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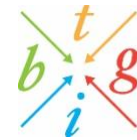
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## **Micro-Level Interactions in the Compliance Processes of Transnational Private Governance**

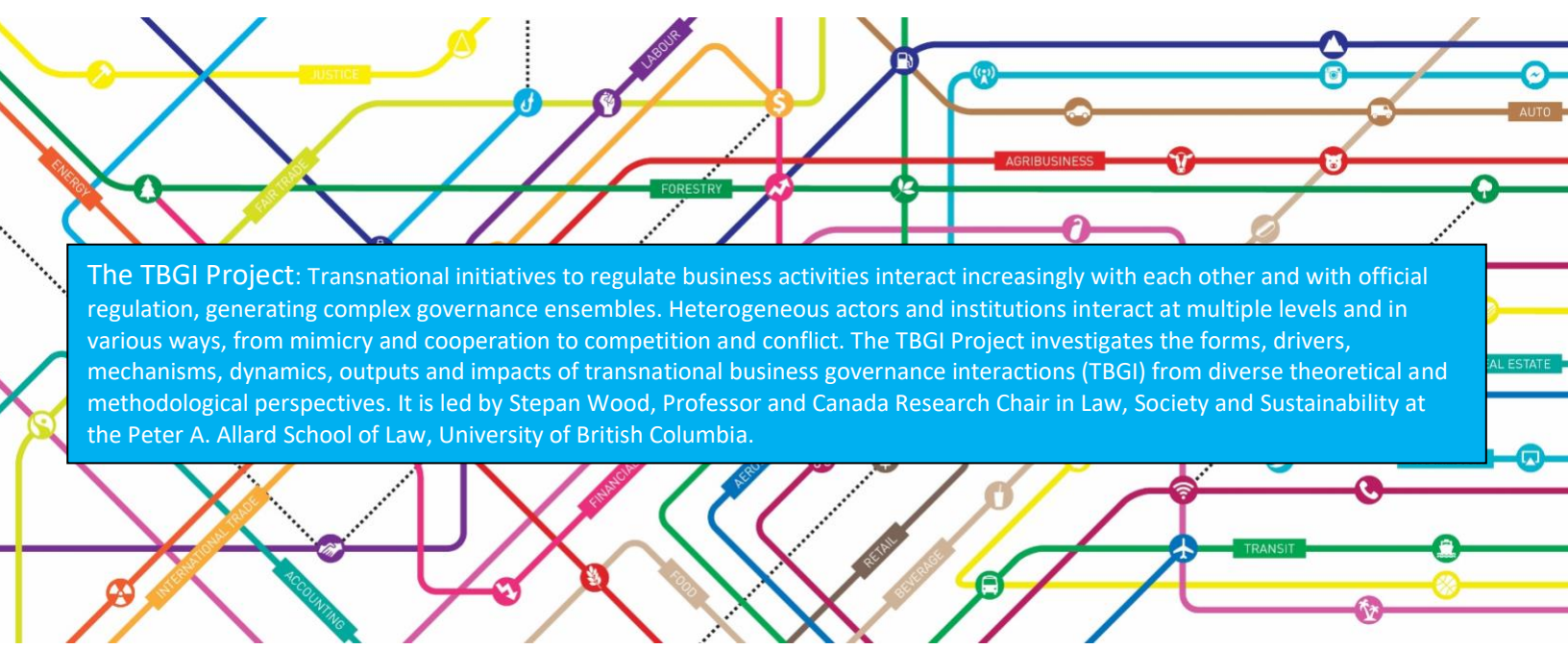
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The TBGI Project: Transnational initiatives to regulate business activities interact increasingly with each other and with official regulation, generating complex governance ensembles. Heterogeneous actors and institutions interact at multiple levels and in various ways, from mimicry and cooperation to competition and conflict. The TBGI Project investigates the forms, drivers, mechanisms, dynamics, outputs and impacts of transnational business governance interactions (TBGI) from diverse theoretical and methodological perspectives. It is led by Stepan Wood, Professor and Canada Research Chair in Law, Society and Sustainability at the Peter A. Allard School of Law, University of British Columbia.

# Micro-Level Interactions in the Compliance Processes of Transnational Private Governance

Graeme Auld and Stefan Renckens<sup>1</sup>

## Abstract

Transnational private governance has emerged in multiple issue areas to promote responsible business practices. While most studies assess its rule-setting function, much less research has been done on the compliance-assessment function. This chapter examines the various actors that are involved in this process—auditors, individual assessors and, to a lesser extent, accreditors—and their respective interactions. Using the Marine Stewardship Council as an empirical case, the chapter examines the level of competition among accredited auditors and assessors, and the degree of organizational interdependence. It argues that while the number of accredited auditors has increased over time, the degree of competition is rather limited, while auditors are also much less operationally independent than expected due to the mobility of assessors across auditors. As such, this chapter contributes to the TBGI literature by providing a micro-level perspective addressing interactions among governance actors within a transnational private governance regime and their potential influence on regime effectiveness.

## Keywords

Transnational private governance; compliance process; Marine Stewardship Council; auditor competition; assessor mobility; environmental governance

## Introduction

Transnational private governance regimes comprise a bundle of regulatory functions intended to promote responsible business practices. They are rule setters, generating standards that define appropriate environmental and social practices for a given sector or issue area. Companies that seek voluntarily to comply with these standards must pass an independent, third-party audit. With most transnational private governance regimes, this compliance-assessment function is conducted by separate organizations that we term *auditors*. *Accreditation agencies* check to ensure that these auditors can properly implement the assessment procedures of the rule-setting governor. The accredited auditors then

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perform the independent audits to verify the (non)compliance of an applicant company, contracting individual *assessors* (usually in teams of three to five) who have specific expertise relevant to the applicant company and the regime's standards.

