

THE STEWARDSHIP COUNCIL MODEL: A COMPARISON OF THE FSC AND MSC

Xavier Pons Rafols and Luke Brander***

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I. INTRODUCTION

This paper aims to analyze the “Stewardship Council Model” through a comparison of the Forest Stewardship Council (hereinafter “FSC”) and the Marine Stewardship Council (hereinafter “MSC”). In other words, our aim is to study the main features and capacities of an organizational and operational model established on the basis of a stewardship council. In order to do so, we shall focus in the comparison between the two main organizations that operate in the field of certification and sustainable

* *Professor of Public International Law, University of Barcelona.* The developments on FSC are devoted to him. I would like to thank my colleague Jaume Saura for his comments and collaboration in the final drafting of this article.

** *Environmental Economist, Institute for Environmental Studies, Vrije Universiteit, Amsterdam.* The developments on MSC are devoted to him.

labeling, and shall emphasize their similarities and differences. They are two organizations that share common elements in their structure, in their decision-making procedure and in their functioning, which is not surprising since the MSC was established following the model of the FSC. The relevance of the stewardship council model lays in the fact that, from an operational perspective, it provides more credibility and transparency to those sustainable labeling and certification processes. In such a way, it constitutes an organizational and operational model that, notwithstanding its recent character, has proved to be a success and is being extended to other sectors as an example of responsible management.¹

In the next pages, we shall separately deal with the creation and objectives of the FSC and the MSC, their composition and structure. Finally, the last section of this paper is devoted to the functioning of the FSC and the MSC, as regards to its principles and criteria for sustainable management, the procedures for the accreditation of the certification bodies, and the national and regional standards.

II. ESTABLISHMENT AND OBJECTIVES OF THE FSC AND MSC

As we have already mentioned, the FSC and MSC are two recently established non-governmental organizations whose capacities in the field of sustainable labeling and certification have been stressed by organizational as well as operational models. Besides, both of them are international bodies of a global scope that share similar goals oriented towards the achievement of a sustainable development. On the one hand, the FSC is an independent non-profit organization that was created with the main objective of promoting the sustainable management of forests through a program of certification of forestry products. The FSC supports an environmentally appropriate, socially beneficial and economically viable management of forests all over the world.² In doing so, the FSC does not make any distinction among forests, neither based upon the type of forest

1. Thus, for instance, the Rainforest Alliance is exploring the development and implementation of a Sustainable Tourism Stewardship Council (*see* RAINFOREST ALLIANCE, RAISING THE STANDARDS AND BENEFITS OF SUSTAINABLE TOURISM AND ECO-TOURISM CERTIFICATION, FINAL REPORT MARCH 2003, VERSION 8.6 (2003)).

2. In the context of the Forest Stewardship Council's (FSC) mission statement, environmentally appropriate management means a type of management that keeps biodiversity, productivity and ecological processes of forests. FOREST STEWARDSHIP COUNCIL, WHAT IS FSC?, MISSION, at http://www.fsc.org/en/about/about_fsc/mission. Socially beneficial means a type of forest management that helps both local people and society at large to enjoy long-term benefits. *Id.* Finally, an economically viable management implies that forest operations are structured and managed so as to be sufficiently profitable, without generating financial profit at the expense of the forest resource, the ecosystem, or affected communities. *Id.*

(tropical, temperate or boreal), nor on the basis of the country where they are located or the company that exploits them.³ The objectives of the FSC are further developed in its Statute.⁴ On the other hand, the purpose of the MSC is “to work for sustainable marine fisheries by promoting responsible, environmentally appropriate, socially beneficial, and economically viable fisheries practices, while maintaining the biodiversity, productivity, and ecological processes of the marine environment.”⁵ It promotes equal access to its certification program irrespective of the size, scale, type location or intensity of the fishery.⁶ In other words, the goals of both organizations share the same orientation towards adequately balancing the environmental, social and economic dimensions to contribute to guarantee a sustainable management, conservation and development of both forests and marine fisheries.

The FSC was founded by a diverse group of representatives from environmental and conservation groups, the timber industry, the forestry profession, community forestry groups and forest product certification organizations from all over the world. Although the idea of establishing an organization that evaluates, accredits and monitors timber and timber products’ certifiers was initially related to tropical forests (and was first proposed by the *Woodworkers’ Alliance for Rainforest Protection, WARP*), the interest for this certification process subsequently spread to all types of forests (with the creation of the FSC). The initial impulse came from the United Kingdom, where a group of timber traders expressed their willingness to demonstrate the environmental credibility of their products by using a label.⁷ This impulse was reinforced by the action undertaken by

3. About the FSC objectives, see generally Kristen M. Kloven, *Eco-labeling of Sustainable Harvested Wood under the Forest Stewardship Council: Seeing the Forest for the Trees*, 1998 COLO. J. INT’L ENVTL. L. & POL’Y 48, 49.

