

Transparency in Nonstate Certification: Consequences for Accountability and Legitimacy

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Introduction

Governance by disclosure has gained mainstream popularity as a means of social steering. From information-disclosure policies about the roll-over risk of sport utility vehicles and the water-quality violations of US public drinking water systems to the Global Reporting Initiative and the Carbon Disclosure Project, efforts to use the disinfectant power of information have expanded in prevalence and scope.¹ Moreover, the growing significance of supranational governance organizations and their distance from the accountability mechanisms of the state have spurred demands for greater transparency of organizations and institutions including the European Union, the World Bank, the World Trade Organization, and the International Monetary Fund.² In all cases, key debates surround the potential for transparency to improve the legitimacy and accountability of global governance.³

Set within these trends, certification programs—organized and coordinated by nonstate actors—exemplify efforts to encourage and control information flows to resolve environmental and social challenges within and beyond state boundaries. Such initiatives have formed in numerous sectors attending to problems of labor exploitation, environmental degradation, and social injustice. The hope for some is that certification can be a tool for NGOs, investors, governments, and consumers to identify and support high performers, and hence, place upward pressure on sector-wide practices. Beyond this simple appraisal, however, unanswered questions remain concerning how transparency is used by different programs and with what consequences for their operations.

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1. Fung, Graham, and Weil 2007. See also introduction to this special issue.
2. Lodge 1994; Roberts 2004; Esty 2002; and O'Brien et al. 2000.
3. Esty 2006; Nanz and Steffek 2004; Held 1995, 102; and Bernstein 2004. See also Mason 2010; and Gupta 2010.

We tackle these issues by examining two programs active in the forest and fisheries sectors. The first program—the Forest Stewardship Council (FSC)—was established after prolonged efforts within intergovernmental fora and NGO networks to push for changes in global forest governance made little headway.⁴ Supported by a broad coalition, it was set up as a membership organization, and direct participation in rule-making processes was institutionalized through National Initiatives charged with localizing the program’s global standard. The second program—the Marine Stewardship Council (MSC)—emerged not from a coalition but via a partnership of the World Wide Fund for Nature (WWF) and Unilever that sought to create an FSC-type organization for certifying responsible fisheries.⁵ Although other stakeholders were quickly included through workshops and outreach seeking feedback on standards development, the partners purposefully avoided two of FSC’s institutional features: direct membership and national affiliates for localizing global standards.⁶ Hence, MSC emerged with more streamlined attention to stakeholder involvement, and in this respect, comparing these two programs brings to light an oft noted legitimacy trade-off: high levels of participation and transparency increase buy-in and support, but also slow down decision-making and potentially impede timely action on policy problems.⁷

Comparing the MSC and FSC, we examine this trade off and the relationships between transparency, accountability and legitimacy of nonstate certification programs. We find that the MSC and FSC are continually increasing the checks on and openness of their auditing processes, introducing new requirements for certifiers and methodologies for ensuring consistency across assessments. Nevertheless, differences remain in how transparency relates to the accountability and legitimacy of the programs. The MSC uses transparency and stakeholder consultation instrumentally, informing stakeholders of its activities and drawing on their expertise when needed to make fisheries assessments credible. By contrast, the FSC treats transparency and stakeholder consultation as ends unto themselves. This underscores the importance of considering transparency alongside other governance processes and goals, such as who the eligible stakeholders are and who gets decision-making power. Comparing the MSC and FSC clarifies that the former’s choice to avoid membership affected how transparency policies functioned in legitimating the program.

The article proceeds in four parts. First, it reviews transparency as it relates to nonstate certification, drawing an analytic distinction between outcome and procedural transparency and relating transparency to goals of accountability and legitimacy. Second, it describes the programs’ requirements for transparency in rule-making and auditing processes. Third, it examines the conse-

4. Gulbrandsen 2004; Bartley 2003; and Humphreys 1996.

5. Fowler and Heap 2000.

6. Auld 2009.

7. Bernstein 2004.

quences of transparency for goals of accountability and legitimacy. It concludes by discussing the role of transparency in the governance of the FSC and MSC.

Transparency and Nonstate Certification

Certification can be seen as an example of “governance by disclosure” where the eco-label—the end result of the certification process—is the “disclosure.”⁸ The logic is that the eco-label furthers a right to know, permits consumer choice with regard to whether to buy a labeled product or not, and, to the extent that consumers demand and buy labeled products, encourages producers to change behavior to meet the labeling requirements. However, this conceptualization for the role of information disclosure in certification programs is too narrow for several reasons.

First, the eco-label itself does not provide much information; consumers that buy labeled products essentially have to *trust* the label. Without extensive public outreach and marketing, most consumers cannot be expected to critically assess the requirements for awarding the label to producers and then make informed choices about whether to buy a labeled product or not. Though there are labels that provide extensive on-product information—nutritional labels for instance—this is not true of either the FSC or MSC.