In this chapter, we explore these compliance functions from a micro-level perspective by examining interactions among actors within a single private regime (Eberlein et al. 2014). We focus on characterizing the pool of auditors and assessors, how this pool has evolved and the kinds of intra-pool interactions that exist. Our premise is that this pool and its intra-pool dynamics – what we conceptualize as markets for auditors and assessors – matter for the functioning and outcomes of the compliance process. A few studies have highlighted the potential importance of these compliance agents (McDermott 2012). We seek to build from and extend these initial studies and push for further research into these micro-level interactions within a transnational private governance regime.

To undertake this analysis, we examine the Marine Stewardship Council (MSC), a prominent transnational private certification program for sustainable wild-capture fisheries. Our analysis uses a dataset comprising all 312 fisheries that sought certification with the MSC program from 1999 to November 2015; it includes details on the fishery audits (i.e., timing, scores, features of the fishery, stakeholder objections), the organization performing the audit and the composition of the audit team. Considering that auditors are profit-driven businesses, we highlight the impact on the auditor pool of changes in market demand for the MSC certificate by adding data collected on the market campaigns conducted by Greenpeace and other environmental groups that led to a series of commitments from seafood buyers. Our data come from MSC audit reports, the MSC website and Greenpeace websites and reports. As a whole, these data allow us to describe the evolving pool of auditors and assessors working with the MSC, characterize different forms of interactions, and propose potential consequences of these interactions for regulatory outcomes.

Our analysis shows that there has been increasing competition among MSC accredited auditors, in the sense that as demand for audits increased the number of auditors entering the market also increased. However, a closer look at this relationship shows that the competition among auditors has largely constituted a duopoly and that consolidation in the auditor market influences competitive pressures. Furthermore, we find that there are considerable differences across the auditors in terms of assessment outcome variables (duration, scores, objections), especially between those accredited early (2001) and those accredited in a second period (2006-2008). By exploring the sharing of assessors by the auditors, we find that over the 15 years of MSC assessments each auditor has on average employed six assessors whom other auditors have also employed. We also find important connections among the auditors over time: newly-accredited auditors use assessors who gained experience working for early accredited auditors, pointing towards learning across auditors by means of mobile individual assessors. At the same time, we observe that some new auditors draw in new assessors who subsequently work for other existing auditors. As a result, following Power (1997, 2003) and Hatanaka and Busch (2008), we show that while auditors may be organizationally independent, they may not be operationally independent.

The MSC is not a unique case. Any transnational private governance regime that involves third-party certification will include assessors and auditor(s). We therefore see our analysis as elucidating an important, and so far little studied, facet of this form of governance.

We proceed in four steps. First, we review the features of private regimes and motivate our focus on auditors and assessors as important compliance agents. Second, we introduce the empirical case and review the results of our descriptive analysis. Our conclusions provide directions for further research on compliance processes within private regimes.

## Transnational Private Regimes and Compliance Agents

Transnational private governance regimes have emerged in recent decades to create a vibrant field of governance activities aimed at addressing myriad social and environmental problems. Diverse initiatives count as governance in this area of work. Only a subset of these initiatives focus on regulatory governance – the purposeful use of rules to steer behavioural outcomes – what Abbott and Snidal (2009) termed regulatory standard-setting initiatives (see also, Cashore 2002).

Private certification programs are a prominent type of regulatory governance. They have evolved to constitute complete regulatory regimes (Scott 2002) in that they involve processes for, at minimum, (re)negotiating, implementing and monitoring rules, and adjudicating disputes. Rule implementation and monitoring – what we examine in this chapter as encompassing the compliance process (Renckens and Auld 2016) – are typically handled by organizations at arm's length from the rule maker, whereby a regime engages intermediaries to bring rule targets' behaviour in line with the regime's rules (Abbott et al. 2017).<sup>i</sup> The compliance process has evolved to include three distinct agents (Auld 2014): the auditor (at arm's length to both the rule maker and the company to be certified) contracted to conduct the compliance check; the accreditation agency that checks whether the auditor is organizationally qualified to conduct the audits; and the expert assessors hired by the auditor to conduct individual audits. Rule targets that pass an initial audit are then subject to surveillance audits every year and must be re-assessed in a new full audit after, typically, five years.

The incentives for rule targets to comply with the private regime's rules are exogenous to the regime. Unlike government regulations that are mandatory and can include specific sanction mechanisms such as fines, license removals, or even criminal prosecutions, private regimes rely on the evaluative judgments of market players as a compliance driver (Cashore 2002). This has meant that an important source of compliance incentives has come from purchasing decisions by individual consumers and corporate sustainability commitments, which are often spurred by NGO campaigns.

Our premise is that the organizations and individuals involved in this compliance process are consequential for how certification operates and for its regulatory and political outcomes and impacts (Auld and Renckens 2017; Renckens and Auld 2016). Work on technical and product standards and financial accounting support this premise. Galland (2017), for instance, documents the political power of Bureau Veritas, a large auditor, by detailing how it used its European-wide operations to circumvent efforts by the French government to re-establish state oversight of tramway and cableway technical safety inspection. Work on regulatory inspections have also recently turned greater attention to the importance of characteristics of inspectors and inspection teams for inspection outcomes (e.g. Muehlenbachs et al. 2016; Short et al. 2016).