4. The FSC Statutes and the main documents of the organisation are available in English and Spanish on their website. FOREST STEWARDSHIP COUNCIL, FSC STATUTES (Revised, Aug. 2000, Nov. 2002), *at* http://www.fsc.org/keepout/en/content_areas/77/83/files/FSC_Statutes___revised_November_2002.PDF

5 SARAH ANDERSON, *ET AL.*, THE STATE OF VICTORIA, DEP’T OF NATURAL RESOURCES, INCORPORATING BIODIVERSITY INTO ENVIRONMENTAL MANAGEMENT SYSTEMS FOR VICTORIAN AGRICULTURE: A DISCUSSION PAPER ON DEVELOPING A METHODOLOGY FOR LINKING PERFORMANCE STANDARDS AND MANAGEMENT SYSTEMS 31 (2001)[hereinafter INCORPORATING BIODIVERSITY].

6. *Id.*

7. On the creation of the FSC, see NIGEL DUDLEY ET AL., *BAD HARVEST? THE TIMBER TRADE AND THE DEGRADATION OF THE WORLD’S FORESTS* 145-147 (Earthscan Publications Ltd. 1995).

the World Wide Fund for Nature (WWF), among other institutions.⁸ The key steps of the process of establishment of FSC are the following:

- 1) In 1990, there was a meeting in California where it was discussed how the different participants could combine their interests in improving forest conservation and reducing deforestation;
- 2) In 1993, representatives from 25 countries⁹ came together in Toronto to hold the Founding Assembly of the Forest Stewardship Council;
- 3) In 1994, a definitive set of Principles and Criteria, together with the Statutes for the Council were agreed and approved by the votes of the Founding Members; and,
- 4) In 1996, the first accreditation contracts were signed with four certification bodies.¹⁰

Likewise, the Marine Stewardship Council (MSC) was launched in 1997 by Unilever and the World Wide Fund for Nature (WWF). The MSC became independent from its founders in June 1998, and now receives funding from a number of charitable trusts, corporate sponsors, and developing agencies. Establishing independence from its founders has been an important step for the MSC in gaining acceptance from Unilever's competitors and from fishing industry organizations that were opposed to the WWF being involved in fisheries management. The key steps in the development of the MSC are the following:

- 1) In 1995, Unilever and WWF start discussions about sustainable fisheries;
- 2) In 1996, statement of intent to establish the MSC;
- 3) In 1997, foundation of MSC;
- 4) In 1998, MSC becomes an independent non-profit organization;
- 5) In 1999, start of accreditation of certification bodies;
- 6) In 2000, first MSC certified fish on the market;
- 7) In 2001, governance structure is established with balanced stakeholder participation; and,

8. WWF played a decisive role in the creation of the FSC. See PETER KANOWSKI ET AL., AGRICULTURE, FISHERIES AND FORESTRY-AUSTRALIA, INTERNATIONAL APPROACHES TO FOREST MANAGEMENT CERTIFICATION AND LABELLING OF FOREST PRODUCTS: A REVIEW 32 (1999).

9. Among them, Argentina, Brazil, Colombia, Ghana, Honduras, Japan, Mexico, Salomon Islands, Sweden, Switzerland, United Kingdom and United States. DUDLEY ET AL., *supra* note 7.

10. TASSO AZEVEDO, ET AL., FOREST STEWARDSHIP COUNCIL, POLITICAL INSTRUMENT, IMPLEMENTATION AND CONCRETE RESULTS FOR SUSTAINABILITY SINCE 1993 6 (2002).

