

Public accountability in private regulation: contrasting
models of the Forest Stewardship Council (FSC) and
Marine Stewardship Council (MSC)

Dr. Fred Gale and Dr. Marcus Haward

School of Government, University of Tasmania

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Introduction

Some of the most intractable environmental problems can be found in the natural resource management area, especially forest, fisheries and water management. One reason why is it so difficult to agree on sustainable management arrangements in these areas is that the changes required touch on established social institutions that entrench broad scale private and public property rights to resources that require a more disaggregated approach. Another reason is that the policies required to achieve genuine sustainability necessarily entail a reduction in the volume of the resource being appropriated by private and public entities, resulting in reduced profits, lowered tax revenues, and decreased employment. A government contemplating the introduction of sustainable resource management policies in the forest, water, or fisheries sectors is often persuaded that the environmental gains are not worth the political economic losses in the form of revenues, votes and political legitimacy. The consequence is that most of the time governments make significant compromises to industry demands despite substantial scientific evidence that tougher regulations are required.

Confronted with a history of public regulatory failure in the natural resources sector and especially with respect to forest and fisheries management in the 1980s, environmentalists became disillusioned with the capacity of the state as a vehicle for change. By 1992, two decades of environmentalism had passed and, despite some notable successes in dealing with point-source pollution and in reducing chlorofluorocarbon emissions that were depleting the ozone layer, the general environmental picture was not improving. Indeed, in the natural resources sector, there was clear evidence of continued deforestation, fisheries depletion and forest and fisheries degradation around the world.¹ If governments were unable to usher in sustainable development, other actors would have to fill the void. Figuring out who those other actors were and what institutions they would operate through became a central question.

¹ For forests, see WCFSD 1999 and FAO 2001; for fisheries, see FAO 2000 and IUCN 1998.

If policy analysts and legal scholars dominated the first era of environmentalism, economists moved centre stage during the second. Economists addressed the matter of resource decline and degradation by analysing the incentives confronting rational actors making choices about what to do in a context where profit making is a central objective. From an economic point of view, it would only be rational for firms to adopt genuinely sustainable forest and fisheries management practices if it paid, at least over the long run. Since current practices were viewed as environmentally unsustainable, the question arose as to how to restructure the balance of incentives for business actors to encourage them to move away from existing approaches (grounded in sustained-yield forest and fisheries management) and to adopt ecosystem-based approaches that would safeguard the ecological health and integrity of the resource base (Grumbine 1994).

While there are many possible economic incentives—such as taxes, property rights, subsidies, procurement—attention came to centre on voluntary certification and labelling schemes as possible solutions to the global crises in the world's forests and fisheries. The general idea behind voluntary certification and labelling is that firms will alter their practices in response to market signals from consumers and retailers who are able to express a preference for goods by choosing those that are certified to a specific standard (and that carry a label that signals this achievement) over those that are not. Firms alter their practices not because they are altruistic, but because it benefits their bottom line by enabling them to maintain existing markets, enter new markets, enhance their reputation and brand, and/or receive a price premium.

In the past decade or so, there has been an explosion in the number of voluntary certification and labelling schemes. These range from pure *first-party* schemes in which an individual firm certifies itself to its own standard, to pure *second-party* schemes, where the standard is developed by an industry body that then certifies members to that standard, to pure *third-party* schemes where the standard is developed by a group at arms-length from individual companies and the industry, and compliance is audited by

independent organizations with no vested interest in the outcome. Hybrid schemes are also possible, where a standard developed by a first or second party is audited for compliance by a third-party certifier. In the past decade, certification schemes have become extremely popular in the forest sector. Schemes have also developed in the fisheries, organic agriculture, coffee, clothing, and mineral sectors. The expansion in the number of schemes within sectors, and the increase in the number of the sectors where schemes are being applied, has led to a concomitant growth in the literature on voluntary certification and labelling. Although much of this literature tends to be descriptive, the past few years has seen more analytical work being done. Interesting contributions theorising the significance of certification and labelling written or in the pipeline are those by Meidinger, Elliott and Oesten (2001); Webb (2003); Cashore, Auld and Newsom (2004); Cashore et al (2005); Tollefson, Gale and Haley (forthcoming); Deere (1999); Phillips, Ward and Chaffee (2003); Potts and Haward (2001); and Teisl, Roe, and Hicks (2002).

Despite the development of a more analytical approach to understanding private regulation, much of the analysis has occurred within distinct resource sectors, reflecting the predilection of forest and fisheries researchers for example to study their subject matter separately. There have been very few cross-sectoral studies that have examined certification more broadly (but see Webb 2003). Much can be learned about the nature of certification and labelling and how they operate, however, through such cross-sectoral analysis. In particular, such cross-sectoral research can cast new light on the political economy of forest certification and labelling and on the similarities and differences between schemes within and across sectors.

While numerous research questions can be generated from such an approach, our particular interest in this article is to describe the different institutional structures in operation in two schemes that notionally have the same origin. These are the Forest Stewardship Council and Marine Stewardship Council schemes, which both owe their existence in large measure to staff and funding from the World Wide Fund for Nature

(WWF-International) based in Gland, Switzerland. While both the FSC and the MSC aim to achieve the sustainable management of their respective natural resource, they do so with very different institutional structure. Does this difference in institutional arrangement reflect the nature of the resource that the scheme has been being developed for? Is it instead purely a social artifact that reflects the idiosyncratic nature of each scheme's development? Does it perhaps reflect the differing political economy of the respective resource? Or is it a consequence of policy learning by those promoting the MSC scheme following experience with FSC? Our research is designed to shed some light on these competing explanations.

Rise of private regulation

Environmental support for private forms of regulation occurred in a context of increased state unwillingness and incapacity to undertake the policies necessary to achieve the emerging objectives of sustainable forestry and fisheries management. But although environmentalists sought to “de-centre” the role of the state in forestry and fisheries management, it was not clear to most of the actors involved on how such de-centring could be achieved. Clearly, some form of voluntary activity was required to check governments on the one hand and industry on the other creating space for civil society actors to promote alternative management practices reflecting a broader set of values. Reflecting back on the past decade, it is possible to identify two broad movements that work in the direction of decentring the state. The first focuses on devolving responsibility for resource management from the centre to the periphery in the form of schemes to promote community forest and fisheries management. The second involves enlisting the power of the market via certification and labelling schemes to provide consumer incentives for managers to “do the right thing”.

