Learning through Disclosure: The Evolving Importance of Transparency in the Practice of Nonstate Certification

Graeme Auld* and Lars H. Gulbrandsen†

* Carleton University, Canada
† Fridtjof Nansen Institute, Norway


Abstract:

Governance by disclosure has gained mainstream popularity as a means of social steering using the disinfectant power of information to improve the legitimacy and accountability of global governance. 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. Formed in numerous sectors, certification programs attend to problems of labor exploitation, environmental degradation, and social injustice. For some the hope 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. This paper extends an initial analysis of the Marine Stewardship Council and the Forest Stewardship Council to other programs operating in the fisheries and forest sectors, and it assesses what the individual activities of nonstate certification programs mean for the practices that emerge in the growing field of private regulatory initiatives. Not unlike innovation in the knowledge economy, nonstate certification programs are generating new governance arrangements, mechanisms and norms which may have broad value for collective efforts to manage earth systems. However, we argue, incomplete or uneven transparency within the community of nonstate certification programs presents problems for this collective model of innovation. This unevenness can mean certain programs are gaining from the experiences of others, without reciprocating with information about their own successes and failures.

Keywords: governance by disclosure, certification, global governance, accountability, legitimacy, learning
1. Introduction

Certification programs—organized and coordinated by nonstate actors to address social and environmental challenges in numerous economic sectors—exemplify efforts to govern by disclosure. Some hope certification will 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 effects for their operations and the transformative potential of nonstate certification initiatives as tools of global governance.

Our initial assessment compared two programs active in the forest and fisheries sectors.¹ The first program—the Forest Stewardship Council (FSC)—emerged from the ashes of a failed global forest convention.² Established as a membership organization, the FSC allows direct participation in rule-making processes through National Initiatives charged with localizing the program’s global standard. The second program—the Marine Stewardship Council (MSC)—formed as a partnership initiative of the World Wide Fund for Nature (WWF) and Unilever that sought to create an FSC-type organization for seafood.³ Other stakeholders were quickly included via workshops and outreach seeking feedback on standards development. Still, the partners purposefully avoided two of FSC’s institutional features: direct membership and national affiliates for localizing global standards.⁴ Hence, MSC formed with less attention to stakeholder involvement, and in this respect, comparing these two programs shed light on an oft noted

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¹ Auld and Gulbrandsen 2010  
² Gulbrandsen 2004; Bartley 2003; Humphreys 1996.  
³ Fowler and Heap 2000.  
⁴ Auld 2009.
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.\(^5\)

By examining the approach taken to this tradeoff by the MSC and FSC, we show that both programs 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. For the MSC, transparency and stakeholder consultation are used to inform stakeholders of the program’s activities and to draw advice from these stakeholders to make fisheries assessments credible. By contrast, the FSC treats transparency and stakeholder consultation as ends unto themselves. Comparing the MSC and FSC, therefore, clarifies that the former’s choice to avoid membership affected how transparency policies functioned in legitimating the program.

This chapter extends our comparative, programmatic analysis of transparency in nonstate certification in two ways. First, we compare the MSC and FSC to other certification initiatives operating in the forest and fisheries sectors to underscore the variation in how transparency is used in practice. We find notable differences. The MSC and FSC, despite their differences, remain leaders in providing information on the outcomes of auditing processes. Many other programs do not require the disclosure of the audit outcomes, which speaks to the challenge of inconsistent or partial transparency underscored by this volume.\(^6\)

Second, we examine what the individual activities of nonstate certification programs mean for the practices that emerge in the growing field of private regulatory initiatives. On the upside, there is the potential that the practice of disclosing audit reports may become the norm among nonstate certification programs. Indeed, it has been adopted by many carbon offset