- 8) In 2004, around 200 MSC certified fish products on the market.¹¹

From a legal point of view, the FSC and MSC are independent non-governmental organizations of international composition; they are both non-for-profit entities. Both international certification programs use a logo that ensures that the product has followed appropriate and sustainable management operations. In the case of the FSC, the logo ensures that the product bearing this seal comes from a forest area (a forestry management unit) where appropriate and sustainable management operations are carried out (or, at least, this logo ensures that the FSC principles and criteria are observed within this forest area). In this sense, the FSC seal is an absolutely independent, international, and credible registered mark for wood and wood products, which obviously constitutes a market incentive for improving forest management.¹² In the field of maritime fisheries, companies successfully achieving certification have the right to apply for a license to use the MSC logo on their products.¹³ This logo helps consumers recognize those fisheries that are responsibly managed.¹⁴ The use of the MSC logo and legend needs the express permission of MSCI (*Maritime Stewardship Council International Ltd.*, the trading arm of the MSC which is authorised by the MSC to issue licenses for the use of the logo on its behalf).¹⁵ In this sense, the MSC has established a broad set of principles and criteria for the certification of sustainable fisheries, which were developed through a process of international consultation and are based on the FAO Code of Conduct for Responsible Fisheries.¹⁶ The three MSC principles reflect the MSC's definition of sustainable marine fisheries and form the basis for detailed criteria that are used to evaluate whether a fishery can be certified. The MSC principles and criteria relate only to the primary stage of production and not to the

11. MARINE STEWARDSHIP COUNCIL, HISTORY OF THE MSC, available at http://www.msc.org/html/content_470.htm [hereinafter MSC WEBPAGE].

12. Together with the FSC—probably the most successful— the existence of other forestry certification schemes should be noted. See PETER WOOD, MINISTRY OF EMPLOYMENT & INVESTMENT, PROVINCE OF BRITISH COLUMBIA, A COMPARATIVE ANALYSIS OF SELECTED INTERNATIONAL FORESTRY CERTIFICATION SCHEMES 15 (2000), at <http://for.gov.bc.ca/het/certification/woodreportoct00.pdf>.

13. MSC WEBPAGE, *supra* note 11, at USING THE LOGO, http://www.msc.org/html/content_468.htm.

14. *Id.*

15. *Id.*

16. See *Report of the Conference of FAO*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, Twenty Eighth Session, Code of Conduct for Responsible Fisheries (1995), at <http://ftp.fao.org/docrep/fao/005/v9878e/v9878E00.pdf>.

processing, distribution, and sale of fisheries products. The three principles are:

- 1) A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted; the fishery must be conducted in a manner that demonstrably leads to their recovery;
- 2) Fishing operations should allow for the maintenance of the structure, productivity, function, and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends; and,
- 3) The fishery is subject to an effective management system that respects local, national, and international laws and standards, and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.¹⁷

In spite of this set of similarities and parallelisms in their establishment and goals, an important difference should be noted in the sense that the FSC has a broader base membership while the MSC, which became independent from its founding organizations and has the support of more than 100 organizations in more than twenty countries, has a more centralized structure and, in any case, it keeps, as we shall see, a wide Stakeholder Council. In effect, the FSC is a voluntary association made up of individuals and organizations, which should designate a representative. Most of the members are organizations and institutions of diverse character, such as the World Wide Fund for Nature, National Wildlife Association, Greenpeace, Friends of Earth, or retailers of forestry products. All of them have voting rights and participate in the highest body of the Organization (the General Assembly of Associates). It is obviously essential that members adhere completely to the FSC objectives and support the principles and aims of this organization.

Each member must pay an annual fee, which is calculated on a gradual basis considering the operation expenses of each Association. These fees should cover the membership service expenses of the Association, without any discrimination that could affect to the Associated from Southern countries. In this sense, the FSC Board of Directors is studying a subsidy system for the purpose of ensuring that these fees do not constitute any sort of financial barrier to the associated members from developing countries.

17. MARINE STEWARDSHIP COUNCIL, MSC PRINCIPLES AND CRITERIA FOR SUSTAINABLE FISHING, at www.msc.org/assets/docs/fishery_certification/MSCPinciples&Criteria.doc [hereinafter MSC PRINCIPLES AND CRITERIA]; see also Luke Brander, *Capture Fisheries*, in SUSTAINABILITY LABELLING AND CERTIFICATION 271 (Mar Campins Eritja & Marcial Pons, eds., 2004)(discussing impact of this Code of Conduct over labelling schemes).

In addition, the FSC Board of Directors recently approved the establishment of the *FSC Global Fund* with the view of attracting donations from corporations and other donors whatsoever.¹⁸ Around 85% of the FSC International's funding comes from private foundations and substantial contributions to FSC also come from large conservation NGOs like WWF. In a similar way, funds for the functioning of the MSC mostly come from different NGOs, trusts and foundations, as well as development agencies and different industrial corporations.