Second, empirical research has demonstrated that the growth and spread of nonstate certification programs are driven primarily by NGO targeting of retailers and resulting retailer demand for certified products rather than consumer demand. This is particularly the case in the forest sector.⁹ Similarly, with fisheries, the growth of wild-capture certification has primarily been driven by large companies, like Unilever, Tesco, Sainsbury’s and Wal-Mart, concerned with their corporate reputations.¹⁰

Third, product labeling is only one component in the advanced and comprehensive certification programs we examine. As will become clear below, focusing on the openness of rule-making and auditing processes reveals a lot more about the consequences of transparency in nonstate certification programs than a focus on the label itself.

How, then, can we assess transparency in nonstate certification programs? We focus on the consequences of procedural and outcome transparency for two broad policy goals: accountability and legitimacy. By procedural transparency we mean the openness of governance processes, such as decision-making or adjudication.¹¹ Transparency of this type is often used to improve the legitimacy of global governance arrangements.¹² With more open procedures, the likelihood increases that organizations and institutions not supported by norms of popu-

8. Gupta 2008.

9. Cashore, Auld, and Newsom 2004; and Sasser 2003.

10. Gulbrandsen 2006.

11. Vermeule 2007, 187.

12. Esty 2006, 1514.

lar sovereignty can secure legitimacy.¹³ Outcome transparency concerns openness about regulated or unregulated behaviors; for instance, a law might require disclosure about the health effects of marketed products or pollution released during manufacturing. This is termed outcome transparency as it deals with the substantive ends of a given policy intervention, and it is considered important for identifying and managing environmental and social problems.¹⁴ Many economists, for example, show how mandatory information disclosure creates incentives for reduced health or environment related violations and helps consumers avoid risk or make healthful or environment-friendly choices.¹⁵ Outcome transparency is also relevant to the dynamics of “accountability politics,” where transnational advocacy networks use disclosed information to hold prominent international players—corporations, states, and international organizations—accountable to their commitments.¹⁶ Although outcome and procedural transparency can occur simultaneously, this is not always the case. A process with no procedural transparency could establish a rule requiring extensive outcome transparency for some regulated party. Hence they are useful to disentangle.

With certification, the focal actors for procedural transparency are decision-makers. Information about decision-making processes made public can be a means to meet all the above mentioned policy goals. First, accountability may improve, as information about decision-making processes enables program members and the public to ask relevant questions and demand answers. Second, by appealing to shared norms of openness and fairness, it can help increase the acceptance of certification rules and regulations by producers, NGOs, local communities and other relevant audiences, thus enhancing legitimacy.¹⁷ Finally, information about decision-making processes can facilitate buy-in from a broad base of participants to ensure effective implementation of policy choices. Because participation in these programs is voluntary, procedural transparency can help convince participants that decision-making is conducted in an open, balanced, and fair manner.

With outcome transparency, the focal actors are those being regulated. Information about their activities disclosed to the public and stakeholders can enhance accountability and legitimacy. First, better accountability can result because NGOs use audit reports to hold certified companies to account for their practices and performance. As explained by Meidinger: “If a significant amount of information about a given practice is publicly available, then that practice becomes potentially accountable to a broad set of actors and values, at least in that it is subject to their criticism.”¹⁸ Second, improved legitimacy can result

13. Gupta 2008 identifies this as the central assumption of procedural transparency.

14. Vermeule 2007, 187; and Mitchell 1998.

15. Benbear and Olmstead 2008; and Viscusi, Magat, and Huber 1986.

16. Keck and Sikkink 1998.

17. Bernstein 2004; and Bernstein and Cashore 2007.

18. Meidinger 2006, 82.

if information about auditing and monitoring convinces relevant audiences that assessments are credible and that the system for monitoring practices, verifying compliance, and responding to noncompliance can be trusted.¹⁹ Finally, by increasing information about the practices and performance of certified companies, outcome transparency can influence behavior and ultimately may facilitate better environmental and working conditions, or other relevant improvements.²⁰

Procedural and outcome transparency do not operate in isolation; their consequences need to be considered in relation to other policies and the environment into which the information is disclosed. For instance, procedural transparency may not empower all stakeholders equally or even those most affected by decision-making processes.²¹ It may empower certain interest groups, but do little to ensure accountability to a broader stakeholder base.²² As Fung suggests, there are three relevant questions concerning the issue of participation: who gets selected as participants; what form of information is exchanged and through what means; and who holds decision-making power?²³ These questions remind us that the effects of transparency for accountability and legitimacy are mediated by other features of decision-making processes.

Transparency Requirements

This section examines provisions in the FSC and MSC for procedural and outcome transparency in rule-making and auditing (Table 1). The data draw from the programs' past and current policy documents, and the analysis is informed by a review of selected assessment reports from third-party auditors and interviews with FSC and MSC staff, NGO and industry representatives and other stakeholders.