\(^5\) Bernstein 2004.
\(^6\) Cite appropriate chapters, Mol and Gupta and Mason’s introduction.
verifiers, such as the American Carbon Registry, Verified Carbon Standard, and Climate Action Reserve. However, certain leading programs, such as the joint initiative of the Rainforest Alliance and the Sustainable Agriculture Network, a program active in certifying many agricultural commodities, does not disclose audit reports. This inconsistency has implications for the learning capacity of nonstate certification programs. It means later programs may be benefiting from the transparency of early programs, but then not disclose their own lessons to potentially enhance the future developments of the field of certification as a whole. A key challenge we therefore stress is how the marketization of information—in this case knowledge about the operation of nonstate certification—requires careful attention if the transformative potential of certification is likely to be realized.\(^7\)

Our analysis proceeds in four parts. First, drawing an analytic distinction between outcome and procedural transparency, we review the links between transparency, accountability, legitimacy and learning within and across nonstate certification initiatives. Second, we review our assessment of the transparency requirements of the MSC and FSC. Third, we discuss the consequences of transparency for goals of accountability and legitimacy, and using a comparison of the outcome transparency of the MSC and FSC with other initiatives operating in the fishery and forest sectors, we explore consequences for the learning capacity of communities of nonstate certification programs

2. Embracing transparency and disclosure

The information provided by an eco-label is only one reason and—in our assessment—not the most important reason why certification is an example of governance by disclosure.\(^8\) First, eco-labels provide limited information; consumers that buy labeled products essentially have to

\(7\) Cite Mol’s chapter
\(8\) Gupta 2008.
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—these are rare in the field of nonstate certification programs. Second, empirical research has demonstrated that the growth and spread of nonstate certification programs are largely driven by NGO targeting of retailers and resulting retailer demand for certified products rather than consumer demand.\(^9\) Third, eco-labels are only one small piece of information nonstate certification programs disclose; information about the procedures and outcomes of rulemaking and auditing reveals a lot more about the consequences of transparency in certification programs than does the label itself.

In this light, our original assessment focused on the consequences of procedural and outcome transparency for two broad policy goals: accountability and legitimacy.\(^10\) Here we add an assessment of the learning capacity of nonstate certification. 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 popular 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.\(^14\) This is termed outcome transparency as it deals with the substantive ends

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\(^9\) Cashore, Auld, and Newsom 2004; Sasser 2003; Gulbrandsen 2006.
\(^10\) Auld and Gulbrandsen 2010
\(^12\) Mitchell 2011; Esty 2006, 1514.
\(^13\) Gupta 2008 identifies this as the central assumption of procedural transparency.
\(^14\) Mitchell 2011.
of a given policy intervention, and it is considered important for identifying and managing
environmental and social problems.\textsuperscript{15} 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.\textsuperscript{16} 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.\textsuperscript{17}
Although outcome and procedural transparency can occur simultaneously, they may not. 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.\textsuperscript{18} 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.

\textsuperscript{15} Vermeule 2007, 187; Mitchell 1998.
\textsuperscript{16} See e.g., Bennear and Olmstead 2008.
\textsuperscript{17} Keck and Sikkink 1998.
\textsuperscript{18} Bernstein 2004; Bernstein and Cashore 2007.
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. Second, improved legitimacy can result 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. 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.

Procedural and outcome transparency need to be considered in relation to other policies and the environment into which the information is disclosed. First, procedural transparency may not empower all stakeholders equally or even those most affected by decision-making processes. Who gets selected as participants, what form of information is exchanged and through what means, and who holds decision-making power are all important questions. How they are answered will condition how transparency affects accountability and legitimacy.

Second, the environment into which information is disclosed contains other certification initiatives, and the learning capacity of this constellation of initiatives, we suspect, will be shaped by the procedural and outcome transparency of the individual nonstate certification programs. Without information on what works and does not work, the innovative potential of nonstate certification will be limited. Various scholars interested in the aggregate effects of self-organized

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19 Meidinger 2006, 82.
20 O’Rourke 2006; Raynolds, Murray, and Heller 2007.
21 O’Rourke 2003.
22 Langley 2001; Vermeule 2007, 192.
23 Fung 2006.
governance or policy experiments underscore this point. In Overdevest and colleagues words: “Experimentalism seeks to encourage local jurisdictions or communities to experiment with ways of achieving standards for environmental quality (air quality, water quality, adequate participation), while it calls for the broader pooling and sharing of information across experiments to help improve public understanding and accountability (p286).” The key point for us is the “pooling and sharing of information”, which relies on the transparency.