Community resource management has come of age in the past decade, with many countries encouraging greater involvement of local and indigenous groups in the management of their natural resources (Petherham, Stephen and Gilmour 2002). In British Columbia, Canada, for example, the New Democratic Party (NDP) Government

of Glen Clark established a community forestry program under new legislation that approved seven community forestry pilots in 1999–2000 (Bellinger and Gale 2004). Community forestry has also been promoted in the United Kingdom, the United States, and in many developing countries around the world, as a solution to state incapacity and in response to demands from communities and indigenous peoples for a greater say in natural resource management. In Australia, a nascent community forestry movement is getting off the ground, with the Victorian state government sponsoring research on its feasibility and form and experimenting in implementation via its Wombat Community Forestry initiative (WFCC Steering Group, 2002).

Fisheries, too, have undergone significant changes as new stakeholders and interests have emerged, and Governments and international organisations have recognised new actors outside narrow, traditional resource user interests. Community concern at the “fishery crisis” and concerns at changes in fishing practices—the impacts of the development of salmonid aquaculture, for example—have reinforced demands for increased scrutiny of fisheries. Moves towards co-management in fisheries have been undertaken around the world (Haward and Wilson 2001), while increasing industry involvement in fisheries has been criticised as failing to facilitate provision of alternative views.

Community resource management decentres the state via the sharing of elements of policy-making authority with community-based actors, or even, as in the case of the British Columbian pilot project noted above, developing new tenure arrangements to effect the transfer of state land to community control over a defined period of time and based on a history of successful management. The other alternative, voluntary certification and labelling, more explicitly decentres the state since it involves a group of private individuals constituted according to some internal logic meeting to develop a standard that is then used to judge the adequacy of resource management practices. Voluntary certification and labelling has a long history that, at one level, goes back into the history of commerce when firms sought to distinguish themselves from other firms

via the use of places of origin and branding. The recent history of voluntary certification, however, builds on the successes of the organic movement, the experience of SmartWood in 1989, research by the London Environmental Economics Centre, and the policy entrepreneurship of the World Wide Fund for Nature-International (WWF-International).

From the organic movement, those interested in natural resource certification and labelling observed the need to establish a standard that was systematic on the one hand to ensure conformity of application across regions, but flexible on the other hand and capable of being applied to a wide range of different products. Moreover, the experience of the organic movement demonstrated that a group of concerned consumers existed who were prepared to purchase goods produced in a specific way when offered the choice. The question for those interested in the sustainable management of forests and fisheries was whether the success of the organic movement could be replicated in these sectors, too. While there were reasons to believe that consumers would discriminate with respect to their purchase of fish products, the timber industry was more difficult to judge because many timber products are intermediate rather than final goods. Indeed, an early consulting report carried out by the Oxford Forest Institute (OFI) for the ITTO in 1990-91 to consider “incentives” for sustainable forest management concluded that certification and labelling was unlikely to prove successful because of difficulties in preventing non-certified wood from entering the timber chain as the product moved from the forest to the consumer (OFI 1991).

The OFI Report, however, was not well received, primarily because its authors were viewed as having pre-judged the issue of forest certification and labelling in order to promote an alternative approach involving the imposition of a levy on tropical timber imports. A more detailed and systematic analysis of forest certification and labelling by the London Environmental Economics Centre (LEEC 1993) between 1991 and 1993 concluded that forest certification could, indeed, make a modest contribution to sustainable forest management because some markets were environmentally sensitive.

Other studies, such as that by Ozanne and Smith (1997), demonstrated a substantial consumer willingness to pay for sustainably produced timber. By the time LEEC produced its report, moreover, experience with forest certification was building up via the Smartwood Program of the Rainforest Alliance (RA). In 1989, RA established the SmartWood program under its own guidelines to carry out assessments of forest operations to determine if they were being managed sustainably and to issue a Smartwood certificate to those that met the standard. Early certificates were awarded to companies in both developed and developing countries, perhaps most controversially to Perum Perhutani, an Indonesian public sector body responsible for managing teak plantations on the island of Java, Indonesia. While Ozanne and Vlotsky had demonstrated the existence of healthy consumer demand, the Smartwood Program provided evidence of the potential for supply.

These various strands related to forest certification came together in the early 1990s when a bagpipe maker by the name of Herman Kwisthout approached WWF to inquire about the possibility of having the tropical timber he used in his bagpipes certified as coming from sustainably managed forests so he could reassure his customers that they were not indirectly contributing to rainforest destruction (Cashore, Auld and Newsom 2004: 1). WWF and RA spearheaded a number of feasibility studies of the potential of forest certification to have an impact in developing countries (including in Papua New Guinea) and organised a meeting of interested parties in early 1992 to discuss the idea. The response was enthusiastic and resulted in an inaugural meeting in Toronto, Canada, in October 1993 of a new kind of global civil society organization, the Forest Stewardship Council. The early discussions focused on the actual standard for sustainable forest management that FSC would use, with those experienced in technical forest matters tending to prioritise economic and silvicultural considerations and those with environmental and social expertise concerned to ensure biodiversity protection, protection of forest non-timber economic values and indigenous and workers' rights. The discussions were eventually consolidated into a set of ten FSC Principles and 56 Criteria of good forest management.

FSC's inception in 1993 resulted in an explosion of certification and labelling schemes around the world both in terms of country and sector. The Marine Stewardship Council was formed in 1996 to promote the certification of fisheries; and discussions are currently underway to determine the feasibility of forming Mining, Coffee, and Tourism Stewardship Councils. While civil society organizations have been behind the formation of these stewardship councils, large industry and some governments have worked to establish their own competitor schemes, most especially in the forestry sector. Hence, today, firms often have a choice to be certified under the FSC scheme, under a government scheme, or under an industry scheme. In Australia, companies can choose to be certified under either the Australian Forestry Standard (AFS) or FSC. Canadian forest firms can choose the FSC scheme, the Canadian Standards Association (CSA) scheme, or the US industry's Sustainable Forestry Initiative (SFI). In Malaysia, companies can choose between the FSC scheme and the Malaysian Timber Certification Council scheme (MTTC). Companies can, of course, opt to be certified under more than one scheme

Forest certification: the FSC and its competitors

Of the various sectors where certification might be applied, it is the forest sector that has seen its earliest and most extensive application. As previously noted, the Forest Stewardship Council held its inaugural meeting in October 1993 in Toronto, Canada, with over 100 individuals representing industry, environment, indigenous peoples, churches, unions, and academic and research interests in attendance. FSC's establishment was not universally welcomed, however; in fact, it was perceived as a threat by major industry in both Canada and the United States (Gale and Burda 1998; Cashore and Lawson 2001). In response, the Canadian Pulp and Paper Association (CPPA) launched a process to establish an alternative scheme through the Canadian Standards Association (CSA), one of a handful of organizations in Canada accredited by the Standards Council of Canada (SCC) to develop national standards. CSA also acts as

a bridge between national and international standard's development through its links with the Geneva-based International Organisation for Standardization (ISO).