Forest Stewardship Council

Rule-Making

With the FSC, rule-making occurs in various settings. Ultimate authority rests with its membership, over 800 in December 2009. Member organizations and individuals are separated into three interest-based chambers (environment, social, and economic) each of which control one third of the total voting rights (although originally a quarter of the rights went to economic and three quarters went to social and environmental). Parity between Northern and Southern interests is also required within each chamber. The secretariat is the FSC's central

19. O'Rourke 2006; and Raynolds, Murray, and Heller 2007.

20. O'Rourke 2003.

21. Langlely 2001.

22. Vermeule 2007, 192.

23. Fung 2006.

Table 1
Transparency Used by the FSC and MSC

<i>Types of Transparency</i>	<i>Use and Consequences for FSC</i>		<i>Use and Consequences for MSC</i>		
	<i>Focal Actors</i>	<i>Means</i>	<i>Ends</i>	<i>Means</i>	<i>Ends</i>
Procedural	National Initiatives	<ul style="list-style-type: none"> Broad participation in standards development Stakeholder and public meetings Comment periods on draft standards 	<ul style="list-style-type: none"> Standards accountable to members and public Legitimate standard, congruent with local conditions Buy-in from participants to ensure legitimacy and implementation 		
	Certifier / assessment team	<ul style="list-style-type: none"> Seven years of records available to FSC Assessment records available to stakeholders Documenting and responding to stakeholder comments, keeping identities anonymous 	<ul style="list-style-type: none"> Certifiers accountable to stakeholders and FSC Credible assessments and legitimacy of program 	<ul style="list-style-type: none"> Public notice for operations entering full assessment 30-day comment period on assessment standard Documenting and responding to stakeholder comments 	<ul style="list-style-type: none"> Standards accountable to public Legitimate standard, congruent with local conditions, based on expert knowledge and stakeholder consultation
Outcome	Fishey / forestry operation	<ul style="list-style-type: none"> Disclose information to certifier for evaluation against P&C Assessment summarized and publicized on certifier's web-site; full report provided to FSC 	<ul style="list-style-type: none"> Certifiers and operation accountable to stakeholders and FSC Credible assessment and legitimacy of program Compliance with standard 	<ul style="list-style-type: none"> Disclose information to certifier for evaluation against P&C Assessment summarized and publicized on MSC web-site 	<ul style="list-style-type: none"> Certifier and company accountable to stakeholders and MSC Credible assessment and legitimacy of program Compliance with standard

organizational body. Led by the Executive Director, it manages operational issues, carrying out the membership's mandates and the Board of Director's strategic plans.²⁴

After four years spent drafting the international Principles and Criteria (P&C), which involved worldwide consultation, groups of interested stakeholders in a specific country—or region within a country—were given official status and charged with developing locally appropriate indicators and verifiers for P&C. Although local processes were underway when the FSC was established, the first national contact person was endorsed in the UK in 1995.²⁵ There are now 57 National Initiatives: 15 in Africa, two in North America, nine in Latin and Central America, 23 in Europe (including Russia), and eight in Asia and Oceania. The FSC set stringent requirements for transparency of these initiatives: "In order for the FSC as a whole to maintain its credibility and transparency, the organization and its National Initiatives must act in an open and participatory fashion."²⁶ Likewise, with the National Initiatives' standards development work, the FSC requires procedural transparency for standards it will endorse. This means: "The consultative process [has to] be transparent and accountable, both to working group members, and to the wider public. Minutes of all meetings and draft standards [are to] be made available to any interested party."²⁷

Meeting these procedural requirements has been time and resource intensive. With the nine US regional standards, the shortest was the Rocky Mountain process, which began in 1998 and had a standard endorsed in September 2001, conditional on certain changes. These were finalized in November 2004.²⁸ Other standards, including for the Pacific Coast and Appalachia regions, took eight years to receive endorsement. The working groups comprised between 14 and 34 representatives of social, economic and environmental interests and each have sought input from and kept informed larger groups of stakeholders. In the Pacific Coast region, over 400 groups were contacted for their perspectives on the draft standard; around 100 provided significant input. In a required 60-day public comment period, the Pacific Coast standard received 215 comments.²⁹

The procedural requirements have meant that the number of endorsed standards has lagged behind the spread of forest management certificates. To date, 30 standards have been endorsed by FSC's International Board. In 1999, when there were only three endorsed standards (the UK, Sweden and the Canadian Maritimes), forest operations in 31 countries were FSC certified.³⁰ By 2010,

24. Forest Stewardship Council 1995.

25. Synnott 2005.

26. Evison 1998, 29.

27. Evison 1998, 61.

28. Forest Stewardship Council 2004e.

29. Forest Stewardship Council 2005.

30. Auld 2009.

FSC-certified forests exist in 82 countries, nearly four times the number of endorsed standards (given some countries, particularly the US, have several sub-national standards endorsed).³¹ Since certifiers were operating before the FSC launched and in order not to restrict participation in areas where standards remain incomplete, FSC-accredited certifiers may assess operations against locally-adapted “generic” standards.³² Here, too, FSC requires stakeholder consultation, including soliciting input from: any FSC National Initiative operational in the country or region; relevant government bodies; interested domestic and international NGOs; representatives of relevant indigenous peoples and forest dwelling or using communities affected by the operations; labor unions; contractors; and representatives of forest industry and forest owners.³³ In a language readily understood in the region, the certifier must contact stakeholders about the assessment and indicate that their input will inform the localization of the “generic” standard for the assessment. The standard must also be made available on the certifier’s website.³⁴