III. THE STRUCTURE OF THE FSC AND THE MSC

In relation to the structure of both organizations, it is also convenient to stress the similarities and differences. As we have mentioned concerning its membership, the FSC appears to have a broader base membership and has a less centralized standard setting process than the MSC. But both organizations, although with different structures, are consistent, in terms of governance, with the widest participation of stakeholders. They both establish, in this sense, a special partnership between conservation and business.

FSC has a unique governance structure that is built upon the principles of participation, democracy and equity.¹⁹ The FSC is basically structured in a General Assembly of Associates, a Board of Directors, a Secretariat directed by an Executive Director, and the Committees that the Board of Directors may establish.²⁰ The FSC's highest level is the General Assembly, which consists of individual members or duly designated delegates of member organizations. The main peculiarity of such an Assembly is that it is made up of three Chambers. The purpose of the chamber structure is to maintain the balance of voting power between different interests without having to limit the number of members. From the perspective of the FSC's underlying concept, this balance between economic, social and environmental interests may have a positive impact on forest management. In a similar sense, the FSC's decision-making procedure takes into account this necessary balance, and each chamber holds an equitable percentage of the total votes.

18. Decision adopted by the Board of Directors (22nd Session, 24-26 May 2001). FOREST STEWARDSHIP COUNCIL, ANNUAL REPORT 2001, at http://www.fsc.org/keepout/en/content_areas/88/1/files/AR2001.pdf

19. FOREST STEWARDSHIP COUNCIL, FSC A.C. BY-LAWS (RATIFIED, SEPTEMBER 1994; EDITORIAL REVISION, OCTOBER 1996; REVISED FEBRUARY 1999, AUGUST 2000, NOVEMBER 2000), at http://www.fscus.org/images/documents/FSC_International_Bylaws.pdf [hereinafter FSC BY-LAWS].

20. *Id.*

The first chamber (Social Chamber) is made up of social and indigenous organizations, as well as of individual persons assigned to it. As stated by the FSC By-Laws, these are social and indigenous organizations and individual persons that actively promote an environmentally appropriate, socially beneficial and economically viable forest management.²¹ The second chamber (Environmental Chamber) is made up of not-for-profit non-governmental organizations and assigned individuals with a demonstrated commitment to environmentally appropriate, socially beneficial and economically viable forest management.²²

Individuals and organizations with economic interests concerning the trade of forestry products participate in the third chamber (Economic Interests Chamber). More specifically, the reference to these organizations and individuals includes employees, consultants or representatives of forest product companies, Certification Bodies, industry Associations (whether for profit or not-for-profit), wholesales, retailers, traders, end-users, and consulting companies. In any case, these individuals and organizations must have demonstrated and active commitment regarding the implementation of the FSC's Principles and Criteria in the framework of their commercial or industrial activities. In the latter sense, for a successful application, these members are requested to provide information about the way in which their commitment with the purposes, principles and criteria has effectively materialized. So, it is expected that Certification Bodies be in the process of being accredited by FSC, that traders have made a commitment to have a significant percentage of their sales in certified timber, and that producers have a significant part of their production forests certified by an FSC accredited certification body or be certified within a reasonable time frame.

Excepting for the third chamber,²³ the General Assembly's chambers have a basically interchangeable membership, which introduces certain elements of confusion into a body that precisely intends to balance a diversity of interests.²⁴ This specific balanced structure has allowed the FSC evolving into a discussion forum about all the aspects relating to forests (including the social aspects).²⁵ In addition, it can be said that this

21. *Id.*

22. *Id.*

23. *Id.*

24. For properly understanding such a statement, it has to be kept in mind that the General Assembly was initially made up of two chambers, the economic interest chamber (with the 25% of the voting power) and the first chamber (indigenous, environmental and social interests) with the 75% of the voting power. DUDLEY ET AL., *supra* note 7, at 147. This unique first chamber was divided in the two existent chambers in the first ordinary General Assembly in June 1996. *Id.*

25. These aspects are usually disregarded in this field. See Saskia Ozinga, *The limits of forest certification*, FERN (2000), at <http://www.fern.org/pubs/articles/limits.htm>.

balanced structure, as well as the wide and diverse participation, contribute to strengthen the FSC's international credibility. On the other hand, it rests with the Board of Directors to assign to the appropriate chamber the academic and research organizations, legal associations or other forestry entities, in accordance with the nature of their activities.