In the United States, the American Forest & Paper Association was also worried about FSC. In 1993 they established their own countervailing scheme, the Sustainable Forestry Initiative (SFI). Initially the SFI was a second-party forest certification scheme, designed and audited by AF&PA for its members. Over the years, however, and under increasing pressure to justify the legitimacy of its scheme, SFI has evolved into a second/ third-party hybrid standard, with members able to voluntarily opt to be audited by accredited SFI third-party auditors (Gale 2002; Cashore, Auld and Newsom 2004).

The action taken by industry in Canada and the United States was replicated in other jurisdictions including Malaysia (Malaysian Timber Certification Council, MTCC), Indonesia (Lembaga Ekolabel Institute, LEI), Brazil (CERFLOR), Australia (Australian Forestry Standard), and elsewhere. In some cases, agreements have been reached between the national schemes and FSC joint certification to occur. In Indonesia, for example, LEI and FSC have signed a Joint Certification Protocol that obliges third-party certifiers to certify operations under both schemes, simultaneously, using both the LEI Criteria & Indicators and the FSC Principles and Criteria. While this makes the certification task more complicated, it obviates the need for a firm to undergo two separate audits and a successful audit enables them to use both the LEI and the FSC logos. In other countries, however, such joint certification exercises are not possible and companies interested in being certified under both schemes must undergo separate audits.

FSC's generic Principles and Criteria (P&Cs) of good forest management are designed to promote "environmentally responsible, socially beneficial and economically viable" forest management (FSC 2004). Initially there were nine FSC principles, but these were expanded in 1996 to ten to include a new principle on forest plantations. The original Principle 9 also underwent substantial revision in the late 1990s. Initially it focused on

natural and primary forests, but it proved difficult to make these concepts precise in themselves and to translate them into the second FSC language, Spanish. In some jurisdictions, a strict application of the principle as worded appeared to prohibit any logging in the majority of the region's forests (i.e. Brazil and British Columbia). Today, Principle 9 focuses on a forest's "high conservation values", shifting the emphasis from distinguishing between forest types (natural, primary, old-growth, second-growth, and so forth) to identifying the conservation values that they serve (biodiversity protection, watershed protection, community amenity, indigenous peoples cultural values, and so forth).

FSC's ten principles and 56 associated criteria constitute the basic FSC Standard against which firms around the world seeking FSC certification are assessed. The ten principles, set out in Box 1, aim to safeguard the diverse set of interests that are bound up in most forests related to economic, social, environmental and indigenous peoples values. Principle 3, for example, enshrines the legal and customary rights of indigenous peoples to enjoyment of the benefits of forests. Principle 4 requires that the welfare of local communities and workers be protected, with a portion of the economic benefits flowing to the communities where the forests are located. Principle 6 and 9 require that environmental values be respected and biological diversity protected, especially those values associated with high conservation value forests. Principle 10 deals with forest management on plantations, a subject on which there is much controversy within FSC and within the environmental chamber.

FSC's Principles, however, are broad statements that are not, as such, auditable or easily evaluated on the ground in a specific forest. In order to determine if they are met and to ensure consistency in application, therefore, each principle is associated with several criteria, which are designed to clarify the meaning. For example, Principle 6 requires that firms safeguard biodiversity and maintain the forest's function and ecological integrity. There are ten criteria associated with Principle 6, of which the first states:

6.1 Assessment of environmental impacts shall be completed—appropriate to the scale, intensity of forest management and the uniqueness of the affected resources—and adequately integrated into management systems. Assessments shall include landscape level considerations as well as the impacts of on-site processing facilities. Environmental impacts shall be assessed prior to commencement of site-disturbing operations.

Box 1: FSC Principles

Principle #1: Compliance with laws and FSC Principles

Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.

Principle #2: Tenure and use rights and responsibilities

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

Principle #3: Indigenous peoples' rights

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

Principle #4: Community relations and worker's rights

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

Principle #5: Benefits from the forest

Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

Principle #6: Environmental impact

Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

Principle #7: Management plan

A management plan—appropriate to the scale and intensity of the operations—shall be written, implemented, and kept up to date. The long term objectives of management, and the means of achieving them, shall be clearly stated.

Principle #8: Monitoring and assessment

Monitoring shall be conducted—appropriate to the scale and intensity of forest management—to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

Principle #9: Maintenance of high conservation value forests

Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

Principle #10: Plantations

Plantations shall be planned and managed in accordance with Principles and Criteria 1–9,

The first criteria sets out more detailed provisions to guide certifiers in determining whether the provisions of Principle 6 have been met. This requires forest managers to carry out an assessment of environmental impact. The other nine criteria associated with Principle 6 set out provisions related to inventorying the forest, forest management practices, riparian management, chemical use, conversion to plantations, and so forth.

From the point of view of a certifying body, however, even FSC's associated criteria do not provide a sufficiently detailed guide to ensure reliability and consistency of assessments. Hence certifying bodies (such as Smartwood, Société Générale de Surveillance (SGS), Scientific Certification Systems (SCS), and several others) develop their own "indicators" for each criterion. The purpose of developing and assessing practices against indicators is to provide clear, measurable evidence that the requirements established in each criterion have been met. The indicators are often measurable actions that a forest manager needs to undertake. In the field, a certifier examines the forest operation and ticks off or scores the indicators listed under each criterion. At the end of the exercise the certifier examines the list of indicators and makes a judgement as to whether, on balance, enough of the criterion under a principle have been met to pass the forest manager on that principle. To be certified, FSC requires that firms achieve a satisfactory performance on all ten principles.

To date, most certifications around the world have used indicators developed by certifiers. In the past several years, however, deliberative processes have been put in place for the development of national and regional FSC standards. These build on FSC's generic Principles and Criteria (which cannot be altered), but establish nationally or regionally appropriate indicators for particular jurisdictions. For example, in the United States, there are nine approved regional standards, covering most of the forests in the country. The New England states are now certified under the FSC-Northeast Regional Standard, while the states of Montana, Idaho and Wyoming are certified under the FSC-Rocky Mountains Regional Standard. These regional standards have been developed by FSC Regional Working Groups that have been structured in various ways (Gale 2004).