This new direction for studies of regulatory inspection is an extensive and longstanding research agenda for students of financial audits – an area of work beyond the scope of this chapter to fully review. In short, there are at least three relevant tracks to this work. First, studies have examined the changing nature of audit markets through descriptive studies of the degree of competition – measured by concentration ratios and the Herfindahl indices, for instance (e.g. Wolk et al. 2001) – and studies connecting measures of competition to outcomes, such as audit quality (Newton et al. 2013) and audit fees (Maher et al. 1992). Second, considering similar outcomes, studies examine the characteristics of the auditors, such as size and reputation (Francis 1984). Third, this area of research has also examined the role of individual assessors, connecting personal experience and characteristics to the same outcomes examined in the market-level studies (Cahan and Sun 2015).

In spite of this well-established literature, the majority of research on private regimes has not examined auditors and assessors as potentially important agents that affect the processes and outcomes of compliance, despite their widespread importance to this form of governance. The small set of studies that do focus on these agents speaks to their import. McDermott (2012) documents how stakeholders in

British Columbia, Canada held divergent views on the trustworthiness of the six different auditors that were accredited to certify for the Forest Stewardship Council (FSC) in the province. A sense of shared values, more than perceived competence, stood out as key to trust, which highlights the significance of these compliance agents for the credibility of the certification program as a whole. Maletz and Tysiachniouk (2009), by contrast, emphasize the importance of expertise for compliance outcomes. Through case studies of two Russian companies audited against the FSC, the authors document how the “knowledge, experience and personal disposition” of assessors affected how the FSC’s generic standards were translated into specific requirements for the two forest companies. Relatedly, a study by Toffel, Short, and Ouellet (2015) examining labour violations in factory audits across 47 countries from 2004 to 2009 finds that assessors who have taken more skills training are associated with audits noting more labour violations, whereas the years an assessor has worked for an audit organization had no statistically significant relationship with the number of violations reported in audits.

We contribute to this burgeoning research focus for private regimes by beginning with a descriptive effort to characterize the compliance agents (both auditors and assessors) and how they interact within the compliance process. We focus on the fisheries sector and one prominent private regime, the Marine Stewardship Council.

## The Marine Stewardship Council

The MSC was established in the mid-1990s as a partnership of the World Wide Fund for Nature (WWF) and Unilever. The program became independent of its founders in 1999 and has since been a lead standard-setter and certification program for responsible capture fisheries. The MSC fishery standard relevant for this chapter’s time frame consisted of three principles and associated criteria and indicators, addressing the sustainability of the operator’s targeted fish stock(s), broader environmental consequences of the fishery, and the fishery’s management and operational systems (MSC 2010).<sup>ii</sup>

The MSC requires compliance before a fishery can enjoy the benefits of participation. Companies that want to be certified by the program must complete an independent audit, performed by auditors that are accredited to certify against the MSC standard. The MSC initially did the accreditation in-house; it now has this work done by Accreditation Services International (ASI).

To achieve certification and gain access to the MSC on-product label, a fishery must pass the audit with overall scores of at least 80 (out of 100) for all three principles; these average scores are calculated using weights for the performance indicators associated with the principles. Stakeholders can also issue an objection to the audit decision, after which the current practice is for an adjudicator to review the concerns and decide whether certification can be granted.

## The Market for Auditors

The number of accredited auditors for the MSC has steadily increased over the years of its operations. Table 1 shows that 15 different auditors have been accredited in four distinct waves: in 2001, five auditors were accredited (Moody/Intertek, SGS, SCS, ME Certification, and Tavel); between 2006 and 2008, another six were accredited (Food Certification/Acoura Marine, DNV, MRAG, Bureau Veritas, OIA and IMO); two more were accredited in 2010 (Global Trust/SAI and SFS); and the latest (Marine Certification) received accreditation in 2016.

When we pool all the audits conducted through November 2015, we see that more than half have been conducted by two auditors – Moody / Intertek (37%) and Food Certification / Acoura Marine (15%). Moody also bought Tavel in 2010 furthering its dominance (SeafoodSource 2010). It was then acquired by Intertek on April 27, 2011 (Intertek 2012). Finally, Table 1 provides figures for the average size of the audit

teams for each of the auditors. Most congregate around 3.5 to 4.5 members per team; indeed, the average across the entire sample is 3.72 (s.d. 0.052).