Besides the balance of interests and perspectives that this structure implies, each chamber is structured in a particular way for the purpose of balancing the interests of developed and developing countries.²⁶ In this sense, within each chamber, Northern and Southern organizations and individuals shall have 50% of the voting power.²⁷ In effect, there shall be "Northern" and "Southern" sub-chambers within each of the three chambers.²⁸ The total voting weight of all individual Associates in each sub-chamber shall be limited to 10% of the sub-chamber's total voting weight.²⁹ In accordance with the Transitory Clause of the FSC By-Laws, voting rights within each chamber will be distributed in an equitable way.³⁰ This also means that the percentage or value of the votes of the existing members will be proportionally reduced when new members incorporate into the chambers.

In short, the structure of the General Assembly is clearly associated with the will to keep the balance between the different interests inherent to the FSC. The same balanced principle also inspires the complex decision-making system within the General Assembly. Although it is not a double or triple majority system, this procedure takes into account the existence of the three chambers and the parity composition of each chamber (members and delegates from both Northern and Southern countries).³¹ So, each chamber has the 33.3% of the voting power in the General Assembly. As we have mentioned previously, the 50% of this 33.3% is conferred to Northern and Southern countries respectively. So, the value of each member's vote will depend on the specific chamber to which it has joined, provided that all associates have the right to vote in ordinary and extraordinary Assemblies and postal ballot. As for their validity, the General Assembly's decisions require the affirmative vote of at least 66.6% of the voting power of the assembly.³² Abstentions are not considered as cast votes. For a *quorum* to exist at any Ordinary or Extraordinary meeting a *quorum* of at least 66.6%

26. FSC BY-LAWS, *supra* note 19.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. FSC BY-LAWS, *supra* note 19.

32. *Id.*

of the members of each of the chambers is required (not of the total voting power, but of each chamber).³³

On the other hand, the Board of Directors is the highest management, executive and representation body of the FSC. It is accountable to the FSC members, and to the public authorities in the country in which FSC is headquartered. The Board of Directors is made up of nine members, whether individuals or accredited delegates of the member organizations, elected for a three-year period.³⁴ They cannot remain in their post in consecutive periods.³⁵ In order to ensure continuity, three Directors will retire at the end of each calendar year.³⁶ They will be replaced by postal ballot or by General Assembly vote -if the election coincides with a meeting of the General Assembly of Associates.³⁷

Two Board members (one from the North and one from the South) shall come from and shall represent economic interests, but shall not be duly designated delegates of Certification Bodies. The remaining seven Board members will come from environmental and social members.³⁸ The Board of Directors may meet at any place and whenever it is considered necessary by the chairman or the majority of the Directors.

In the third place, the Executive Director is the chief executive of FSC. He or she is appointed by the Board of Directors, to which is responsible for the effective implementation of the policies of FSC.³⁹ The Board supervises the activities of the executive Director, as well as defines the conditions in which s/he performs his functions (including the term of office).⁴⁰ All these conditions are expressed in the pertinent contract. The Executive Director should attend the meetings of the Boards (although s/he has not voting rights).⁴¹ The Executive Director designates the members of the Secretariat's staff, following the criteria set by the Board of Directors and ensuring the broadest geographic representation.⁴² The Executive Director will submit for the approval of the Board the accounts duly audited by an

33. *Id.*

34. *Id.*

35. *Id.*

36. FSC BY-LAWS, *supra* note 19.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. FSC BY-LAWS, *supra* note 19.

42. *Id.*

external auditor appointed by the Board of Directors, together with a report about the activities of the Association in the previous year.⁴³

Finally, the FSC By-Laws foresee the possibility of establishing the necessary committees for supporting the operational and management activities of the organization, such as a Technical Committee for revising and making recommendations regarding the FSC Principles and Criteria, and the national or regional standards, among other aspects.⁴⁴ The Committee that the Board of Directors should compulsorily establish is the Dispute Resolution and Accreditation Appeals Committee, which will deal with disputes and grievances from members and review accreditation decisions.⁴⁵ This Committee, named by the Board, is made up of six representatives, provided such committee shall be formed by one member from the North sub-chamber and one from the South sub-chamber from each of the Social, Environmental and Economic Chambers. In addition, at least one of the members of the committee shall be from North America, Central and South America and the Caribbean, Europe, Australia and Oceania, Asia and Africa.⁴⁶

Concerning the organic structure of the MSC, it is important to stress that, once it became independent from its founding organizations, in 1998, a new governance structure has been constructed, formed of a Board of Trustees, a Stakeholder Council, and a Technical Advisory Board.⁴⁷