Auditing

The certification assessments are conducted by independent certification bodies (certifiers), which must be FSC accredited. The first accreditation contracts were signed in 1996 with the Soil Association, SmartWood, Société Générale de Surveillance (SGS), and Scientific Certification Systems (SCS); the number of accredited certifiers has since grown to 22, although only some operate globally and several just perform chain-of-custody assessments. By April 2010, there were 1,009 active forest-management certificates and 16,814 chain-of-custody certificates.³⁵

The FSC accreditation has evolved from an in-house process, conducted by its Accreditation Business Unit, to one controlled by a separate organization—Accreditation Services International (ASI)—which began operations in March 2006. The basic rules for what auditors must disclose have been the same since late 2004; however, ASI now posts public summaries of the accreditation reports on its website. The requirements for procedural transparency are extensive. Each accredited certifier must maintain seven years of records on a wide range of issues, and all this information must be made available to the FSC, upon request. The records must cover, *inter alia*, information on the certifier’s staff including their qualifications, potential conflicts of interest and training records; information on its decision-making processes and operations including committee work, evaluation and certification contracts, reporting, and approvals for use of the FSC Trademark; details on all certificate holders and their products; and

31. Forest Stewardship Council 2007a

32. Forest Stewardship Council 2004d.

33. Forest Stewardship Council 2004f; Forest Stewardship Council 2004d, clause 3.1.3.

34. Forest Stewardship Council 2004d.

35. Forest Stewardship Council 2010.

meeting minutes or notes from all committees overseeing certification and dispute-resolution decisions.³⁶ Additionally, the rules require that certifiers provide interested stakeholders information on the names and qualifications of those responsible for, *inter alia*, the certifier's overall performance, decision-making and dispute resolution.³⁷

A first step for applicants is typically a confidential pre-assessment. During the full assessment, stakeholders are to be consulted to aid in determining whether the operation is in "compliance with the environmental, legal, social, and economic requirements of the Forest Stewardship Standard."³⁸ With the exception of small forest owners (operations eligible for FSC's small and low intensity managed forests program), FSC defines stakeholders as noted above. The FSC also requires that certifiers document all input, with explanations for how these comments affected the certification outcome. Should the certificate be awarded, the certifier must contact stakeholders to inform them of the outcome and explain how the stakeholders' specific concerns were addressed. These details are sometimes present in the public summary report, but none of the opinions of stakeholders are made public without prior written consent.³⁹

Both when assessments use a "generic" or an endorsed standard, the results are summarized and posted on the certifier's website. At minimum, the report must include: a description of the forest and its land-use history; details on the forest management systems in use; summary of the operation's management plan in terms of FSC's requirements (Criterion 7.1); details of the operation's monitoring and assessment procedures consistent with FSC requirements (Criterion 8.2); and a description of the audit's scope and justification for any areas not assessed. The report must also note the assessment standard, details of the evaluation process, general observations taken to make the certification decision, and a clear statement of the certification outcome, including any conditions or pre-conditions.⁴⁰ This is in addition to a longer report detailing the operation's full assessment, which is provided to the FSC.⁴¹ Discussion of the evaluation process typically explains how and with whom the team consulted.

Marine Stewardship Council

Rule-making

Rule-making authority is held by a Board of Trustees, which also acts as the organization's public face. Initially, the MSC was run by a secretariat that coordinated the activities of a Standards Council, Advisory Board, and National

36. Forest Stewardship Council 2004c, clause 9.

37. Forest Stewardship Council 2004c, clause 3.3.

38. Forest Stewardship Council 2004f, clause 1.1.

39. Forest Stewardship Council 2004f.

40. Forest Stewardship Council 2004a.

41. Forest Stewardship Council 2004b.

Working Groups.⁴² The Advisory Board was partitioned into three chambers: one for economic interests, a second for environmental groups and government bodies (domestic and international), and a third for educational, social, and consumer interests.⁴³ It was the closest analogue to FSC's membership, being "open to any individual with an interest in fisheries and their certification irrespective of their own background."⁴⁴

This structure has since changed. Following a review in 2001, the MSC broadened representation on its Board of Trustees and replaced the Standards Council with a Technical Advisory Board designed to give advice on standards, chain of custody, and logo licensing. Finally, the Advisory Board was replaced by a Stakeholder Council comprising 30 to 50 members who annually met to give guidance to the Board. Two members from the Council and one member of the Technical Advisory Board hold seats on the Board of Trustees.⁴⁵ Still, the Trustees retained rule-making authority, meaning the MSC remains more centralized than the FSC. The FSC was a clearer model for the MSC's approach to drafting standards, which involved worldwide consultation with fisheries stakeholders; however, divergence occurred in the approach to localization.⁴⁶ The MSC did develop national affiliates—three were operational by 1999—yet these were responsible for outreach and promotion rather than localizing global standards. This task was instead given to the certifiers.⁴⁷

The MSC has sought a balance between stakeholder input into a transparent assessment process and the need for consistency across like fisheries seeking MSC endorsement. As with the FSC, applicants can undergo a confidential pre-assessment that provides a gap analysis determining steps the operation will need to take prior to a full assessment.⁴⁸ Public notice is required prior to the full assessment, which is when work similar to that done by FSC National Initiatives begins. Initially, expert assessment teams were given discretion to develop performance indicators and scoring guideposts for evaluating the candidate fishery. Although guided by previous assessments, the aim is to have measures appropriate for a specific operation. Since 2002, however, the MSC has been working on the consistency and reliability of assessments. In July 2008, it introduced a new fisheries assessment methodology, purported to be the program's "biggest change" since the standard was drafted in the late 1990s.⁴⁹ This provides a default assessment tree, from which certifiers must now build performance indicators and scoring guideposts.