Table 1: Characteristics of the Auditors Accredited for MSC Audits

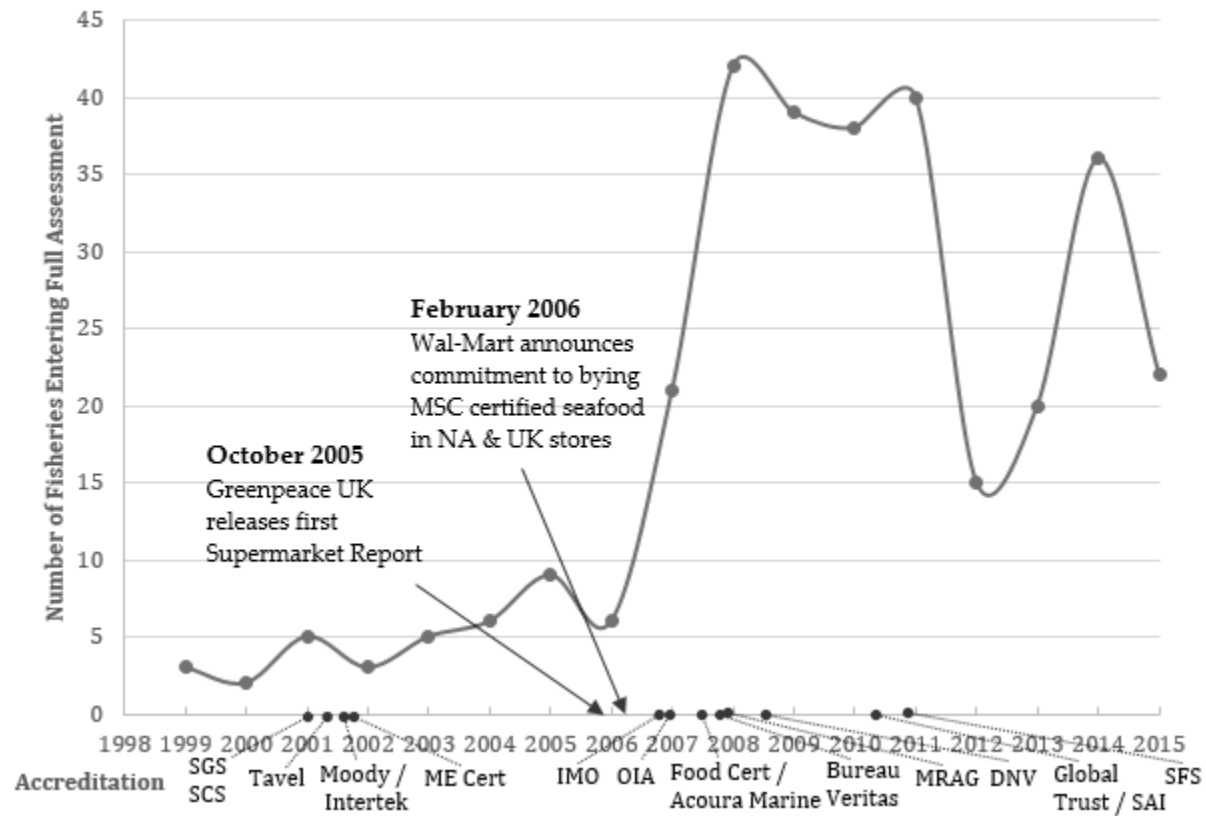
Auditor	Date Accredited	Audits	Team Size	Accreditation wave
		Count (%)	Mean (s.d.)	
SGS	January 1, 2001	8 (3%)	3.38 (0.18)	FIRST
SCS	January 1, 2001	32 (10%)	3.5 (0.15)	
Tavel	March 5, 2001	7 (2%)	4.57 (0.37)	
Moody / Intertek <sup>1</sup>	May 1, 2001	116 (37%)	3.72 (0.09)	
ME Certification <sup>2</sup>	September 1, 2001	20 (6%)	3.2 (0.16)	
IMO <sup>3</sup>	November 21, 2006	1 (<1%)	5	SECOND
OIA	December 6, 2006	5 (2%)	4.8 (0.66)	
Food Certification / Acoura Marine <sup>4</sup>	July 16, 2007	47 (15%)	4.17 (0.12)	
Bureau Veritas	October 4, 2007	12 (4%)	3.67 (0.19)	
MRAG	December 20, 2007	22 (7%)	3.27 (0.12)	
DNV	August 11, 2008	23 (7%)	3.48 (0.12)	THIRD
Global Trust / SAI	March 5, 2010	14 (4%)	3.5 (0.14)	
SFS	December 7, 2010	3 (1%)	5 (0.58)	
Marine Certification	May 3, 2016	1 (<1%)	3	FOURTH
TQCS	N/A	1 (<1%)	6	N/A

Notes:

1. Formerly Intertek Moody Marine, it now operates under Intertek Fisheries Certification. On December 9, 2015, Intertek voluntarily ended its accreditation for MSC fishery assessments, while it continues to perform Chain of Custody assessments.
2. Transferred from MacAlister Elliott and Partners.
3. Since March 2, 2015, IMO has withdrawn from fisheries certification, but still performs Chain of Custody assessments.
4. Formerly Food Certification International.

The increasing pool of accredited auditors is partly explained by the changing market demand for MSC certificates. As we noted above, compliance incentives for private regimes are exogenous. Actors other than the private regime generate them. In the case of the MSC, rising demand can be traced back to specific events at the end of 2005 and the beginning of 2006 (Figure 1). In October 2005, Greenpeace UK started a public campaign aimed at naming and shaming supermarkets for their insufficient attention to fisheries products' sustainability (Greenpeace 2005). It released the first of a series of annual reports evaluating the seafood purchasing practices of UK supermarkets, a market segment recognized to be highly competitive (Schurman and Munro 2010). The reports did not advocate MSC certification as such—indeed, Greenpeace has continuously voiced concerns over the MSC (e.g., Greenpeace 2009)—yet the campaign served to pressure supermarkets to respond, and commitments to purchase certified seafood offered targeted companies one way to claim they were doing something. The campaign could claim quite immediate success when Wal-Mart and ASDA (the UK affiliate of Wal-Mart) announced in early 2006 that they would commit to MSC certified fisheries products (Auld and Cashore 2013).