The Board of Trustees has a diverse membership, including representatives from the fishing industry, fish processors, retailers, conservation groups, the fisheries scientific community, and former government officials.⁴⁸ The Board comprises 14 members, who are nominated for a three-year term and are also automatically trustees of the charity.⁴⁹ The specific responsibilities of the Board include: approving plans, targets and strategy; the MSC finances; appointing chief members of the Board, Chair, Committee, Technical Advisory Board, the Accreditation Committee, and the Executive; representing the MSC in public; and endorsing the accreditation of certifiers.⁵⁰

43. *Id.*

44. *Id.*

45. *Id.*

46. FSC BY-LAWS, *supra* note 19.

47. MSC WEBSITE, *supra* note 11, at GOVERNANCE, http://www.msc.org/html/content_474.htm.

48. *Id.*

49. *Id.*

50. *Id.*

The Stakeholder Council has the task of providing policy advice to the MSC and acts as a representative and liaison body.⁵¹ The annual meetings of the Stakeholder Council are combined with an open conference, which provides a platform for the Chair of the Board of Trustees and the Chief Executive to make public presentations on the MSC's strategy and activities.⁵² The Stakeholder Council consists of representatives from all relevant public and commercial stakeholder constituencies.⁵³ These constituencies include scientific, academic and resource management interests; general conservation NGOs; marine conservation NGOs; consumer groups and inter-governmental organizations (e.g. FAO, OECD, EU); catch sector interests; supply chain and processing interests; retail, catering and distribution interests; and developing nation and fishing community interests.⁵⁴ The membership of the Stakeholder Council is structured in the following way.⁵⁵ Each constituency is allowed up to five seats on the Council.⁵⁶ Half the members of the Council are selected by the Board of Trustees and the other half are selected by current members.⁵⁷ Each constituency is responsible for its own nominations and appointments.⁵⁸ The Board of Trustees holds the power to appoint members to the Stakeholder Council in situations where current members cannot agree.⁵⁹ The two joint-Chairs of the Stakeholder Council also have seats on the Board of Trustees in order to ensure that the Council is represented and involved in all Board decisions.⁶⁰

The Technical Advisory Board (TAB) provides advice to the Board of Trustees on scientific, technical and legal matters related to the MSC Standard.⁶¹ It consists of 11 members but is able to call on additional experts or form sub-committees in order to focus on particular technical issues.⁶² The members of the TAB are appointed by the Board of Trustees but are able to select their own Chair. Currently, the Chair of the TAB is

51. MSC WEBPAGE, *supra* note 11, at STAKEHOLDER COUNCIL, http://www.msc.org/html/content_477.htm.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. MSC WEBPAGE, *supra* note 11, at STAKEHOLDER COUNCIL, http://www.msc.org/html/content_477.htm.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. MSC WEBPAGE, *supra* note 11, at TECHNICAL ADVISORY BOARD, http://www.msc.org/html/content_475.htm.

62. *Id.*

also a member of the Board of Trustees. Recommendations formulated by the TAB may be put out for consultation to the Stakeholder Council or other interested parties before they are sent to the Board of Trustees. The Board of Trustees are not obliged to follow the advice of the TAB but must provide reasons for not doing so in situations where its decisions do not conform to TAB guidance.⁶³

In addition to the three main bodies that comprise the MSC governance structure outlined above, the MSC Accreditation Committee (formerly called the Approvals Committee) has the function of ratifying certifier accreditation decisions made by the MSC.⁶⁴ As stated in the foreword of the Accreditation Committee Rules and Terms of Reference, "the Accreditation Committee acts as the independent check and balance to the MSC accreditation function...the MSC Accreditation Committee also oversees the overall integrity of the MSC certification body accreditation program."⁶⁵ Members of the Accreditation Committee, of which there are between 3 and 5, are elected by the Board of Trustees for fixed terms of 3 years.⁶⁶

IV. FUNCTIONING OF THE FSC AND THE MSC.

Together with the specificities of the structure of both the FSC and the MSC, with a wide and diverse participation of stakeholders, the stewardship council model highlights an operational activity that has, in both the FSC and the MSC, a prime dimension or focus. On the one hand, the establishment of principles and criteria in respect of the forestry or fisheries activities; on the other, the procedures for the accreditation of the entities that shall act as certifiers in both sectors; finally, the local, national or regional dimension of the implementation of the above mentioned principles and criteria. For explanatory purposes, we shall address separately the analysis of the functioning of the FSC and the MSC.

