different areas still differs greatly and implemented measures have varying effectiveness and are enforced to varying degrees. Actual prosecution or conviction of offences against existing finning bans are still the exception rather than the rule, with many cases of finning going undetected in all oceans.

As this report outlines, Fins Naturally Attached (FNA) is well-established as global best practice and, indeed, increasingly as the norm for sustainable fisheries management. Furthermore, implementation across a range of jurisdictions, including all EU fishing fleets, clearly demonstrates that FNA is a feasible and workable policy option. Alternative policy options all contain inadequacies and loopholes and create complexities in monitoring and enforcement, and there are no viable counter-arguments remaining against a FNA in all fisheries and at all levels.

Even in MSC-certified fisheries, shark finning is far from absent and the risk of finning occurring is often incompletely and inconsistently assessed during certification under the requirements established by the current Fisheries Standard and Fisheries Certification Process. Despite the MSC's stated 'zero tolerance' policy on finning and the clear guidance stating that evidence of finning should exclude a fishery from certification, MSC does not require implementation of FNA and compliance with the MSC's ban on finning is not sufficiently assessed during initial certification, the annual surveillance audits or recertification.

In this context, over many years, stakeholders have not only criticised the deficiencies of the MSC process but have also engaged intensively with MSC to develop constructive policy solutions to prevent shark finning from happening. Following the MSC's failure to implement global best practice to prevent finning during the last Fisheries Standard Review in 2015 and through the Fisheries Certification Process update in 2019, the currently ongoing Fisheries Standard Review appears to represent the last opportunity for the ecolabel to raise the bar, introduce globally accepted best practice and drive real change on the water.

The MSC's review of shark finning requirements, and whether they still reflect global best practice, as part of the currently ongoing Fisheries Standard Review, appears to be a step in the right direction, albeit the review has been repeatedly criticised for being slow and lacking transparency.[130] To date – more than eight months after the consultation in July 2020 — no announcement has been made by MSC as to proposed wording for a revised Standard and a recent MSC announcement suggests public consultation on a revised Standard will not take place until 2022, although there may be opportunities to provide some feedback on proposed revisions during 2021.

130 https://www.make-stewardship-count.org/scorecards-list/#transparency

Overwhelming support for requesting FNA was expressed by workshop participants and online survey respondents in 2020: 20 of 35 respondents to MSC's survey did not believe any other approach could deliver the same confidence as FNA, and 18 of 35 responses explicitly called for FNA at SG60 (i.e. as a prerequisite for certification). However there are concerns that the proposals provided for the next round of public consultation in 2021 may not reflect the views of stakeholders, as the objective of the review as stated on the MSC website might prejudice the outcome as "we may need to make changes to the evidence required for Conformity Assessment Bodies to ensure compliance with our shark finning requirements".[131] While improvements in monitoring and data adequacy are certainly needed, these should not be considered as an alternative to the implementation of a strong and enforceable policy, as outlined throughout this report.

Based on the recent MSC publication summarising its proposed revision to the Standard regarding shark finning, such concerns may appear to be substantiated. Although FNA may eventually be introduced at the entry level of SG60, the planned revision could lead to major exceptions when stating "fisheries with a proven and effective alternative may be eligible for certification provided there is equivalent evidence of effectiveness from the relevant fisheries management authority"[132] and thereby would allow similar relaxed interpretations of the requirements as currently existing at SG80, providing numerous loopholes to continue certifying the inadequate status quo instead of raising the bar to ensure fisheries enforce the MSC's proclaimed zero tolerance on finning.

With shark species globally facing such severe threats, the time to act is now and the urgency is such that MSC should be looking to tried-and-tested solutions. FNA is already required by 44% of the world's major shark fishing nations: this therefore cannot be perceived as an overly ambitious or unrealistically challenging objective for a supposedly gold standard ecolabel. Instead of continuing to lag behind the curve of sustainable fisheries management, MSC must embrace the trend and in adopting FNA would provide a powerful incentive for further vessels, fishing groups, states and RFMOs to follow suit.