Figure 1: Fisheries Under Audit from January 1999 - November 2015, and Auditor Accreditation Dates



Note: While the first audit started in 1999, the first auditors were only accredited in 2001. This is likely because the initial accreditation processes were occurring concurrently with the first official fisheries audits  
NA=North America

Before 2006, only 33 fisheries started the certification process, an average of just under five fisheries per year. According to Martin et al. (2012), in this same period, only 58 fisheries had undergone confidential pre-audit assessments, which are used by fisheries to assess their potential performance before entering the formal audit process. From 2006 to 2015, the number of fisheries starting formal audits jumped. A total of 279 fisheries sought full audits over this time period, for an average of almost 28 fisheries per year, nearly as many per year as had sought full audits in the first six years of the MSC's existence. A total of 389 fisheries underwent confidential pre-audit assessments from 2006 to 2012 (Martin et al. 2012). These numbers underlie the pronounced increase in fisheries seeking certification captured in the rise in active audits documented in Figure 1.

This externally driven increase in demand for certification implies that a private regime does not necessarily need to lower its standards to increase corporate participation, as is hypothesized in the often mentioned trade-off between strictness and support (cf. Bernstein and Cashore 2007). Fisheries that initially did not see the (market) benefit of getting certified – even though they would have passed the audit – may now be incentivized to engage. Yet fisheries that expect to have a more difficult time passing an audit may also decide to get audited. This may more dramatically change the composition of the applicant pool, in terms of difficulty of assessment or likelihood of success, even though the mentioned pre-audit assessments may weed out the worst performers.

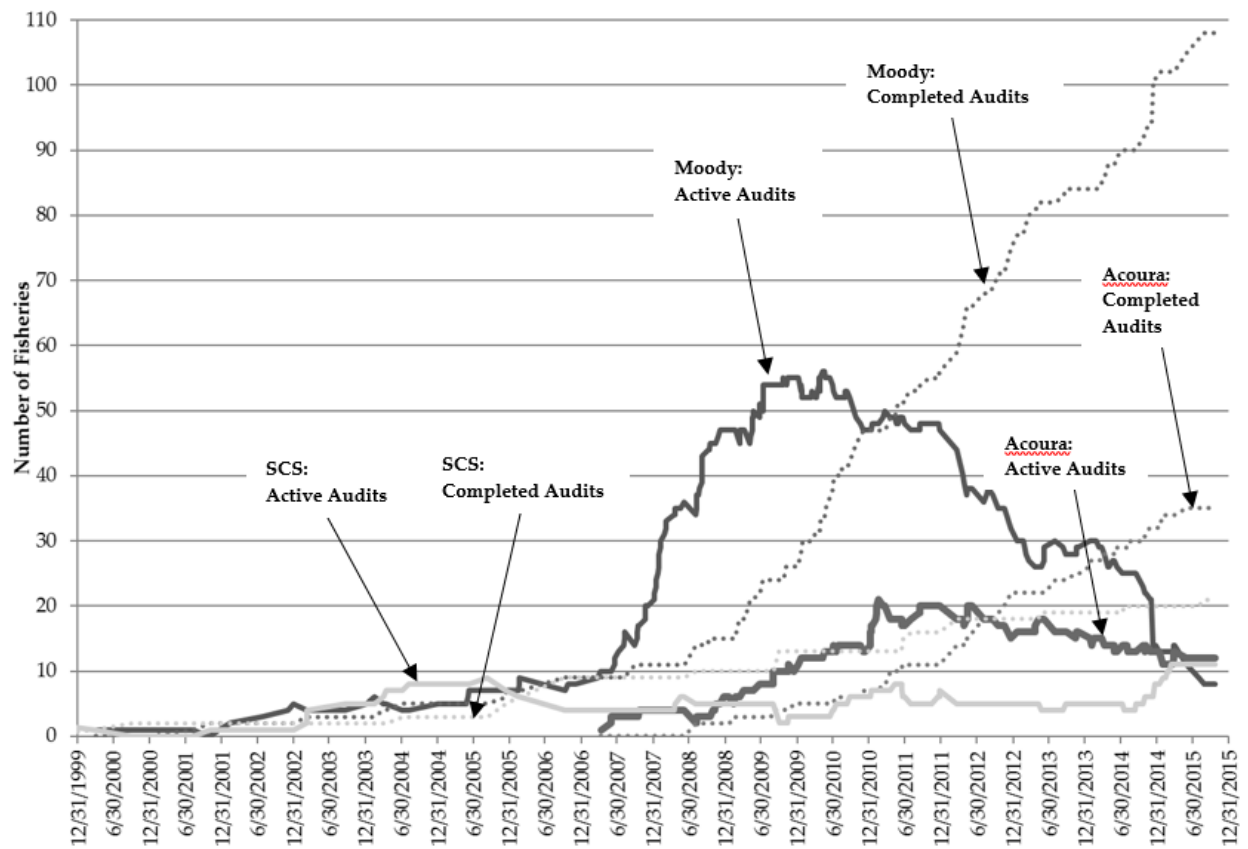
Notwithstanding the incentives for new fisheries to get audited, the entry of new auditors was ostensibly a response to this dramatic rise in the number of fisheries seeking certification. In 2011, there



were times when 111 fisheries were being audited. We know, however, from Table 1 that Moody / Intertek was successful in capturing a large proportion of this increasing demand. How did this happen? To understand, a more informative picture of the audit market emerges when we examine the activities of auditors for the time span of our data. A first important pattern is the ratio of active auditors to active audits. This ratio has fluctuated from a low of 0.6 to a high of 8.2. Over the span of our data the average ratio is 5.7 (s.d. 1.81). This means that there have been times when very few fisheries were seeking audits compared to the pool of available auditors, and other times when the auditors have had many more fisheries to potentially audit (as many as an average of eight per auditor).