A. *Main elements on the functioning of the FSC*

As we have mentioned above, the objective of the FSC is to promote a viable and sustainable management of forestry resources through a program

63. *Id.*

64. MSC WEBPAGE, *supra* note 11, at ACCREDITATION COMMITTEE, http://www.msc.org/html/content_476.htm.

65. MARINE STEWARDSHIP COUNCIL, MSC ACCREDITATION COMMITTEE RULES AND TERMS OF REFERENCE 3 (2003), at http://www.msc.org/assets/docs/governance/mscaccreditationcommitteeTOR_version2_october2003.pdf.

66. MSC WEBPAGE, *supra* note 11, at ACCREDITATION COMMITTEE, http://www.msc.org/html/content_476.htm.

of voluntary accreditation for forest management certifiers. So, the FSC's main aim is to accredit independent certification bodies for the purpose of ensuring the authenticity and credibility of their certifications. This operation has a twofold dimension:

- 1) Setting principles for forest management at world scale, widely recognized and respected, which are consistent with national or regional standards; and,
- 2) Setting the procedures and conditions for the accreditation of the certification bodies.

1. Principles and criteria for Forest Management.

The FSC has elaborated its own principles and criteria, which constitute the starting point of its activities, since they are incorporated into the evaluation systems as well as in the standards of all the certification bodies seeking the FSC's accreditation. It is a set of ten principles and 56 criteria applying to whatever type of forests, whether tropical, temperate or boreal.⁶⁷ In the same sense, many of these principles apply to plantations and forests partially re-planted.⁶⁸ In this sense, it is important to point out that at the international level there have been no advances in the proposals for the elaboration of a legally binding international instrument on forests, and that there are only some regional processes of establishment of criteria and indicators, as well as the whole of the proposals and measures of action adopted in the framework of the international dialogue on forests held by the United Nations. This process has been developed institutionally with the *Intergovernmental Panel on Forests (IPF)* and its successor, the *Intergovernmental Forum on Forests (IFF)* and, finally, since 2000, with the *United Nations Forum on Forests (UNFF)*⁶⁹.

While the ISO 14001 only specifies how a company's management system must be organized to address environmental aspects and impacts of its operations, the FSC's Principles and Criteria cover both product and

67. FOREST STEWARDSHIP COUNCIL, FSC PRINCIPLES AND CRITERIA FOR FOREST STEWARDSHIP (APRIL 2004), at <http://www.fsc.org/plantations/docs/FSC-STD-01-001%20FSC%20Principles%20and%20Criteria%20for%20Forest%20Stewardship%202004-04.pdf>. (Document available in Spanish: FSC Doc. No. 1.2 (Revised Feb. 2000)), at http://www.fsc.org/keepout/esp/content_areas/77/71/files/Principios_y_Criterios_FSC.pdf [hereinafter FSC PRINCIPLES AND CRITERIA].

68. *Id.*

69. On the establishment of a new international framework in the field of the United Nations, and the task of these organs, see XAVIER PONS RAFOLS, EL RÉGIMEN FORESTAL INTERNACIONAL [THE INTERNATIONAL FORESTRY REGIME] 91-131 (INIA 2004); see also J. Saura Estapà et al., *The Un Context for Sustainability Labelling and Certification*, in SUSTAINABILITY LABELLING AND CERTIFICATION, *supra* note 17, at 97-8.

processes standards, specifying different standards for the diverse aspects of forest management (including the social aspects).⁷⁰ At this point, it is worth underlining the presence of “equity” and other ethical values concerning the enterprises’ activities within the FSC’s Principles and Criteria.⁷¹

For the purpose of obtaining the registered mark, all the Principles should be met, provided that they constitute a complete set of principles that must be regarded as a whole. However, neither the FSC nor the certification bodies require an absolute and full compliance with each and every Principle and Criteria. In this sense, the need has been stressed for the FSC to be fitted with a certain margin of flexibility when applying its Principles and Criteria, which allows adapting them to the specific local conditions. In this sense, the differences and difficulties concerning their interpretation would be regarded from the national, regional and local standards’ perspective. Thus, the FSC Principles and Criteria are not directly intended for being used as a basis for the field certification, but for defining the framework within which the national, regional and local forest management standards will be developed and implemented.