The purpose of such working groups is to develop regionally specific standards that, once endorsed by FSC (both nationally and internationally) must be used by all certifiers operating in that region.

The existence of regional and national working groups referred to above highlights one of many interesting features of FSC from a governance perspective. FSC's devolved and chamber-based governance structure makes it unique in the world of international civil society organizations. Figure 1 sets out the main elements of FSC's governance arrangements, highlighting its role as a devolved, chamber-based, membership organization. Only major associational and reporting relationships are shown and it must be recognised that there is a tremendous degree of interaction among the varying bodies in relation to any specific decision. The key point about Figure 1 is that it depicts the crucial role of the FSC member within the organization. There are two categories of members: individual and organisational. Anyone who shares the objectives of the organization can apply to join. An application must be supported by two existing members and, when accepted, an annual membership fee must be paid (currently US\$100 for northern individual members). Members play a key role in the organization in electing individuals to the International and National Boards and in participating in FSC activities within their own country. Members also participate directly in determining the policy of FSC through regular General Assembly meetings, held at least every three years. The purpose of the General Assembly meetings is to pass resolutions with respect to FSC's Principles and Criteria, its organisational arrangements, and to act as a final arbiter in the case of organisational disputes.

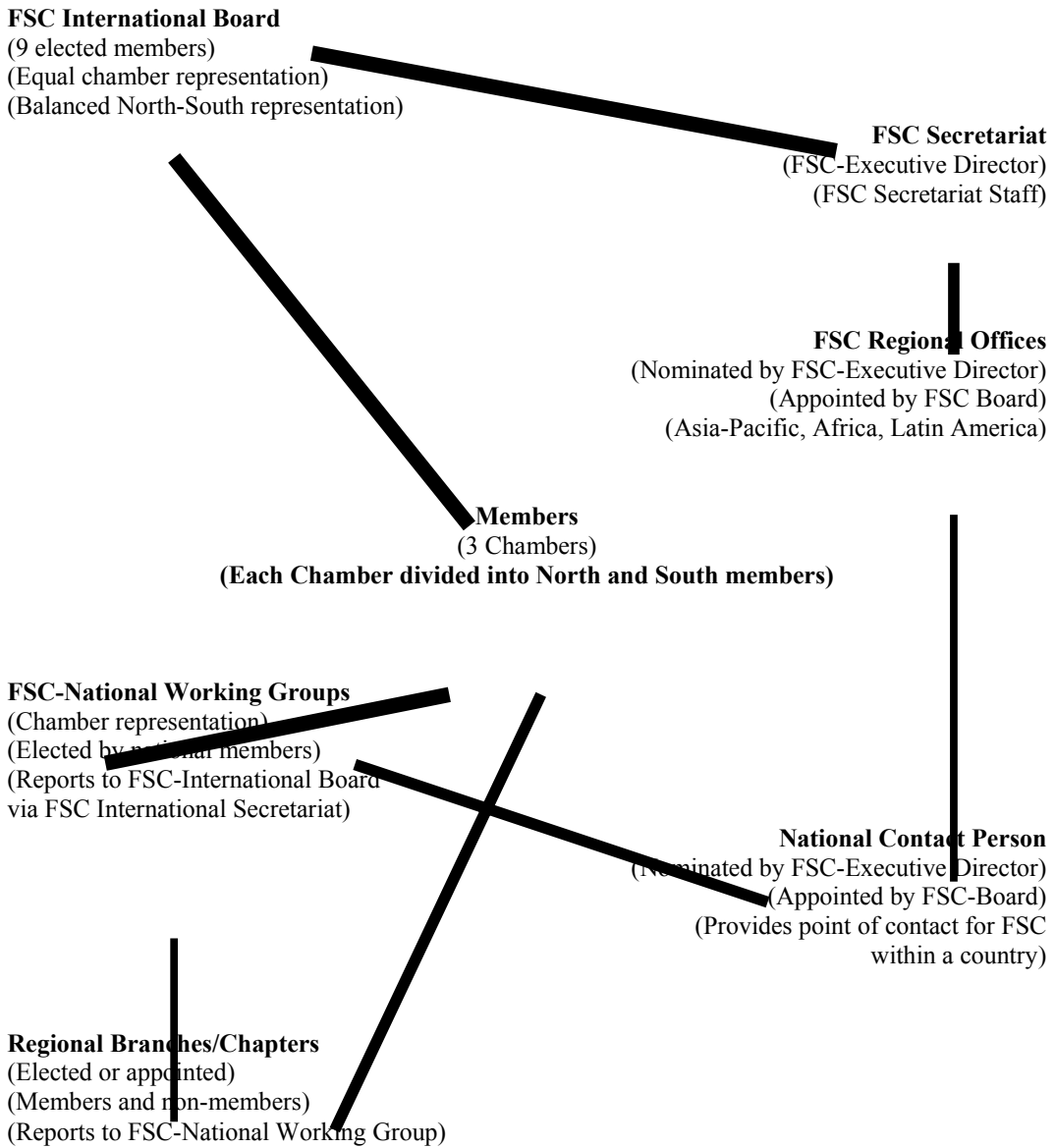
FSC membership is not only divided into two basic types, individual and organisational; it is also divided into three different interest groups—economic, environmental and social. Applicants indicate on their membership forms which interest-based chamber they are applying for, but the ultimate decision rests with the FSC Board, who reserve the right to allocate a member to an alternative chamber. This system works well for members that are clearly associated with one or another interest such as large forest

companies (economic chamber), major environmental organizations (environmental chamber), and church groups (social chamber). However, there are many individuals and groups that span more than one chamber, and each has to make a judgement as to which group to belong to. For example, many researchers doing work on forest certification can logically belong to the environmental chamber (if they are biologists or ecologists for example), or to the social chamber (if they are anthropologists or sociologists). Some union representatives find it strange that they are located in the social chamber and not the economic chamber, while large- and small-scale forest operators often find they do not share a common vision although both are located in the economic chamber. Notwithstanding these classification difficulties, however, the chamber approach does guarantee that the three core values related to sustainability are incorporated directly into FSC's decision-making arrangements. No single set of values can dominate the decision-making process, as often occurs in other certification schemes and, more generally, through many liberal democratic state institutions. Governments and government bodies are ineligible currently for FSC membership.