During the assessment, the applicant fishery is required to provide information that will allow the assessment team to score the fishery; the assessment

42. Fowler and Heap 2000, 141.

43. Marine Stewardship Council 2000; and Fowler and Heap 2000, 141.

44. Marine Stewardship Council 1999.

45. Marine Stewardship Council 2001b.

46. Murphy and Bendell 1997.

47. May et al. 2003, 21.

48. Chaffee, Phillips, and Ward 2003, 64.

49. Marine Stewardship Council 2008a and 2008b.

team interviews relevant stakeholders and takes account of concerns relating to management and sustainability of the fishery. Procedural transparency is facilitated by a comment period, where interested stakeholders have 30 days to make suggestions about performance indicators and scoring guideposts. The final versions must incorporate this feedback and be made public before the assessment begins.⁵⁰

Auditing

The MSC now also has accreditation conducted by an external organization. Accreditation was first handled in-house, similar to FSC. However, a need to align the program with the FAO “Guidelines for the Eco-labeling of Fish and Fishery Products from Marine Capture Fisheries” meant the MSC has separated accreditation from its role as a standards organization.⁵¹ Rather than duplicate the FSC, it contracted ASI to conduct its accreditation work, but the MSC still has not followed the FSC by posting accreditation reports online.

Recall that a pre-assessment is necessary before an applicant can undergo the full assessment. The pre-assessment is fully confidential, but sometimes clients publicize the outcome on the Internet to show stakeholders identified areas for improvements.⁵² If an applicant fishery wants to undergo a full assessment, this must be publicized—in a local newspaper, for example—and all relevant stakeholders must be notified. By 2004, less than half of the fisheries that had undergone pre-assessments proceeded to a full assessment.⁵³ Still, as of November 2009, there were 125 fisheries in some stage of full assessment and 59 already certified. An average full assessment takes eighteen months from announcement to the final decision. The shortest assessment—the Atlantic deep sea red crab fishery certified in September 2009—took four months; the longest—the Gulf of Alaska Pollock fishery certified in April 2005—took about four and half years.⁵⁴

The certifier appoints the full-assessment team that comprises experts in fishery stock assessments, ecosystem management, and fishery management. The assessment involves significant stakeholder engagement. Some assessments have even provided opportunities to comment on potential expert assessors.⁵⁵ Any stakeholder can comment on the process, and the team must demonstrate that these comments have been considered in their final report. The assessment team also arranges meetings with stakeholders throughout the process, and groups they have met with are listed in the public summary report. The reports

50. Chaffee, Phillips, and Ward 2003, 70.

51. Marine Stewardship Council 2006.

52. Interview with Alice McDonald and Daniel Suddaby, MSC Fishery Assessment Officers, 23 May 2006.

53. Bridgespan Group 2004, 4.

54. Marine Stewardship Council 2009b.

55. Scientific Certification Systems 2000.

also list comments considered by the team. With the Western Australian rock lobster fishery, conservation groups expressed concern about by-catch; consequently, the fishery was required to create, within 12 months, a better system for tracking by-catch and documenting the fishery's interactions with marine life.⁵⁶

The assessment team makes the final certification decision. The team members score the fishery according to the assessment tree and issue a preliminary report for peer review and public comment. Stakeholders may also object to the final certification decision, which activates an objections procedure. Of the 59 certified fisheries, five have received complaints initiating this procedure. All relevant assessment documents are posted on the MSC webpage. These documents include a number of stakeholder notifications, a public comment draft report, final report and determination, a public certification report, and annual surveillance reports. When relevant, a summary report of the objections panel and other relevant documents from the objections procedure are also posted on the website.⁵⁷

Consequences of Transparency for Nonstate Certification

What have the above provisions done to advance the efforts of MSC and FSC as governance organizations? At the outset, we noted that neither procedural nor outcome transparency act in isolation. The choices of which actors constitute legitimate stakeholders and which actors have decision-making authority interact with provisions for transparency to affect a program's accountability and legitimacy. We assess these relationships below, focusing on rule-making, auditing and the role of transparency in MSC and FSC governance writ large.

Accountability of the Auditing System

With auditing, the aims of the MSC and FSC have been to ensure accountability to stakeholders and the programs themselves (Table 1). From the beginning, these processes have been scrutinized. Each initiative has had to ensure the auditing process is independent while simultaneously institutionalizing means of control to ensure the program and its image remain intact.

For the MSC, unease with auditing immediately emerged. The first objections panel was formed to review the New Zealand hoki fishery, which entered full assessment in October 2000 and was certified in March 2001.⁵⁸ The Western Australian rock lobster fishery, certified in March 2000, also inspired concern.⁵⁹ Meetings of the just-formed Stakeholder Council aired these concerns, with participants critically discussing the arms-length, opaque relationship between the MSC and the certifiers. One concern was the confidentiality of pre-assessments.