To explore these implications, we turn to work on innovation in knowledge economies and the potentials and pitfalls of intellectual property rights in this societal project. A core conundrum for spurring innovation is the open-access quality of ideas and information and the incentive this creates for secrecy. These qualities serve to justify intellectual property right protections with the premise that without protections, it would be irrational to innovate knowing that someone else could take and copy the innovation or expressive work as soon as it was distributed. Moreover, public intellectual property protections—particularly patents—serve to ensure disclosure of innovations. An exclusive right to use the innovation for a time-bound period comes with a requirement to put the innovation on the public record. Hence, disclosure and use rights, in part of the intellectual property rights regime, go hand-in-hand.

These insights highlight a key challenge. Nonstate certification programs are innovating new governance arrangements, mechanisms and norms which have broad value to collective efforts to manage earth systems. Tracking systems developed in forestry, for instance, have become critical for advancing efforts to weed out trade in illegal wood. However, incomplete or uneven transparency within the community of nonstate certification programs presents problems

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24 Victor, House, and Joy 2005; Keohane and Victor 2011
25 Overdevest, Bleicher, and Gross 2010
26 Braithwaite 2008; Boyle 2008
27 Auld et al. 2010
for this collective model of innovation. It may mean certain programs gain from the experiences of others, without reciprocating with information about their own successes and failures. Hence, we suggest that open-source governance models provide important lessons for the future evolution of nonstate certification programs. We focus on outcome transparency, not how transparency in general affects learning.

Our analysis is a plausibility probe for the argument that without disclosure about the effects of nonstate certification, collective learning about what does and does not work will be difficult to advance. Without these provisions, interest in experimental governance approaches,\textsuperscript{28} are unlikely to realize much success. We suggest that the ability of later programs to copy aspects of early programs, without needing to disclose their own lessons learned, presents a key stumbling block for the field of nonstate certification programs to make continuous improvement towards addressing environmental and social challenges. Though many design characteristics may be copied,\textsuperscript{29} we narrow our focus on outcome transparency as it is arguably critical for learning about programmatic effects.

3. Institutionalizing transparency and disclosure: Comparing the MSC and FSC

Drawing on our previous analysis, this section reviews procedural and outcome transparency provisions in the FSC’s and MSC’s rule-making and auditing processes (Table 1).\textsuperscript{30}

3.1 Rule-making

Ultimate decision-making authority resides with different bodies in the two programs. With the FSC, it is held by the organization’s membership, over XXX in December 2011. Member organizations and individuals are separated into three interest-based chambers

\textsuperscript{28} Hoffmann 2011; Overdevest, Bleicher, and Gross 2010
\textsuperscript{29} See Dingwerth and Pattberg 2009; Gulbrandsen 2010.
\textsuperscript{30} Auld and Gulbrandsen 2010
(environment, social, and economic) each of which now control one third of the total voting rights. Parity between northern and southern interests is also required within each chamber. The secretariat is the FSC’s central organizational body. Led by the Executive Director, it manages operational issues, carrying out the membership’s motions and the Board of Director’s strategic plans.\textsuperscript{31}

By contrast, with the MSC, ultimate decision-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 Working Groups.\textsuperscript{32} 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.\textsuperscript{33} 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.”\textsuperscript{34} Following a review in 2001, the MSC expanded 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 provide the Board guidance. Two members from the Council and one member of the Technical Advisory Board hold seats on the Board of Trustees, which continues to hold rule-making authority.\textsuperscript{35}

The core rules the FSC and MSC establish are those governing the practices of audited operations in the respective sectors. Both programs took similar approaches to establishing global