But, as Table 1 suggests, the auditors have not been equally successful in securing contracts to audit particular fisheries. We can see this dominance emerge when we plot two trends for the top three auditors (Moody / Intertek, SCS, and Food International / Acoura Marine): the number of active audits and the number of completed audits (Figure 2). These trends show that up until the end of 2005, SCS and Moody were keeping pace with each other. They each had seven active audits at the time; Moody had completed seven and SCS had completed five, which together represented 75% of all completed audits. Post-2005, they diverge. Moody ramped up its auditing work, reaching a high of 56 active audits in May 2010, which represented 60% of all the active audits, while earlier, in September 2008, Moody had even captured 75% of the audit market. SCS, by contrast, stagnated. Over the same time period, it averaged only four active audits. Its share of the active audits averaged 9% over this same time period.

Figure 2: Active and Completed Audits for the Top Three MSC Auditors



The figure also details the later rise of Food Certification / Acoura Marine. It began audits in April 2007 and reached a high point of 21 active audits by February 2011, which represented 20% of all active audits at that time. This high also marked the changing fortunes of Moody / Intertek, which, by this time,

only accounted for 47% of the active audits. And, as the figure highlights, by 2015, all three auditors had converged towards a similar level of audit activity. The decline in Moody / Intertek's activities was likely an early signal of its December 2015 announcement that it would voluntarily end its accreditation for MSC fishery audits.

What underlies the dynamics of this audit market? While it is evident that rising demand helps us understand the entry of new auditors, it does not appear to help explain why some were able to capture more of the audit market. As work on financial audits indicates, features of the auditors may matter, such as their capacities, resources, and the alignment of MSC audit work with their business strategy. For instance, a large auditor such as Moody / Intertek might find it easier to dedicate the resources needed to compete and win audit contracts. From the perspective of the fisheries, the relative performance of auditors and their fees could also matter. As an initial attempt to understand this in the context of private governance, we examine performance differences across the auditors. We know from previous work that there were concerns about inconsistencies across auditors in the early years of the MSC's operations (Ward 2008). Perhaps the auditors were more or less stringent in their interpretation of the MSC standard, meaning some auditors were able to capture a greater hold of the market given that fisheries likely preferred a relatively less stringent audit for the same certification program, all else being equal. There is some suggestive evidence in our data that this may be the case.<sup>iii</sup> For fisheries that began audits before 2007, Moody / Intertek certified 17 fisheries, giving these fisheries an average score of 88.05 (95% C.I. 87.10 – 88.99). SGS certified four fisheries, with an average score of 83.44 (95% C.I. 80.61 – 86.27), while SCS certified 13 fisheries, with an average score of 86.27 (95% C.I. 84.85 – 87.71). These numbers imply that Moody / Intertek's scoring was higher than its dominant competitors in the first years of the MSC's operations. Additionally, according to these numbers, SGS was the most stringent scorer. Yet, SGS also faced three objections to its four early audits. This may have meant that fisheries were less inclined to contract SGS for future audits, and it may have also given SGS less reason to see continued engagement with the MSC as a worthwhile business activity. Indeed, as Table 1 shows, SGS only engaged in four additional audits by November 2015.

Turning to the second wave of accreditation, we can compare Moody / Intertek and SCS to their main competitor – Food Certification / Acoura Marine. From 2006 onward, the average audit scores awarded by these three competitors indicate that SCS became more variable in its audits, while its average score increased only slightly (average of 86.6; 95% C.I. 83.70 – 89.54). Moody / Intertek's average score dropped to 86.7 (95% C.I. 85.96 – 87.38) to become more aligned with the scoring practices of SCS. And, interestingly, Food Certification / Acoura Marine had even lower scores, averaging 84.9 (95% C.I. 84.21 – 85.64) for the fisheries it audited. Thus it does not appear that Food Certification / Acoura Marine offered less stringent audits (measured by higher scores for fisheries) as a way to attract fishery clients away from Moody / Intertek.

However, a different picture emerges when we compare the duration of the certification processes in which the auditors were involved. This is a measure of how long a fishery takes to proceed from announcing that it is pursuing certification to when the audit is complete and a final decision has been released. Auditors lack complete control over the length of this time period, yet fisheries will experience a longer time period as costly because it means they cannot claim to be certified or access any market benefits until the process is finished. When we compute averages for the auditors active for the time period 2006 to 2015 (the time period that follows the uptick in market demand for MSC), we see that Moody / Intertek was involved in considerably longer certification processes than its main competitors. Its certification processes took on average 864 days (95% C.I. 758.73 – 969.50) or just under 2.5 years. Both SCS and Food Certification / Acoura Marine were much faster, with average durations, respectively, of 566 days (95% C.I. 487.65 – 644.18) and 555 days (95% C.I. 452.08 – 657.03). Given these differences will matter for fisheries, the discrepancies between these three main competitors are quite striking.

While we observe such outcome differences (audit score and duration) among auditors, it is unclear for now both theoretically and empirically how the direction of these differences should be interpreted. A shorter certification process, for example, can be the result of a more experienced auditor or audit team, the availability of a larger pool of assessors, or characteristics of the fishery (a smaller, better organized or less complex fishery). But a shorter certification process is not necessarily “better” than a longer one, since it can also indicate a less rigorous audit. Similarly, higher audit scores can result from less experienced auditors and assessors, a more lenient audit process, or beneficial fishery characteristics. In a crowded auditor market with a few dominant players, then, there are multiple competing incentives. Auditors may want to retain clients for future re-assessments and build a reputation as a trusted and fair auditor. At the same time, they need to take into account the bottom line and their likelihood of survival when entering a new market. Examining strategic behaviour to reconcile these objectives is an important avenue for future empirical research.