56. Scientific Certification Systems 2000, 26.

57. Marine Stewardship Council 2009a.

58. SGS Product & Process Certification 2001.

59. Sutton 2003.

Participants at the June 2002 meeting of the Stakeholder Council pushed the MSC to exert greater control over the pre-assessments, viewing these as a credibility issue for the organization. The meeting gave four recommendations to the Board, including: that certifiers be required to “notify the MSC of all formal applications for pre-assessment” and ensure clients know if they are considered controversial; and that MSC ought to work with certifiers on pre-assessments, including helping identify relevant stakeholders, and have confidential access to pre-assessment reports for those fisheries undergoing a full assessment.⁶⁰ These issues were picked up at the Council’s August 2003 meeting, the minutes of which highlight a discussion about possible forms of oversight and transparency for accredited certifiers, including the possible publication of the accreditation reports or, at least, information on non-conformities with MSC requirements. The notes outlined an action point to “discuss options” on how to improve transparency.⁶¹ Likewise, a report commissioned by the Homeland Foundation, Oak Foundation and Pew Charitable Trust released in 2004 urged the MSC to address several issues, with some focused specifically on the accreditation and certification processes, including: “Ensure transparency in all documents and decision-making as much as possible.”⁶²

The FSC also faced criticism for the operation of certifiers. One of the first was SmartWood’s certification of Flor y Fauna in 1995.⁶³ The issues surrounded pre-existing scrutiny of the company in the Netherlands; links between the WWF Netherlands, a Dutch insurance and banking group, and the FSC, all of whom were endorsing Flor y Fauna; and questions about the company’s growth-and-yield and pricing expectations.⁶⁴ Though the assessment began in 1993—before the FSC accredited SmartWood—it still raised concerns about the credibility of the assessment processes. This was followed in 1996 and 1997 by disquiet over an SGS assessment of Leroy Gabon, particularly due to the company’s operations near a forest reserve, and as some groups asserted, the limited stakeholder consultations and insufficient management plan.⁶⁵ In this case, the FSC eventually suspended SGS’s forest-management accreditation pending certain changes to its procedures, and it requested that all accredited certifiers respect a six-month moratorium on certifying primary forests.⁶⁶

The MSC and FSC, as discussed above, have modified their accreditation processes so as to improve credibility and accountability. This has included increased provisions for procedural and outcome transparency, such as disclosure

60. Marine Stewardship Council 2002, 9.

61. Marine Stewardship Council 2003.

62. Highleyman, Amos, and Cauley 2004, 31.

63. Donovan 1996.

64. Centeno 1996.

65. “Gabon-Environment: NGOs Want Eco-Label Stripped from German Firm,” *IPS-Inter Press Service*, 26 January 1997.

66. Tickell, Oliver. “FSC Cracks Down on Certifier Despite ‘Approval,’” *Timber Trades Journal*, 25 October 1997.

of the public summary reports for certification assessments. By one account, this may be boosting the systems' credibility, as skeptical groups and individuals are able to trace the corrective action requirements imposed on companies and see how they are eventually resolved. Information in the reports also makes the work of outside critics easier since they can access information previously unavailable and raise their concerns more forcibly. For example, data for a report critical of FSC's accreditation and auditing practices, issued by the Rainforest Foundation, would have been difficult to compile had the public summary reports not been available.⁶⁷

These outcomes aside, both programs have continued to pursue a strategy of increasing checks on and openness of their auditing processes. Similar to the MSC's new assessment methodology, the FSC has improved its procedural requirements for accreditation. As of January 2010, a new FSC accreditation standard requires certifiers to include greater interaction and engagement with stakeholders during the assessment process and longer comment periods.⁶⁸ Nevertheless, differences remain in how far the programs have gone in using disclosure. Unlike the FSC, the MSC does not make accreditation reports available on its website. There is another key difference in the challenges facing the MSC and FSC in the audit process: localizing standards and who controls this process, as explained below.

Legitimizing Standards through Localization

Both programs, albeit by different means, sought to adapt standards to local conditions and use local stakeholder engagement to garner support. This has presented challenges. First, this approach comes with a trade-off. Locally appropriate also means different, which can mean inconsistent and unfair, as companies operating in different regions face more or less costly standards or NGOs see strict standards being applied in some regions and not others.⁶⁹ Each program continues to address this challenge. The MSC Technical Advisory Board began work on consistency in 2001 and a new fisheries assessment methodology was released in 2008. In the US, the FSC office introduced national indicators in 2001 as an effort to harmonize US regional standards. It is now completing a revised standard that should replace existing regional standards.⁷⁰ In the current version (draft 7, July 2009), regional variation is addressed at the indicator level.⁷¹ Broader discussions in FSC have also examined consistency, but to date nothing as extensive as the US effort has been undertaken.