\textsuperscript{31} Forest Stewardship Council 1995.
\textsuperscript{32} Fowler and Heap 2000, 141.
\textsuperscript{33} Marine Stewardship Council 2000; Fowler and Heap 2000, 141.
\textsuperscript{34} Marine Stewardship Council 1999.
\textsuperscript{35} Marine Stewardship Council 2001b.
standards, but differed in how they made these standards appropriate for different local fisheries and forestry contexts. The FSC decentralized the process. 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 the P&C.\(^{36}\) 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.”\(^{37}\) 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.”\(^{38}\)

Meeting these procedural requirements has been time and resource intensive, and as a result, endorsed standards lag behind the spread of forest management certificates.\(^{39}\) By 2010, 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).\(^{40}\) 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.\(^{41}\) Here, too, FSC requires stakeholder consultation, including soliciting input from: any FSC National Initiative operational in the country or region; relevant

\(^{36}\) 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. [Check these numbers]


\(^{38}\) Evison 1998, 61.

\(^{39}\) See Auld and Gulbrandsen 2010 for further discussion of the time standards have taken to receive endorsement.

\(^{40}\) Forest Stewardship Council 2007a

\(^{41}\) Forest Stewardship Council 2004d.
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. 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.

The MSC, while emulating the FSC’s approach to setting global principles and criteria, the role of localization was given to certifiers. As with the FSC, applicants can undergo a confidential pre-assessment that identifies steps the operation will need to take prior to a full assessment. 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 was to have operation-specific measures. Since 2001, however, the MSC has been working on the consistency and reliability of assessments. In July 2008, it introduced a new fisheries assessment methodology that 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 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

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42 Forest Stewardship Council 2004e; Forest Stewardship Council 2004d, clause 3.1.3.
43 Forest Stewardship Council 2004d.
44 Murphy and Bendell 1997.
45 Chaffee, Phillips, and Ward 2003, 64.
46 Marine Stewardship Council 2008a, 2008b; Gulbrandsen 2010, 126.
get 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.\textsuperscript{47}

3.2 Auditing

The certification assessments—or audits—for both programs are conducted by independent certification bodies (certifiers). Both programs also use the same external organization—Accreditation Services International—to conduct the assessments. ASI was originally set up by the FSC in March 2006.

For the FSC, 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, \textit{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 meeting minutes or notes from all committees overseeing certification and dispute-resolution decisions.\textsuperscript{48} Additionally, the rules require that certifiers provide interested stakeholders information on the names and qualifications of those responsible for, \textit{inter alia}, the certifier’s overall performance, decision-making and dispute resolution.\textsuperscript{49}

\textsuperscript{47} Chaffee, Phillips, and Ward 2003, 70.
\textsuperscript{48} Forest Stewardship Council 2004c, clause 9.
\textsuperscript{49} Forest Stewardship Council 2004c, clause 3.3.
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.” 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.

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. This is in addition to a longer report detailing the operation’s full assessment, which is provided to the FSC.

\[50\] Forest Stewardship Council 2004e, clause 1.1.
\[51\] Forest Stewardship Council 2004e.
\[52\] Forest Stewardship Council 2004a.
\[53\] Forest Stewardship Council 2004b.
For the MSC, 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 web to show stakeholders identified areas for improvements.\textsuperscript{54} If an applicant fishery wants to undergo a full assessment, this must be publicized—in a local newspaper, for example—and all relevant stakeholders need to be notified. By 2004, less than half of the fisheries that had undergone pre-assessments proceeded to a full assessment.\textsuperscript{55} Still, as of December 2011, there were 135 fisheries in some stage of full assessment and 109 already certified. An average full assessment takes one and half years from announcement to the final decision.\textsuperscript{56}

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.\textsuperscript{57} 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 also list comments considered by the team. With the Western Australian rock lobster fishery, conversation 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.\textsuperscript{58}

\textsuperscript{54} Gulbrandsen 2010, 125.
\textsuperscript{55} Bridgespan Group 2004, 4.
\textsuperscript{56} Auld and Gulbrandsen 2010
\textsuperscript{57} Scientific Certification Systems 2000.
\textsuperscript{58} Scientific Certification Systems 2000, 26.
In the end, the assessment team makes the 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. 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.\(^\text{59}\)

4. Effects of transparency and disclosure

At the outset, we noted that neither procedural nor outcome transparency act in isolation. The choices of who constitute legitimate stakeholders and who has decision-making authority interact with provisions for transparency to affect a program’s accountability and legitimacy. We first assess these relationships, focusing on rule-making, auditing and the role of transparency in MSC and FSC governance writ large. We then broaden our assessment to probe how outcome transparency affects the learning capacity of nonstate certification programs alone and as a field of organizations.