The incapacity of a single chamber to dominate proceedings is reflected in FSC's voting arrangements. For a resolution to be adopted by the General Assembly, it must be supported by at least two-thirds of the voting members present. Members are allocated votes based on a complicated formula that weights organisational votes as worth more than individual votes. Individuals within a single chamber can only dispose of a maximum of 10% of that chamber's vote, with organisational members disposing of the remaining 90%. Moreover, each chamber has the same number of total votes (33.3%); and hence obtaining a two-thirds majority means that a substantial proportion of both other chambers must also vote for the resolution. The system is designed to prevent minority interests being sacrificed at the expense of the majority; and to ensure that there is a broad consensus in favour of any of the decisions taken. To date the system has worked well despite its complexity; and the FSC membership has abided by the decisions of the FSC General Assembly.

A final feature of the FSC membership structure is that applicants not only indicate the type of membership they seek (individual or group), and the chamber they wish to join (economic, environmental, social), but they also indicate whether they are from the North (and thus represent developed country interests), or the South (and thus represent developing country interests). Once again, this system can be criticized for being imperfect and for assuming that interest representation is a function of geographic location; on the other hand, it does seek to embed directly in the FSC decision making structure an equal voice for the South in the decisions taken by the FSC in relation to forest certification.

Figure 1: FSC Governance



The role of the General Assembly is pivotal. Members with a specific interest in one of the organization's sectors or regions can propose resolutions (which must be seconded), which are then voted on by the membership. General Assemblies in the past have been well attended and lively affairs; especially the 2002 General Assembly in Oaxaca, Mexico, where there was considerable controversy over the Draft 3 of the FSC-BC regional standard, which was then before the FSC Secretariat's Accreditation Business Unit for endorsement. Perhaps the major role of the FSC membership in between meetings of the General Assembly is to elect the FSC-International Board, which presides over the activities of the organization and which takes responsibility for the actions of the organisation's Executive Director and the FSC Secretariat. The FSC-International Board consists of nine individuals elected by the FSC membership for three-year terms. Board members can stand for election for two consecutive terms before stepping down. The Board of Directors of FSC International is representative of the chamber structure of the organization at large, with two members drawn from the economic chamber and the remainder from the economic, social and environmental chambers.

Board members preside over an organization that has grown enormously over the past decade both in breadth and depth. The expanding workload is placing considerable demands on the largely voluntary FSC Board, but much of the workload is handled now by the FSC Executive Director and a group of professional staff originally based in Oaxaca, Mexico, but recently relocated to Bonn, Germany. The Executive Director's task is to ensure that the organization carries out its mandate in an efficient and effective fashion. This includes (a) promoting FSC in developed and developing countries; (b) recommending national and regional standards for endorsement by the FSC International Board; (c) encouraging the establishment and active engagement of National Working Groups in countries around the world; (d) preparing for Board meetings and bi-annual meetings of the General Assembly; (e) accrediting certifiers to the organization permitting them to certify companies under the FSC process and evaluating them regularly to ensure appropriate standards are met; (f) dealing with disputes between members and certifiers over specific instances; (g) raising funds to

support the work of the organization; and (h) monitoring the use of the FSC Logo and ensuring only duly certified individuals with licences to use the logo are using it.

In order to manage this workload, the FSC is moving to a more decentralised organisational structure in which regional and national offices take increasing responsibility for many elements of FSC's program. In recent years, regional offices have been established in Europe, Africa, Latin America and the Asia Pacific, with the role of the regional office manager being to promote the growth of forest certification and to liaise with forest certifiers in the region. Regional office managers are expected to establish good working relationships with National Working Groups and Contact Persons of the countries in their region, although distance and lack of funds makes this somewhat difficult to achieve at times. In the Asia-Pacific region, for example, the Regional Office is located in Bangkok, Thailand and services not only the countries in that immediate vicinity (Laos, Cambodia, Malaysia, Vietnam), but also countries much further a-field including Australia, New Zealand and Papua New Guinea.

The remaining important body in the institutional structure of the FSC is the National Working Group. These are country-based environmental civil society organizations that are duly registered under the laws of the country and that are responsible for promoting FSC domestically. FSC currently has National Initiatives in such countries as Australia, Brazil, Canada, Germany, Japan, Poland, Papua New Guinea, Russia, and the United States. National initiatives can take several forms ranging from the appointment of a Contact Person to the establishment of a fully-fledged National Working Group. There are no specific requirements for the establishment of a national working group, although it is expected to be representative of the three chambers that compose FSC International. In some countries, however, such as Canada, a fourth, indigenous peoples Chamber (First Nations Chamber in the Canadian system) has been added to explicitly recognise a vital additional interest that cannot be incorporated into the social chamber. The role of a National Working Group is to promote FSC within the country and to work towards the establishment of national or regional FSC standards.

FSC is, as can be seen, remarkably democratic for an international institution. Members are able to influence the organizations direction both directly and indirectly. Direct influence can be exerted during the General Assemblies when resolutions can be put forward to alter FSC's Principles and Criteria, or to consider policy and procedural changes to the way the organization is operating. Indirect influence can be exerted by lobbying individuals on national and international boards and by lobbying the FSC Secretariat. Matters are made even more complicated by the fact that different members often represent somewhat different interests, not only when they belong to different chambers, but even within the same chamber. FSC-BC members, for example, are a subset of the broader category of FSC-Canada members; there is no guarantee that members of FSC-BC's social chamber will see eye to eye on every issue as members in the FSC-Maritimes social chamber located on the other side of Canada. While this democratic structure of FSC is commendable from the perspective of interest balancing and governance, it has been criticized by some members for being unwieldy and inefficient. The point made here is that, at the end of the day, FSC is in the business of delivering certification services to industry; to do that, it needs to be run more like a business and less like a government. Certifiers and companies need immediate access to clear information to enable them to make timely decisions on whether, when and how to get certified. To the extent that the democratic structures of FSC result in a lack of clarity and delay, they become dysfunctional and self-defeating. Such criticisms may have played a role within the World Wild Fund for Nature when it considered establishing a body to certify the world's fisheries. At the very least it is a curiosity that, having been so heavily involved in the establishment of the FSC, the WWF decided to work closely with a fisheries multinational to develop an institutional structure that was almost its antithesis. The institutional structure of the Marine Stewardship Council, to which we now turn, highlights this interesting contrast.