Economically driven arguments from fisheries or the MSC's own growth objective should not be accepted as reasons for not implementing Fins Naturally Attached. Therefore, MSC might need to consider the economic incentives its programme offers to certified fisheries in helping to overcome such arguments from the industry. There does need to be an economic incentive for fishers to change their operations and their attitudes towards marine conservation and shark conservation in particular; such incentives can indeed only be generated by a market willing to pay premium prices for truly sustainable seafood, rather than expecting sustainability to be for free and available for the same retail price as fish caught by massive exploitation of our oceans, destruction of vulnerable habitats, the loss of biodiversity and especially the loss of the top predators essential for healthy marine ecosystems — the sharks.

131 *How could the Standard change?* https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions
132 https://www.msc.org/standards-and-certification/developing-our-standards/the-fisheries-standard-review/projects/shark-finning-solutions

A recently published paper highlights how uniquely important sharks are for the ecosystem and how alarmingly endangered the majority of the oceanic species are by now due to continued overfishing since the 1970s. The paper concludes: “Action is needed immediately to prevent shark population collapses and myriad negative consequences for associated economic and ecological systems.”[133] With abundance of oceanic sharks having declined by 71.1% since 1970 due to an 18-fold increase in fishing pressure and 16 out of 31 oceanic shark species being rated as endangered or critically endangered in the most recent IUCN listing,[134] it will be mandatory to take every possible action now to reverse this trend.

Therefore, preventing finning with the introduction of the strongest existing regulations should be considered a mandate, requiring no further debate for those fisheries that claim to be fishing sustainably and who receive the MSC’s ecolabel to support their claim.

133 and 134 Pacoureau, N., Rigby, C.L., Kyne, P.M. et al. Half a century of global decline in oceanic sharks and rays. Nature 589, 567–571 (2021). https://doi.org/10.1038/s41586-020-03173-9

11. Authors' Recommendations: What MSC should do as part of the Standard Review to prevent shark finning in MSC-certified fisheries

Following up on this change in perception and rewarding responsible sourcing, consumers relying on MSC as a sustainable seafood ecolabel can reasonably be assumed to have an expectation that shark finning is not happening in a certified fishery. This assumption is supported by consumer polling conducted by YouGov Germany in 2018, in which 85% of more than 5,500 consumers across Germany, Switzerland and the UK stated that shark finning and destructive fishing practices should be banned in certified fisheries.[135] Consumer expectations were also highlighted in a comment made during one of the MSC's July 2020 workshops[136] from a retail perspective: *"[organisation name redacted] is of the view that a FNA policy is best practice and that is certainly what our customers would expect from a certified, sustainable fishery.*"

Numerous stakeholders from NGOS, academia, the retail sector and the supply chain, and the majority of respondents to the recent public consultation have come to the same conclusion: a requirement for Fins Naturally Attached in all fisheries interacting with sharks, alongside improved monitoring and surveillance is the surest way of achieving this.

Based on the arguments reviewed and the facts discussed in this report, we recommend that MSC follows the international best practice and the recommendation from civil society and responsible retail by introducing a requirement for any fisheries interacting with sharks as primary, secondary or ETP species to have a Fins Naturally Attached policy with no exemptions in place as a prerequisite for certification.[137]

135https://www.make-stewardship-count.org/wp-content/uploads/2018/12/infographic_1-1.pdf
136https://www.msc.org/docs/default-source/default-document-library/stakeholders/consultations/annex-iiia--transcript-from-fisheries-standard-review-consultation-workshop---evaluating-requirements-for-the-prevention-of-shark-finning-(7-july-2020).pdf
137https://www.sharkproject.org/wp-content/uploads/2021/01/Fins-Naturally-Attached-Letter-to-MSC-18122020_additional-signatories.pdf

This new requirement should include the following elements:

- Evidence of shark finning must preclude a fishery upfront from entering the MSC certification process.
- Any fishery interacting with sharks as primary, secondary or ETP species must, as a prerequisite and minimum requirement, have a Fins Naturally Attached policy with no exemptions in place at the time of first certification. This must apply to all scoring guideposts, i.e. at SG60, 80 and 100, as a baseline to reflect the proclaimed ‘zero tolerance’ against finning.
- Ahead of certification, when a fishery enters pre-assessment, the risk of interaction with sharks should be determined (on the basis of predetermined, objectively verifiable criteria such as target species, gear type and fishing region).
- A fishery which does interact with sharks should then be subject to an assessment of the risk (low, medium, high) of finning occurring, based on objectively verifiable criteria such as fishing region, vessel and catch size, gear type, duration of trips, landing ports, transhipment at sea and a history of finning incidences in the region or fishery.
- The fishery should then be scored requiring an escalating intensity of independent/external verification corresponding to the probability and extent at which finning might occur in the specific fishery; increased levels of monitoring and surveillance required for SG60, 80 and 100 provide a framework to incentivise fisheries to make improvements in terms of independent verification of compliance.
- The existence of a FNA policy should not be mistaken as a substitute for good monitoring and surveillance but rather to complement those, to demonstrate compliance with the policy prior to, and throughout, certification. When defining the appropriate level of monitoring and surveillance it is important that this constitutes a comprehensive system of measures and that the burden for ensuring compliance with FNA does not rest solely on human observers, as this is prone to failure and may entail threats to their safety.

Annex: Background on MSC, its objectives and potential impact

The Marine Stewardship Council

The Marine Stewardship Council (MSC) was founded in 1997 by WWF and Unilever with the intention of providing a market-based solution to plug gaps in global ocean governance. The MSC model is premised on a 'Theory of Change':[138] products meeting sustainability criteria outlined in the MSC Fisheries Standard are rewarded with certification; suppliers, consumers and retailers preferentially purchase MSC-labelled seafood; market demand for MSC-certified products increases; and more fisheries are then incentivised to improve their sustainability in order to achieve certification.

Criticism of the Marine Stewardship Council

Since its first certification in 2000 — the Western Australian rock lobster fishery[139] — the MSC has grown to become one of the globally most widely acknowledged ecolabel for seafood, with 409 fisheries certified (as of 2019) accounting for 17.4% of all wild marine catch.[140] However, with the scheme's expansion has come increasing concerns that it has strayed over the years from its original mission, with industrial, high-impact fisheries now representing 83% of MSC-certified catches: while the MSC's public communications frequently showcase small-scale, low-impact fisheries, these in fact account for just 7% of certified catch[141] due largely to the huge cost of certification[142] (USD $15,000—120,000).[143]

138 MSC *Our approach* https://www.msc.org/what-we-are-doing/our-approach
139 MSC *Our history* https://www.msc.org/about-the-msc/our-history
140 MSC *Annual Report 2019-2020* https://www.msc.org/docs/default-source/default-document-library/about-the-msc/msc-annual-report-2019-2020.pdf
141 Bloom (2020) *The Sham of the MSC Label: The Biggest Fishing Label's Reality Uncovered* https://www.bloomassociation.org/wp-content/uploads/2020/05/sham-msc-label.pdf
142 High-Level Panel on a Sustainable Ocean Economy (2020) *Ocean Finance: Financing the Transition to a Sustainable Ocean Economy*
143 The Economist World Ocean Initiative (2020) *Blue tick of sustainability or greenwashing of large-scale industrial fisheries?* https://www.woi.economist.com/the-blue-tick-of-sustainability-or-the-greenwashing-of-large-scale-fisheries/