4.1 Transparency and the accountability and legitimacy of nonstate certification

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.

\(^{59}\) Marine Stewardship Council 2009a.
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.\textsuperscript{60} The Western Australian rock lobster fishery, certified in March 2000, also inspired concern.\textsuperscript{61} 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. 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.\textsuperscript{62} 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.\textsuperscript{63} 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

\textsuperscript{60} SGS Product & Process Certification 2001.
\textsuperscript{61} Sutton 2003.
\textsuperscript{62} Marine Stewardship Council 2002, 9.
\textsuperscript{63} Marine Stewardship Council 2003.
accreditation and certification processes, including: “Ensure transparency in all documents and decision-making as much as possible.”

The FSC also faced criticism for the operation of certifiers. One of the first was SmartWood’s certification of Flor y Fauna in 1995. 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. 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. 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.

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

65 Donovan 1996.
66 Centeno 1996.
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.\(^{69}\)

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.\(^{70}\) 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. 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.\(^ {71}\) Each program continues to address this challenge. As noted, the MSC 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

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\(^{69}\) Counsell and Loraas 2002.
\(^{70}\) Shelter 2009.
\(^{71}\) Ward 2008; Auld 2009.
harmonize US regional standards. It is now completing a revised standard that should replace existing regional standards.\textsuperscript{72} Regional variation is now addressed at the indicator level.\textsuperscript{73}

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 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.”\textsuperscript{74} 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. 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.\textsuperscript{75}

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

\textsuperscript{72} Forest Stewardship Council. United States 2001.
\textsuperscript{73} Forest Stewardship Council. United States 2010.
\textsuperscript{74} Marine Stewardship Council 2009a, 4.
\textsuperscript{75} Scientific Certification Systems 2000, 56.
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.\(^\text{76}\) However, the time taken for National Initiatives to submit standards to the FSC for approval constitutes a problem. Recall that the FSC grants considerable authority to certifiers to apply “generic” standards in situations where endorsed-national standards are not yet in place. This discretionary power has been a source of concern for critics who argue that it undermines the credibility of the FSC given lack of effective control mechanisms.\(^\text{77}\) 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 engagement 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.\(^\text{78}\) In response, the FSC has been reaffirming its commitment to its global network and focusing on ensuring “integrity, credibility and transparency of the FSC system.”\(^\text{79}\) This has included introducing some flexibility by permitting standards work to occur

\(^{76}\) Tollefson, Gale, and Haley 2008; Cashore, Auld, and Newsom 2004.
\(^{77}\) Counsell and Loraas 2002.
\(^{78}\) Interview, FSC Staff, December 2007.
\(^{79}\) Forest Stewardship Council 2007b, 10.
in countries without National Initiatives. 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.

In sum, the MSC and FSC have emphasized different approaches to legitimatize 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 turn to now in analyzing the role of transparency in MSC and FSC governance.

4.2 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. 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

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80 Forest Stewardship Council 2009.
81 Shelter 2009.
82 For an illustration of this perspective, see O'Riordan 1997, 10.
workshops and was still under consideration.\textsuperscript{83} 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.\textsuperscript{84} 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.\textsuperscript{85}

Consistent with our 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.\textsuperscript{86} A report by the Certified Forest Products Council (a group of North American companies committed to buying third-party certified forest products) for

\begin{flushright}
\textsuperscript{83} Sutton 1998.  
\textsuperscript{84} Marine Stewardship Council 2001a.  
\textsuperscript{85} Marine Stewardship Council 2001a.  
\textsuperscript{86} Overdevest 2005.
\end{flushright}
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.” 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.