Second, the purpose this process serves for each program differs in a subtle but important way. With the MSC, localization has been more a means to an

67. Counsell and Loraas 2002.

68. Shelter 2009.

69. Ward 2008; and Auld 2009.

70. Forest Stewardship Council. United States 2001.

71. Forest Stewardship Council. United States 2009.

end: experts with knowledge about a fishery's ecology and biology are used to help the assessment team build a credible standard. Drawing on expert knowledge is a central aim of the MSC. As a recent document entitled "A Stakeholder's Guide to the Marine Stewardship Council" explains: stakeholders are a critical "source of information needed to conduct a meaningful assessment." It is particularly important that they ensure that stakeholder issues are considered in the assessment; the assessment "is well-informed and comprehensive"; and that the assessment's outcome "is consistent with the rigorous MSC standard."⁷² This aim is also apparent in audit reports. For instance, the public report for the Alaska salmon fishery noted concerns voiced by Canadian academics, NGOs, and commercial interests about stocks impacted by Alaska's interception fishery. As the report notes:

One of the key components of the stakeholder consultation process is to help extend the evaluation team's discovery capabilities. This helps ensure that the evaluation team gets access to all available data/information about a fishery. (. . .) Unfortunately, while the Canadians we were able to speak to were quick to voice concern, none of the Canadian stakeholders presented evidence that the often identified suspicions about problems in Alaska's interception fisheries were correct or founded.⁷³

This is a legitimate criterion for evaluating input, and as the previous section noted, auditors are required to state how they account for stakeholder input. Still, it exemplifies an instrumental view of the consultation process and illustrates how MSC processes envision consultation more as a means to legitimate assessment outcomes.

This is also true for the FSC. But in addition, the process of developing local standards is an end unto itself. Devolving power to the National Initiatives, and hence empowering stakeholders to take ownership of local-standard development appropriate to their forests, has been central to the FSC and its claims to legitimacy.⁷⁴ However, the time taken for National Initiatives to submit standards to the FSC for approval constitutes a problem. The authority that the FSC grants to certifiers to apply "generic" standards in situations where endorsed-national standards are not yet in place has been a source of concern for critics, who argue that it undermines the credibility of the FSC given lack of effective control mechanisms.⁷⁵ Additionally, it relates to a broader concern that too much power for auditors undermines the authority devolved to National Initiatives. The two different approaches to standard setting offered by the FSC have meant that in certain cases, stakeholder involvement has been extensive and rich, whereas in other cases standard setting has been much less visible and participatory. Hence, the FSC is in a tricky situation. The National Initiatives and their extensive en-

72. Marine Stewardship Council 2009a, 4.

73. Scientific Certification Systems 2000, 56.

74. Tollefson, Gale, and Haley 2008; and Cashore, Auld, and Newsom 2004.

75. Counsell and Loraas 2002.

agement with national stakeholders are partly the basis for its legitimacy. Yet, the National Initiatives have often been hard to coordinate, they are resource-intensive to maintain, and slow at getting standards drafted.⁷⁶ In response, the FSC has reaffirmed its commitment to its global network and has focused on ensuring “integrity, credibility and transparency of the FSC system.”⁷⁷ This has included the introduction of some flexibility by permitting standards work to occur in countries without National Initiatives.⁷⁸ The new standard for FSC accreditation that became operational in January 2010 also increases provisions for stakeholder engagement in the adaptation of a certifier’s generic standard for a given assessment.⁷⁹

In sum, the MSC and FSC have emphasized different approaches to legitimize their programs, one that uses procedural transparency and stakeholder consultation instrumentally and the other where these provisions are ends unto themselves. It is hard to say one is better, but they do, at this point appear to be self reinforcing, an issue we close with in analyzing the role of transparency in MSC and FSC governance.

Transparency and Governance of the MSC and FSC

Comparing the MSC and FSC makes clear that the former’s choice to avoid membership affected how transparency policies functioned in legitimating the program. For the MSC, early concerns centered on its governance, even though it was also being championed for its transparent consultation process. As one observer noted:

The process of consultation being undertaken by the MSC project in devising and developing its Principles and Criteria is being conducted in an extremely open and transparent manner. The project is seeking to consult with, and be guided by, the views of as many stakeholders in the fisheries sector as possible.⁸⁰

Still, a series of articles in *Samudra* (a periodical of the International Collective in Support of Fishworkers) between 1996 and 1998 raised numerous criticisms of the MSC, including the concern that it would marginalize small-scale fishers, particularly in the South. In this respect, it was not a matter of whether consultations were transparent, but rather whether stakeholders were adequately involved in discussions about MSC’s goals.

The MSC was responsive to these concerns. Indeed, a MSC founder contributing to the *Samudra* debates noted that membership had been discussed during the standards-development workshops and was still under consider-

76. Interview, FSC Staff, December 2007.

77. Forest Stewardship Council 2007b, 10.

78. Forest Stewardship Council 2009.

79. Shelter 2009.

80. O’Riordan 1997, 10.

ation.⁸¹ It was then addressed in the 2001 governance review, which considered the possibility of membership seeing it as a way to increase the active engagement and investment of NGOs and retailers in the program and its processes.⁸² Yet, instead of promoting membership, the review re-affirmed the value of a streamlined governance organization. In a post to its website concerning the review, the MSC explained

Many funders and NGOs in particular raised the question of a 'democratic deficit' in the organisation's structure. Comparisons were made with the seemingly more open Forest Stewardship Council (FSC). Some felt that in order for the MSC to be truly accountable to all its stakeholders, the organisation should be membership based. This was, rightly in the view of many, rejected and some argue that the FSC's experience has vindicated that decision.⁸³

Consistent with our above argument, this exemplifies the different approach the MSC has taken to garnering support as a governance organization.