Since the last Standard revision in 2015, an increasing number of academics and NGOs have drawn attention to issues surrounding the MSC's Standard, its processes and governance, and application of the Standard in specific fishery assessments. Some examples of fisheries which have attracted controversy are bottom-trawling fisheries (e.g.[144]), those where nets are being set on Fish Aggregating Devices (e.g.[145]) with high levels of bycatch including turtles and sharks, where sharks are being finned (e.g.[146]), where endangered bluefin tuna are being caught (e.g.[147]) or where fisheries target long-living, late maturing deep sea species (e.g.[148]). Even WWF, one of the original founders of the MSC, has publicly stated in 2020 that it is "*very concerned by the lack of overall improvements, and the continued weakness of the certification and assurance process.*"[149]

Why does MSC's bar for sustainability matter?

While most stakeholders will acknowledge that there are well-managed and truly sustainable fisheries in the programme, the certification of a growing number of controversial fisheries and fishing practices, has generated growing concern that the MSC Standard and its application is no longer meeting the expectations of civil society and the conservation community for a 'Gold Standard'.[150] This may be seen to matter even more because of the market position that MSC occupies and the broader national and international impact of the scheme.

First, the significant and growing percentage of global catch certified by MSC – and the organisation's published objective is to increase this figure further to more than 33% of global catch by 2030[151] — means that standards and requirements established by the MSC could act as a driver for governments and RFMOs to implement sustainable harvest control rules and adequate conservation measures. This might translate the organisation's 'Theory of Change' model into an impact far beyond the 17.4% of global catch currently certified. Thereby, changes made by MSC would drive up standards right across the sector in fisheries, which hope to achieve certification in the future. On the other hand, an overly permissive MSC Standard which rewards certification to the 'status quo' of fishing practices could serve to cap ambition and weaken incentives for market actors to strive for best practice. Secondly, the MSC scheme is by now embedded in commercial and policy decision-making, with many retailers basing their sourcing policy on MSC certification and applying percentage MSC certified as an indicator of success against targets of the United Nations Convention on Biological Diversity and the United Nations Sustainable Development Goals (SDGs), especially SDG 14 – *Life below water.*

144 MSC *Joint demersal fisheries in the North Sea and adjacent waters* https://fisheries.msc.org/en/fisheries/joint-demersal-fisheries-in-the-north-sea-and-adjacent-waters/@@view
145 MSC *Echebastar Indian Ocean purse seine skipjack tuna* https://fisheries.msc.org/en/fisheries/echebastar-indian-ocean-purse-seine-skipjack-tuna/@@view
146 MSC PNA Western and Central Pacific skipjack and yellowfin, unassociated/non FAD set, tuna purse seine https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@view
147 SATHOAN French Mediterranean Bluefin tuna artisanal longline and handline fishery https://fisheries.msc.org/en/fisheries/sathoan-french-mediterranean-bluefin-tuna-artisanal-longline-and-handline-fishery/@@view
148 Australian Marine Conservation Society — Orange roughy ruling victory for sustainable fisheries and for ocean loving Australians https://www.marineconservation.org.au/orange-roughy-ruling-victory-for-sustainable-fisheries-and-for-ocean-loving-australians/
149 WWF International (2020) *WWF Statement on MSC's lack of reform* https://wwf.panda.org/wwf_news/press_releases/local_press_releases/?361757/WWF-Statement-on-MSCs-Lack-of-Reform
150 Make Stewardship Count (2018) Open Letter to MSC https://www.make-stewardship-count.org/wp-content/uploads/2018/02/Open-Letter-to-MSC_FINAL_January-2018.pdf
151 MSC *Our Strategy: Our 2030 aspiration* https://www.msc.org/uk/about-the-msc/our-strategy/our-strategy/our-2030-aspiration

Ziegler, I., Hammond, A., Millward, S., Woodroffe, K., Vail, C., Guida, L., Hofford, A. and Arauz, R. (2020) ***Analysis of the Marine Stewardship Council's policy on shark finning and the opportunity for adoption of a 'Fins Naturally Attached' policy in the MSC Fisheries Standard Review***

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