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 membership 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.

4.3 The Learning Capacity of Nonstate Certification

Extending beyond the comparison of the MSC and FSC and turning the lens to the future role of transparency in the evolution of nonstate certification, here we examine other programs in the forest and fishery sectors. Considerable work has documented how later-emerging programs have learned from the first-mover initiatives, both within issue areas and across them. Dingwerth and Pattberg, for instance, show that membership in the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance affects the transparency of certification programs, particularly with regard to rule-making procedures. ISEAL has worked to improve the

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88 WWF / World Bank Global Forest Alliance 2006, 16.
89 Dingwerth and Pattberg 2009
operations of lead nonstate certification programs, and now includes 13 members. Each instance of emulation has significance. Here, however, we focus only on the diffusion of practices on outcome transparency given its significance for the potential longer-term effects of nonstate certification.

Table 2 presents comparative information on the disclosure of the process and outcomes of audits to date. Three key points emerge. First, across all the programs, procedural transparency for auditing has become a norm. Although the practice varies, all the programs disclose on their websites the specific steps an audit will involve and information on when consultation and stakeholder engagement are to occur. The PEFC, for instance, requires that “the audit evidence to determine the conformity with the forest management standards shall include relevant information from external parties (e.g., government agencies, community groups, conservation organizations, etc.) as appropriate,” though it leaves open who these groups should be and what information must be provided to them by the certifier. There is also variability between different PEFC-endorsed schemes. Second, there are differences in the extent to which outcome transparency is diffusing within the fishery and forestry sectors. Aquaculture programs are not disclosing audit reports, whereas ocean-capture programs are. Certain agriculture programs are not disclosing audit reports, whereas forestry programs are. Third, within those schemes which are requiring outcome disclosure the quality of information varies. With the PEFC, for instance, a public summary report is required, but the specifics of the report are determined by individual schemes.

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90 See [http://www.iscalalliance.org/organisation/full_members](http://www.iscalalliance.org/organisation/full_members) for a current list of members.
91 PEFC 2007.
92 For instance, on the inclusion of information from external parties, the Austrian scheme notes that the evaluation will comprise, “consideration of relevant information from external interest groups (government bodies, associations, environmental groups, etc.), in as far as sensible and appropriate” (emphasis added) PEFC Austria 2006.
93 PEFC 2007.
What do these differences mean? First, as we noted above, outcome transparency has importance for providing information for stakeholders to assess the performance of the certification process, holding to account the program or the operator when practice is not aligned with the rules. Many studies have been conducted using the public summary reports from FSC audits and have shed considerable light on where improvements have been made and where they have not. In contrast, assessments of rule compliance for the aquaculture programs are notably absent, and evaluations of programs with lower quality publicly disclosed reports are thin as well. Without this information, it is very difficult to assess whether the choices certification programs are making are advancing rule compliance in the management practices. This issue is even more important when one considers that even when disclosed information is somewhat detailed, as in the case of the FSC, the challenge of connecting rule-compliance with actual improvements in performance persists.

Finally, ISEAL appears attuned to this issue. The Alliance has recently developed an impact code for its members, which aims to improve, inter alia, the ability of certification programs to track performance. As the code notes, programs should assess their impacts to “enhance societal learning by feeding results into the standards landscape to understand the cumulative impacts of voluntary standards systems.” If we take the insights of open-source governance models and those from experimental governance seriously, ISEAL would do well to consider a contract amongst its members which requires reciprocal disclosure of like information. In the open-source software model, the licensing agreement stipulates that parties are welcome to use the software, but that subsequent innovations need to be fed back into the commons to facilitate future innovation and growth.

94 A few citations here.
95 ISEAL Alliance 2010
5. Conclusion

Procedural and outcome transparency are crucial program elements for nonstate certification, even if they serve different ends for individual programs. 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 stakeholder outreach, but remains committed to its leaner governance model. Rather than bringing 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, bases its legitimacy on a broader sense of stakeholder engagement and inclusiveness, as illustrated by two program features. First, the choice to develop transparent procedures that devolved considerable rule-making authority to national stakeholders influenced how stakeholders viewed the organization. As well, it meant that political controversy over acceptable practices centered on a different aspect of the certification procedure than occurred in fisheries. 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. Our claim is that although increased disclosure might not have convinced skeptical stakeholders of the merits 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.