Turning to the FSC, the choice to devolve some authority to National Initiatives and to base the program's legitimacy more completely on the support of members is an alternative approach. One implication has been that stakeholders supporting the FSC have had an easier time using the language of transparency and participation as a point of contrast with competing certification initiatives backed by forest industry and forest owner associations. The themes identified by Overdevest in her analysis of reports comparing the FSC with various producer-backed schemes are informative.⁸⁴ A report by the Certified Forest Products Council (a group of North American companies committed to buying third-party certified forest products) for instance, emphasized openness and transparency of standards development as a key measure of comparison. A more recent Greenpeace report explains: "Key strengths of the FSC network and organization have been its transparency and its ability to pioneer approaches and adaptations of certification. (. . .) It is in effect an elaborate conflict resolution mechanism for reconciling many differing views and values in relation to forests and some plantations."⁸⁵ This focus is further underscored by guidelines established to separate credible from non-credible certification initiatives, such as those of the World Bank/WWF Global Forest Alliance, which consider procedural transparency in rule-making and auditing as critical components of credible systems.⁸⁶ The point for our assessment concerns how transparency relates to other governance issues, such as who eligible stakeholders are and who gets decision-making power. Perceptions that the FSC was transparent stemmed, arguably, from its openness to stakeholder involvement, the power of member-

81. Sutton 1998.

82. Marine Stewardship Council 2001a.

83. Marine Stewardship Council 2001a.

84. Overdevest 2005.

85. Rosoman, Rodrigues, and Jenkins 2008, 3.

86. WWF / World Bank Global Forest Alliance 2006, 16.

ship provisions, and the devolution of authority to National Initiatives, not, by contrast, from any specific efforts to disclose information on how decisions were being made.

Conclusion

For both the MSC and FSC, procedural and outcome transparency are crucial program elements. Yet they serve different ends. Whereas the MSC uses procedural transparency and stakeholder consultation instrumentally, these provisions serve as ends unto themselves in the FSC. We have argued that MSC's choice to avoid membership affected how transparency policies functioned in legitimating the program. Facing criticism for giving stakeholders less decision-making power than the FSC, the MSC continues to base its legitimacy on efficient and transparent procedures, balance, and expertise. It has bolstered outreach to stakeholders, but remains committed to its leaner governance model. Rather than attempting to bring all relevant stakeholders under its umbrella, it has chosen to inform stakeholders of its activities and draw on their expertise and concerns when needed to make individual assessments credible.

The FSC, by contrast, has faced the burden of supporting institutional arrangements for ongoing stakeholder engagement that go beyond short-term processes. The FSC bases its legitimacy on a broader sense of stakeholder engagement and inclusiveness. Two facets of the FSC program appear important for garnering stakeholder support for its governance efforts. First, the choice to develop transparent procedures that devolved considerable rule-making authority to national stakeholders influenced how stakeholders viewed the organization. It also meant that political controversy over acceptable practices centered on a different aspect of the certification procedure than occurred in fisheries. Indeed, developing national (sometimes sub-national) FSC standards has been one of the most prolonged and arduous aspects of its work. Second, the choice to grant ultimate decision-making authority to FSC members influenced perceptions of the program's transparency. The view of FSC as transparent emerged as much from its openness to stakeholders, the power of membership provisions, and the devolution of decision-making power to National Initiatives as from its specific requirements for procedural and outcome transparency.

Both programs have sought to improve accountability by using procedural and outcome transparency, such as publicizing summarized assessment reports and increasing online disclosure of audit outcomes. Whereas this increased disclosure may boost credibility of forest and fisheries certification to some while reinforcing the skepticism of others, with few exceptions it has been a critical tool for furthering MSC and FSC accountability.⁸⁷ Our claim is that although increased disclosure might not have convinced skeptical stakeholders of the mer-

87. For analysis of accountability effects of transparency in other voluntary governance initiatives, see Dingwerth and Eichinger 2010; and Haufler 2010.

its of certification, most stakeholders would agree that it has enhanced their ability to scrutinize accreditation and certification practices. Procedural and outcome transparency have improved the conditions for holding both certifiers and companies to account for their practices. Still, there remain a few differences in how far the programs have gone in using disclosure, such as MSC's choice not to make accreditation reports available on its website.

Whether or not either program will remain legitimate in the longer term remains to be seen, but it is clear that their respective choices have presented different governance challenges. Our analysis demonstrates that transparency provisions interact with other governance provisions in nonstate certification programs to influence governance outcomes. Understanding transparency policies in these programs therefore requires taking into account which stakeholders are considered eligible to influence certification decisions and who ultimately has the authority to make policy choices.

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