*Fisheries certification: the rise of MSC and its competitors*²

The Marine Stewardship Council (MSC) aims to certify the sustainable performance of fisheries on a global scale. It was initiated in 1996 through the joint efforts of the World Wide Fund for Nature (WWF) and Unilever.³ The MSC was created on the shared objective of the long-term viability of fish stocks. Unilever is one of the world's largest consumer products conglomerates with control of over 20% of the European and US frozen fish markets and global sales of 600 million pounds sterling (Mfodwo 1998). Through the MSC, Unilever hoped to source all its fish products from MSC certified fisheries by 2005 (Fowler 1998)—an increasingly difficult target. WWF is a global conservation organisation with more than 5 million members. It is a science-based organisation that creates and implements policy relating to environmental protection and resource conservation (IUCN 1998). Through the MSC, WWF aims to address the issue of declining global fish stocks and promote socio-economic incentives for sustainable fisheries (IUCN 1998).

The two organisations no longer finance MSC, which is now supported by the Packard Foundation and other charities. The MSC has created a set of principles and criteria for the promotion of sustainable fisheries. Its mission is to become a global accreditation board that, through its label, will let consumers know which seafood products come from sustainable fisheries. MSC believes that given consumer concern and the power of the market, “fisheries” will pay to be certified as sustainable. The MSC hopes to be able to derive some income from the use of labels in the future, but contracts with private companies to set up a certification process for each fishery. MSC has increased the number of fisheries that it has certified. These now include major fisheries such as the Western Australian rock lobster fishery (Australia's most valuable fishery), the New Zealand hoki fishery and the Alaskan salmon fishery.⁴

² This section has been drawn from work with Dr Tavis Potts, see Potts and Haward 2001, 2004.

³ Unilever initially committed itself to purchasing only MSC certified fish by 2005. This commitment has been modified to take account of the time taken to roll out the MSC process.

⁴ Current certified fisheries include Alaskan Salmon, Bury Inlet Cockles, Loch Torridon Nephrops, Mexican Baja Californian Red Rock Lobster, New Zealand Hoki, South African Hake, South Georgia Toothfish, South West Mackerel handline, Thames herring and Western Australian Rock Lobster. Fisheries currently undergoing assessment include Alaska Pollock, Australia

The MSC is an independent, not-for-profit, international organisation. It has established a program of independent assessment, certification and promotion of sustainable fisheries using a market-based labelling approach. The central belief is that through promotion of the MSC label, fishers, processors, marketers, and retailers secure economic benefits through a market advantage. A key challenge within the MSC is the creation of suitable “markets” and ongoing consumer interest to ensure that the incentive remains for commercial involvement. There are a number of alternative approaches to certification of fisheries. Some industry groups, suspicious of the initial link between WWF and Unilever, supported the use of ISO standards. The development of market- and trade-related instruments by regional fisheries organisations (catch documentation schemes or certificates of origin) provide a form of certification of catch (see Haward 2004).

The core of the MSC approach is the development of a standard that identifies fisheries that are harvested in accordance with environmentally appropriate, socially beneficial and economically viable practices (Mfodwo 1998; MSC 2002). This standard was initially based on the FAO Code of Conduct for Responsible Fisheries (MSC 1998). The standard is applied to a fishery through an independent certification process, and upon success, a label is awarded to the product. To ensure the product is tracked from “ocean to plate”, a Chain of Custody certification occurs at every stage of the production and distribution cycle, guaranteeing the reliability of the labelled product through its entire life cycle (MSC 2001).

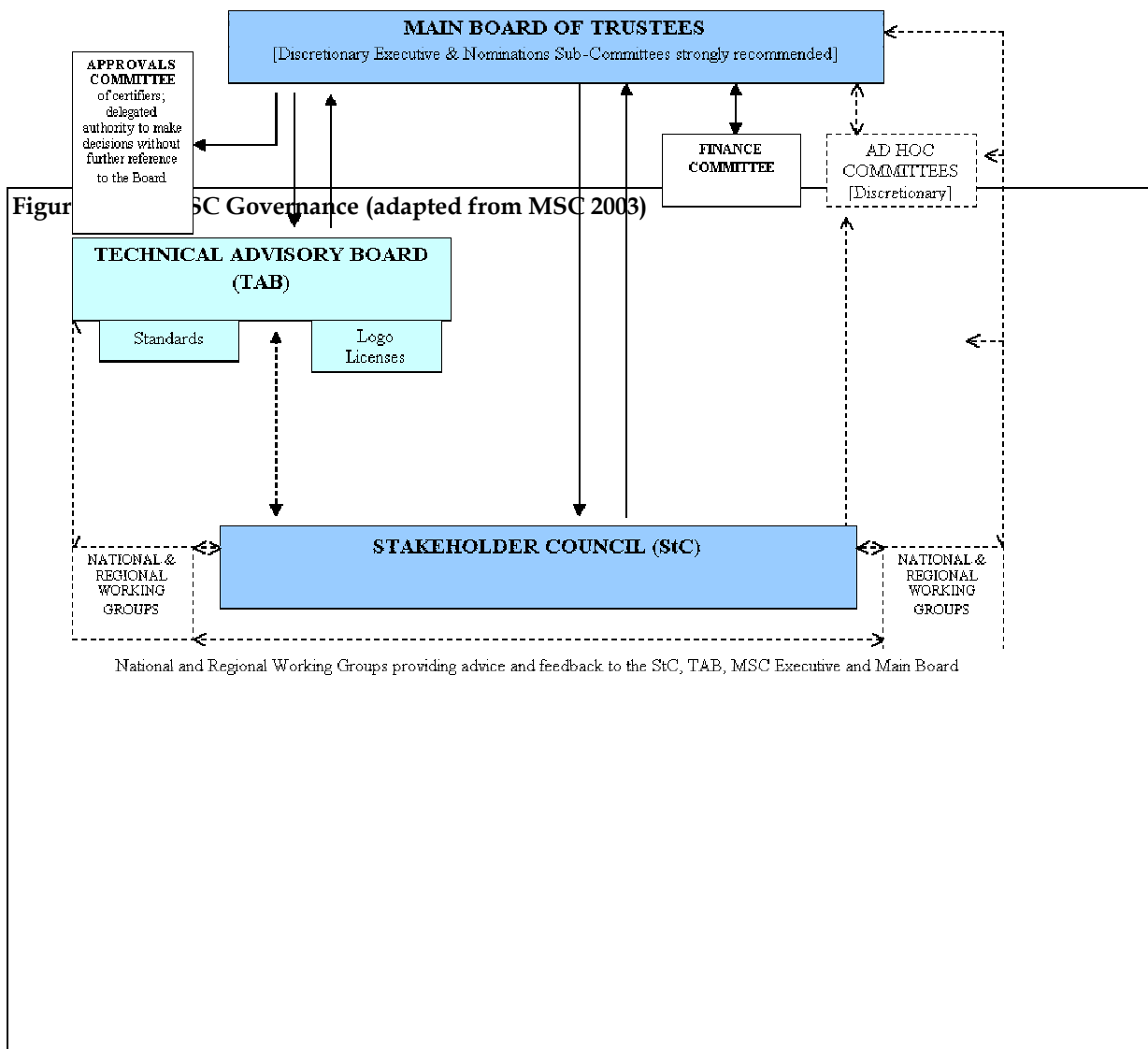
In 1999 the MSC become an independent authority, sourcing its funding from a range of charitable foundations and private organisations, as detailed in its Annual Report (MSC 2002). The creation of the MSC met with initial scepticism from fisheries managers, the industry sector, and environmental organisations other than WWF (Potts and Haward 2001). These issues focused around consultation over the MSC Principles and Criteria