## The Market for Assessors

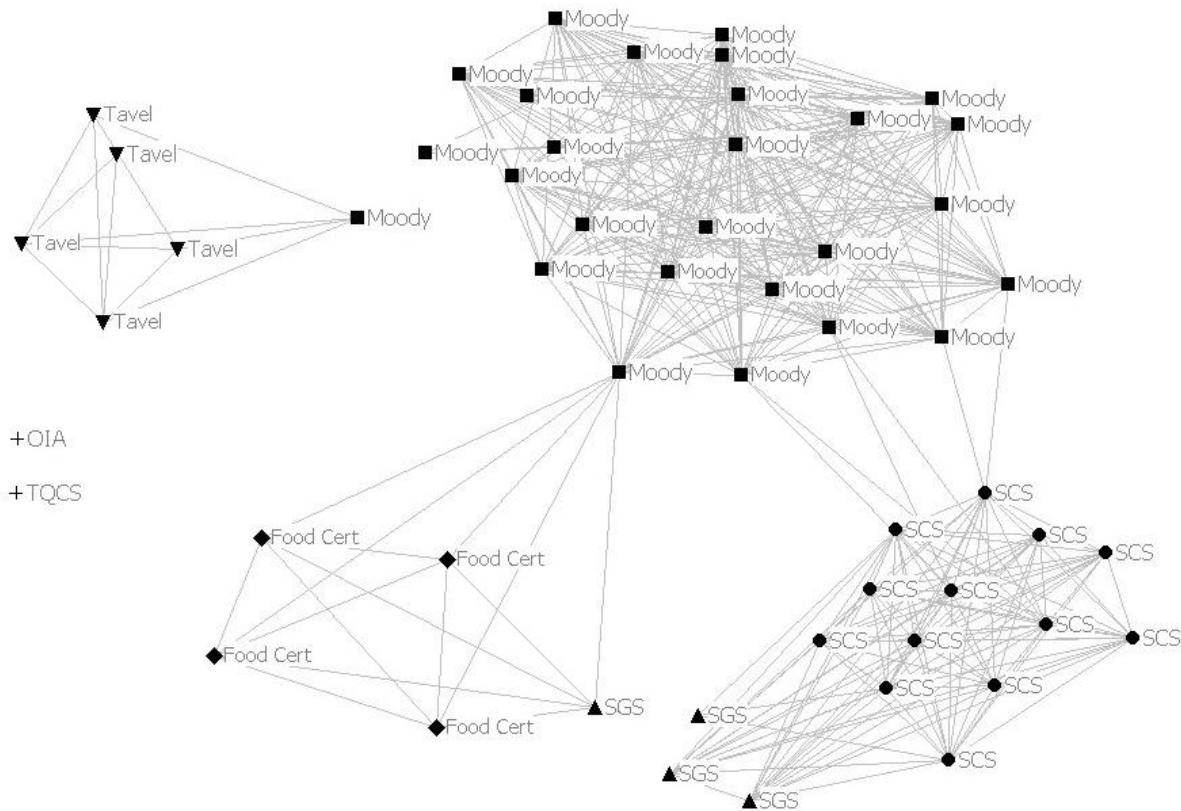
These differences among auditors are also interesting for a second facet of our analysis – that is, the human resource pool available to auditors. Recall that audit teams of three to four team members, on average, conduct audits. Thus, a different way of looking at competitive relationships among auditors is to move the analysis one level down to the individuals the auditors employ to perform the audits. This level of analysis elucidates the degree to which auditors that are organizationally independent are also operationally independent. It also points to another dimension of competition, one that focuses on securing competent experts to carry out audits.

Our dataset comprises 281 individuals who have been assessors for MSC accredited auditors. Many of these assessors worked for different auditors. For instance, one assessor could have been on an audit team for a fishery audited by Moody / Intertek in one year and on the audit team for a fishery audited by IMO at some later date. In our dataset, the average assessor has conducted just over four audits and has worked for 1.32 different auditors; two assessors in our dataset have worked for five different auditors and another five have worked for four different auditors. A total of 54 have worked for at least two different auditors. This implies that there are links among the different auditors that may be important to understand.

Despite this pattern of movement between auditors, our most prolific assessor has performed 52 out of a total of 55 audits for one auditor (Moody / Intertek), with an additional two for Food Certification / Acoura Marine and one for DNV. Our next two most prolific assessors have been employed by three and two auditors, respectively, with assessor two performing 25 audits for Food Certification / Acoura Marine, nine for Moody / Intertek, and one for SGS, while assessor three performed 16 audits for Moody / Intertek and 10 for DNV. Still, the movement of assessors among auditors does indicate a degree of interdependence that just examining the organizational level would miss.

Using social network analysis, we can examine the exchange of assessors among the different auditors. Since we know which auditor conducted each audit, we are able to examine the movement of assessors among the different auditors through their work as assessors for specific fisheries. To do this, we treat the audited fisheries as nodes and the assessors as edges. This means that two fisheries will be connected in our network if they share a common assessor. Using these ties we can examine what happens to the network when a newly accredited auditor enters the auditor market. We can do this because we know the exact dates each audit began and when it was completed or when it ended because the fishery failed certification or withdrew from the audit.

Figure 3: Assessor Movement Across Auditors with Entry of Food Certification / Acoura Marine and Tavel to the MSC Auditor Market (Audits from 1999 to October 19, 2007).



Note: Nodes represent fisheries certified by a given auditor; edges represent assessors that have worked on more than one audit.