This final point is crucial when we turn to assessing the diffusion of disclosure among a broader set of nonstate certification programs. In this comparator group, the MSC and FSC emerge as leaders, as few other initiatives disclose audit reports with similar detail. This incomplete disclosure presents challenges for fostering learning within this private governance field, as only certain lessons are being fed back into the system to inform future reforms.
<table>
<thead>
<tr>
<th>Types of transparency</th>
<th>Focal actors</th>
<th>Use and consequences for FSC</th>
<th>Use and consequences for MSC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Means</td>
<td>Ends</td>
</tr>
</tbody>
</table>
| Procedural            | National Initiatives | -Broad participation in standards development  
-Stakeholder and public meetings  
-Comment periods on draft standards | -Standards accountable to members and public  
-Legitimate standard, congruent with local conditions  
-Buy-in from participants to ensure legitimacy and implementation | | |
|                       | Certifier / assessment team | -Seven years of records available to FSC  
-Assessment records available to stakeholders  
-Documenting and responding to stakeholder comments, keeping identities anonymous | -Certifiers accountable to stakeholders and FSC  
-Credible assessments and legitimacy of program | -Public notice for operations entering full assessment  
-30-day comment period on assessment standard  
-Documenting and responding to stakeholder comments | -Standards accountable to public  
-Legitimate standard, congruent with local conditions, based on expert knowledge and stakeholder consultation |
| Outcome               | Fishery / forestry operation | -Disclose information to certifier for evaluation against P&C  
-Assessment summarized and publicized on certifier’s web-site; full report provided to FSC | -Certifiers and operation accountable to stakeholders and FSC  
-Credible assessment and legitimacy of program  
-Compliance with standard | - Disclose information to certifier for evaluation against P&C  
-Assessment summarized and publicized on MSC web-site | -Certifier and company accountable to stakeholders and MSC  
-Credible assessment and legitimacy of program  
-Compliance with standard |
Table 2: Transparency provisions for the audits of forest and fishery certification programs

<table>
<thead>
<tr>
<th>Programs</th>
<th>Sector</th>
<th>Est.</th>
<th>Transparency provisions</th>
<th>Audit outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Stewardship Council*</td>
<td>Forestry</td>
<td>1993</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Marine Stewardship Council*</td>
<td>Fisheries</td>
<td>1997</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Program for the Endorsement of Forest Certification</td>
<td>Forestry</td>
<td>1999</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Global Aquaculture Alliance</td>
<td>Fisheries</td>
<td>1997</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Rainforest Alliance / Sustainable Agriculture Network*</td>
<td>Forestry</td>
<td>1989 / 1993</td>
<td>Yes</td>
<td>Yes (forestry &amp; carbon) / No (agriculture)</td>
</tr>
<tr>
<td>Friend of the Sea</td>
<td>Fisheries</td>
<td>2006</td>
<td>Yes</td>
<td>Yes (capture fishery) / No (aquaculture)</td>
</tr>
<tr>
<td>Naturland</td>
<td>Fisheries</td>
<td>1982</td>
<td>Yes</td>
<td>Yes (capture fishery) / No (aquaculture)</td>
</tr>
<tr>
<td>Aquaculture Stewardship Council**</td>
<td>Fisheries</td>
<td>2009</td>
<td>Yes</td>
<td>To be determined</td>
</tr>
<tr>
<td>ISO 12877</td>
<td>Fisheries</td>
<td>2007</td>
<td>Partially; available, but at cost</td>
<td>To be determined</td>
</tr>
</tbody>
</table>

Notes: Data for the table is obtained from the organizations’ websites. * Indicates that the program is a member of the ISEAL Alliance. ** Associate member in ISEAL Alliance.
6. References


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