Mackerel Icefish, Alaskan Salmon, Chilean Hake, Hastings fleet pelagic fishery, North Sea Herring, Pacific Halibut, & Alaskan Sablefish.

and the role of an NGO in evaluating fisheries management systems that are established through consultative processes (Fowler, 1998). Concerns existed that Unilever, with its commitment to buy only MSC-certified fish by 2005, could “water-down” certification standards to maintain supply. Despite these concerns, the MSC has continued to grow and attract increasing support from the fishing industry, governments and NGOs and has attracted several key fisheries to its logo. A review of the MSC governance structure was concluded in June 2001 to address the changing needs of an evolving organisation. The review was driven by a need to address stakeholder concerns over the process for efficient and transparent decision-making (MSC 2002, MSC 2003). The revised governance structure is detailed in Figure 2 below.

The MSC is governed by a series of executive and delegated bodies. The Board of Trustees is the executive decision-making body within the MSC. The Board is the final decision-making authority in terms of the technical, scientific and quasi-judicial organisational functions (FAO 2003). The composition of the Board of Trustees includes the executive, the chairman of the Technical Advisory Board and the two joint chairmen of the Stakeholder Council (MSC 2001a). The Technical Advisory Board (TAB) has 15 members and advises the Board of Trustees on matters that include the setting and review of the MSC Standard, logo licenses and Chain of Custody certification (MSC 2002). The Board of Trustees is responsible for appointing the TAB whilst the TAB is responsible for appointing its own Chair (MSC 2000). The Stakeholder Council is a body of 30-50 members made up of diverse interests including conservation, industry, academic, and developing nations (FAO 2003). The Council fulfils the role of a participatory forum and representative authority. The Council is able to submit views directly to the Board, which must take these into account when arriving at decisions.

The governance model employed by the MSC has been developed to promote independence, transparency and participation. An external panel undertook this review and implementation in consultation with several hundred interested parties (MSC 2002).



Source: Potts and Haward (2004).

How these governance mechanisms will deliver MSC outcomes in an increasing climate of promotion, certification initiatives, sectoral interest and resource scarcity will emerge in the near future.

The MSC supports environmentally appropriate, socially beneficial, and economically viable fisheries (MSC 2002). It seeks a balance between these dimensions as set out by sustainable development. The mission of the Marine Stewardship Council is (MSC 2003): *To safeguard the world's seafood supply by promoting the best environmental choice.*

The process of "promoting the best environmental choice" is based on the certification of the fishery management process and linking this certification to a logo that influences consumers and markets (MSC 2001b). The management of the certification process, the certification standard and promotion of the logo are the core functions of the MSC. It is

important to note that the MSC does not directly perform the certification. To remain independent, the MSC accredits a qualified certification organisation and trains them in the methodology (MSC 2001a). Certification teams must meet strict criteria for independence. The certification applies to the fishery and harvesting operation itself, up until the catch is landed (MSC 2001b). Any organisation that processes, wholesales, or retails the MSC product must also be certified and licensed by the MSC through a “chain of custody certification”. Its purpose is to ensure that the certified product can be identified throughout its lifecycle (MSC 2001b). Chain-of-custody procedures are implemented at every stage of transfer commencing with extraction from the sea to receipt on board; delivery to the dock, market, wholesalers, processors, retailers and caterers (MSC 2003).

The MSC developed a standard for sustainable fisheries, the “MSC Principles and Criteria”, through an international consultation process. A fishery may be assessed against this benchmark and be awarded the MSC logo (MSC 1998). MSC’s P&Cs are the basis of a specific set of indicators against which a fishery may be assessed (MSC 1998). During the certification process, the P&Cs are adapted to the context of the candidate fishery undergoing certification. The MSC certification process aims to establish a consistent and transparent methodology. The process includes identification, pre-assessment, formal assessment and monitoring. The process is designed to facilitate not only the immediate certification of a fishery, but ongoing compliance with measures that are established from the certification process (MSC 1998). These definitions set the basis for the generic Principles and Criteria. The three principles cover target and ecological considerations as well as socio-economic and governance concerns. The Principles and Criteria are sub-divided into 23 specific criteria that form the basis of indicators and scoring guides.⁵

Box 2 MSC Principles

Principle # 1:

⁵ The full listing of Principles and Criteria can be found on the MSC website: <http://www.msc.org>.

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

Principle # 2

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

Principle # 3

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

For a client fishery to be certified, the P&Cs are translated into a set of measurable indicators and performance scores. The process uses hierarchical subdivision to progressively refine the Principles and Criteria into operational sub-criteria, performance indicators and scoring guides.