Figure 3 illustrates the sharing of assessors that occurred as Food Certification / Acoura Marine and Tavel entered the auditor market. The network represents every fishery under audit as of October 19, 2007, a date chosen to highlight the entry of Food Certification to the auditor market. By this time, Food Certification, as it was known then, had begun four audits. The first occurred in April 2007, and three more followed before the end of 2007. One assessor that had previously worked for Moody joined all four of these audit teams. This one assessor, therefore, appears to be a key link between the two auditors; this individual had knowledge of two previous Moody audits. Such mobile assessors may be significant given Granovetter's (1973) argument about the strength of weak ties – a situation where limited rather than many ties connect communities, facilitating the spread of innovations. A mobile assessor may represent a weak tie between the two auditors, diffusing certain knowledge and practices to the new auditor. This is interesting, particularly when we compare the experience of Food Certification with the pattern for Tavel. Tavel was linked to Moody via a fishery that had an audit team whose members had never previously worked with any of the other assessors employed by Moody to that date. This link may have been less effective in spreading lessons learned.

We can extend this approach to analysing the entry of other auditors to the market in the second wave of accreditation. MRAG's first audit began on December 3, 2007, and the team included assessors who had in total worked on six previous Moody audits and two SCS audits. DNV began its first audit on

August 18, 2008, and none of the assessors who worked on this audit had ever worked on an MSC audit previously. This was also true for Bureau Veritas for its first audit, which began on February 10, 2009. However, DNV's second and third audits drew heavily on assessors who had previously worked with Moody, one of whom had conducted 15 audits and the other had completed two. The final auditor active in this time period was ME Certification. Its first audit took place on February 9, 2009, and the team included one assessor who had been on four audits for Moody and another who had completed two audits for Tavel.

As well, we can see the counter trends: assessors that moved from Moody to MRAG also moved back to Moody; and assessors that began work with DNV subsequently worked on audits for Moody. Thus, the role of mobile assessors does not appear to advantage only the late movers. In some instances, the entry of new auditors may open up a new pool of assessors previously untapped by the first movers, thus expanding the available supply of assessors for all auditors. This will not necessarily increase the overall level of competition among assessors. Assessors may be chosen for their geographic or species-specific knowledge as well as their location, thereby increasing competition in sub-pools only.

## Conclusion

The descriptive analysis in this chapter provides initial insights into some of the micro-level interactions among auditors and assessors in the compliance process of a prominent transnational private governance regime, the MSC. From a TBGI perspective, two main insights jump out. First, while the number of auditors increased over time creating the potential for a more competitive market—initially at least partly due to increased market demand—in practice the auditor market can be described more accurately as a duopoly. Second, while auditors may be organizationally independent, their operational independence may be limited due to the sharing of assessors.

Several future directions emerge from our analysis, all of which would usefully extend beyond the initial descriptive analysis we have provided. First, research is needed on the impact of competition on regulatory outcomes. In particular, the hypothesis that increased competition leads to more lenient audits needs further examination (cf. Bennett et al. 2013). Competition might also help explain delays some auditors experience when they successfully gain clients for audits, but then must compete for a limited pool of qualified assessors. As we found, interestingly, Moody's time to audit increased during the period when it was engaged in the most active audits. Such delays may, subsequently, influence outcomes if the auditor decides to contract less experienced or new assessors.

Second, the sharing of assessors may pose strategic challenges for an individual auditor. Once trained, an assessor may move to another auditor meaning the first auditor pays some fixed cost of training that subsequent auditors can then benefit from. Assessor movements across auditors should, therefore, be further examined, including assessors' motives for their mobility and potential incentives auditors can offer to decrease such mobility.

Third, private regimes engage compliance agents with varied backgrounds. In most instances, the auditors working for a new private regime, such as the MSC, have prior experience conducting compliance assessments for technical and public regulatory standards. That is, the private regimes are much newer than the auditors that do the compliance-assessment work. When examining the impact of regulatory expertise and competition on regulatory outcomes and overall regime effectiveness, we should therefore be cognizant of not only the interactions among auditors and assessors within one regime, but also of the connections with other regimes, the acquired general auditing expertise in addition to content-specific expertise, and the reasons behind moving into and out of the market of auditors for a particular new private regime.

Finally, a comparative analysis of private regimes will highlight differences in both the auditor and the assessor markets. Some private regimes employ the MSC model of allowing competition among auditors. Other regimes, however, use one dedicated auditor (such as FLOCERT in the case of Fairtrade International) or some other model of compliance verification, which is closely linked to the historical development of a regime (Auld and Renckens 2017; Loconto 2017). Examining the impact of these different models on auditor and assessor interactions is an important avenue for future research.

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<sup>i</sup> Some early certification programs did not use arm's length organizations for these functions. For instance, Fairtrade International only introduced an arm's length audit function in 2003 and the Forest Stewardship Council created an arm's length accreditation organization – Accreditation Services International (ASI) – in 2005.

<sup>ii</sup> A new standard was released in April 2015, following a two-year review. The program has an additional set of rules – termed chain of custody rules – for tracking certified products through the seafood supply chain. These include provisions about guaranteeing the validity of the MSC supply, creating temporal and/or physical separation of MSC seafood from other supplies all along a supply chain, and label compliance requirements. Operators are also checked to ensure they have management systems in place to ensure conformance with chain of custody rules and that they are overseeing and ensuring compliance of subcontractors they work with.

<sup>iii</sup> These descriptive statistics, of course, do not account for self-selection processes, whereby fisheries with particular characteristics, which influence their audit scores, choose certain auditors over others.

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