Comparing the institutional structures of the FSC and MSC

The institutional structures of FSC and MSC clearly contrast, with three features being particularly striking related to differences in standard development, management arrangements and organisational structure. First, with respect to standard development, it is notable that the MSC has adopted and adapted an intergovernmental standard—the FAO Code of Conduct for Responsible Fisheries—while FSC developed its own standard largely from scratch, despite the existence of several intergovernmental forums for the development of criteria and indicators for sustainable forestry management (including ITTO’s Guidelines for the Sustainable Management of Natural Tropical Forests, the Montreal Process and the Helsinki Process). Moreover, while both FSC and MSC follow the principle-criteria hierarchy in their respective standards, FSC’s principles and criteria appear more detailed (there are ten principles and 56 criteria) and MSC’s, significantly less so (three principles and 23 criteria). Moreover, it appears that FSC’s principles take social interests more specifically into consideration with specific

principles dealing with indigenous peoples rights (Principle 3) and workers and communities' rights (Principles 4 & 5). In contrast, MSC's standard has no explicit principle devoted to social matters. Principles 1 & 2 are oriented exclusively towards fisheries management, while Principle 3 bears on the need for an "effective management system." While this could incorporate indigenous, community and worker rights, these interests are not overtly referenced.

In addition to MSC's more streamlined standard, the two institutions depart markedly in terms of their managerial structures. FSC is an open-membership organization: anyone who shares the organisation's objectives can join providing they secure two supporting nominations and pay the membership fee. Members in FSC play an important role at all levels of the organization—regional, national and global—giving rise to a fascinating array of vertical and horizontal political dynamics in the making of FSC's decisions. The same members, for example, can play a role at the regional, national and global level; while lobbying can occur between all levels when decisions made at one level are contested by those elsewhere. While this structure arguably "politicises" FSC's decisions in some instances—for example with respect to the development of regional indicators based on FSC's generic P&Cs—it has the advantage of ensuring substantial democratic accountability to major forestry constituencies, particularly the forest industry, environmental civil society organizations, community groups and indigenous peoples.

MSC's management structure is significantly different and more corporate. Its managerial structure is designed to insulate the Board of Trustees from the political influence of civil society actors whether they represent industry, workers, environmentalists, church groups, academic institutions, indigenous peoples and so forth. MSC's Board of Trustees is appointed, not elected, and functions like a corporate Board of Directors. The Board is the final arbiter of MSC's decisions—especially the accreditation of certifiers and permission to use the MSC logo. In order to ensure input into its decision-making arrangements, the Board of Directors established a Stakeholder

Council, composed of a large number of individuals representing different interests within the fishery. However, the Stakeholder Council can only advise the Board of Directors on its views, it cannot compel them to take action; and there is no equivalent of FSC's biennial General Assembly where stakeholders put forward resolutions to alter the organisation's very constitution.

Finally, FSC and MSC differ in terms of their organisational structure. FSC has always been a somewhat devolved organization and is becoming increasingly so via the promotion of regional offices and national initiatives around the world. These regional and national bodies are responsible for implementing FSC arrangements within their specific jurisdictions, including national or regional standards development and, in the first instance, dispute resolution between regional and national stakeholders. In contrast, the MSC has adopted a more centralised organizational structure, with a head office in London (and small regional offices in Seattle and Sydney). It depends largely on its accredited certifying bodies (rather than dedicated national working groups) to carry out its work.

Conclusions

In this paper we have outlined the institutional structures of FSC and MSC and briefly compared them, observing several important differences. FSC is a membership organization that has embedded within itself a balance of power arrangement between economic, environmental and social interests on the one hand and North-South interests on the other. It has developed a detailed and socially progressive set of principles and criteria for sustainable forest management that constitutes a significant challenge to business-as-usual forestry. To date, large industry has been antithetic to FSC and has worked assiduously to support alternative schemes.

In contrast, MSC is run by a Board of Trustees that are nominated not elected to office and who oversee the organisation's operation with input from a Stakeholder Council. The organization has embraced a standard that appears more socially conservative than

FSC's and that does not embed explicit rights to community groups, indigenous peoples, and workers. The MSC has been enthusiastically embraced by major industry, but has been the subject of some criticism from environmental and community groups.

The question arises as to why these two very different models of certification exist? No definitive conclusions are reached in this paper, but several interesting research hypothesis have been developed. One hypothesis focuses on policy learning in private regulatory regimes. The basic hypothesis here is that the WWF's experience with the FSC led it learn from that organisational experience and to seek to establish a different structure with respect to the FSC to prevent some of the latter's putative dysfunctional elements from reappearing in the fisheries sector. The specific dysfunctional elements about which the WWF may have been concerned include the politicisation of standard development via membership-based advocacy; and untimeliness of service delivery through an organization with a large, voluntary, membership-based board that is incapable of responding fast enough in the modern business environment. To test this hypothesis, interviews with those responsible for the establishment of FSC and, particularly, MSC would be necessary to see how much awareness there was of the FSC model (and perhaps other models in organic agriculture) and how strong the view was that FSC was dysfunctional or at least not functioning optimally.

Another research hypothesis locates forestry and fisheries certification more explicitly within a political economic framework, examining the structure of each industry with a view to determining the relative power of different actors to influence outcomes. Here it could be noted, for example, that the forest industry is much more disaggregated and regional than the fisheries industry, which tends to be more oligopolistic and global. It is possible, especially, that the dominance of Unilever in the industry meant that business had an especially powerful role to play in the establishment of any certification scheme that was not going to be boycotted; and that Unilever and other senior executives in the fishing industry made it abundantly clear to WWF and others interested in establishing the MSC what the minimum requirements would be in terms of standard content and

organisational structure. To explore this political economic hypothesis, then, one would need to gather data on industry structure; and to interview individuals, especially in industry, to see what pressure was applied during the negotiations on the standard to reach a satisfactory outcome (from at least the industry's perspective).

Finally, a third hypothesis with respect to understanding the contrast between the FSC and MSC focuses on the structure of the resource. Obviously forests and fisheries are very different resources with very different management requirements. Trees and forests, for example, stay put on land and are visible. Fish and fisheries, on the other hand, move around and are invisible. While one can inventory forests relatively comprehensively, the size of a fish stock can only be estimated through statistical sampling based on trial catches. One interesting line of inquiry, following Innis' argumentation in relation to the development of Canada (Innis 1930), would focus on the specific nature of the resource to be managed and how its management requirements themselves have led to the establishment of different institutional structures. A similar line of inquiry could be pursued, for example, in relation to agricultural, coffee and mining certification. The insight here would be that there is no inherent "best" institutional structure for private certification regimes; rather, governance arrangements emerge that relate to the structure of the resource they are designed to govern.

While we favour the first thesis especially, it is likely that the other theses also have important explanatory power. In order to determine their merits, however, further research is required in the different rationales for establishing the FSC and MSC, the degree to which WWF consciously set out not to emulate the FSC approach, and to compare and contrast the industry structures and inherent features of the resource (forests and fish) that are of concern to each.

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