The process initiates when the owner or the person that exploits the forest requests the services of a certification body (obviously, on a voluntary basis), and not the FSC’s services directly. The FSC, as mentioned, deals with the accreditation of the certification bodies in order to ensure the authenticity and credibility of the certifications they grant. The process of forest certification implies a rigorous inspection and periodical supervision of the observance of the forest management requirements, as well as the monitoring of the chain of custody.

These ten principles, which have a twofold dimension -quantitative and qualitative-, were initially approved in June 1994,⁷² then completed firstly in 1996⁷³ and finally revised and completed again in 1999.⁷⁴ The list of these principles follows (the 56 criteria that develop them are not reproduced in this list):

Principle 1: Compliance with Laws and FSC Principles. Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to

70. FSC PRINCIPLES AND CRITERIA, *supra* note 67.

71. *Id.*

72. *Id.*; see also DUDLEY ET AL., *supra* note 7 at 147-148, discussing the complex procedure for the adoption of these FSC PRINCIPLES AND CRITERIA.

73. *Id.* at 149 (introducing Principle Ten, concerning Plantations); see also FSC PRINCIPLES AND CRITERIA, *supra* note 67.

74. *Id.*

which the country is a signatory, and comply with all FSC Principles and Criteria.

Principle 2: Tenure and Use Rights and Responsibilities. Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

Principle 3: Indigenous Peoples' Rights. The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

Principle 4: Community Relations and Workers' Rights. Forest management operations shall maintain or enhance the long-term and economic well-being of forest workers and local communities.

Principle 5: Benefits from the Forest. Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

Principle 6: Environmental Impact. Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

Principle 7: Management Plan. A management plan—appropriate to the scale and intensity of the operations—shall be written, implemented, and kept up to date. The long-term objectives of management, and the means of achieving them, shall be clearly stated.

Principle 8: Monitoring and Assessment. Monitoring shall be conducted—appropriate to the scale and intensity of forest management—to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

Principle 9: Maintenance of High Conservation Value Forests. Management activities in high conservation value forests shall maintain or enhance the attributes that define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

Principle 10: Plantations. Plantations shall be planned and managed in accordance with Principles and Criteria 1-9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should

complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.⁷⁵

It can be clearly perceived that the FSC Principles and Criteria take into account environmental, social and economic considerations. From the FSC's underlying concept perspective, this multiple consideration -as well as the wide and diverse membership of the Association- constitutes an added value that confers the FSC a higher credibility. In this sense, and from a social perspective, it is worth underlining the references made to the tenure and use rights and to the local communities, workers and the indigenous people's rights. On the other hand, forest management standards also take into consideration pretty important environmental issues, such as the protection of forest of high values (i.e. with rare or endangered species). In addition, these aspects encompass a viable economic management that makes the forests' exploitation under these criteria attractive for the industrial and trade sectors. However, the FSC is not in a strong position and its action is being undermined by certain industrial sectors that promote other less-strict certification standards and criteria.⁷⁶

2. Procedures for FSC accreditation of certification bodies

Since the FSC is an association that accredits the bodies which later grant certifications on the basis of the FSC Principles and Criteria, and authorize the use of the FSC trademark, one of the most important aspects of the FSC's activities precisely consists on accrediting these certification bodies. This is one of the most criticized aspects of the FSC, too.⁷⁷ Accreditation thus reveals itself as the key process in the role of a stewardship council, since what it must ensure is the competence and correction of the task that the certifying entity carries out.

Certification bodies previously accredited by the FSC carry out evaluations of forests. These bodies are subjected to certain evaluation procedures concerning their competence and credibility. In this sense, the FSC has developed rigorous procedures to evaluate whether organizations (certification bodies) can provide an independent and competent forest evaluation (certification) service. The starting point is the acceptance of the FSC Principles and Criteria for Forest Stewardship. Then, all accredited certification bodies may operate internationally and may carry out

75. *Id.*

76. See DUDLEY ET AL., *supra* note 7, at 152; Kloven, *supra* note 3, at 5-6.

77. See FERN, BEHIND THE LOGO. AN ENVIRONMENTAL AND SOCIAL ASSESSMENT OF FOREST CERTIFICATION SCHEMES (2000), at <http://www.fern.org/pubs/reports/behind/btlrep.pdf>.

evaluations in any type of forest. As we have explained, for the purpose of awarding the FSC logo to a forest product from a certified forest it is also necessary to check the custody chain (i.e. tracking of the timber from the forest to the retailer).

Although it can be expected that accredited certification bodies will exist in the future in the most important producing countries, as a matter of fact, there are accredited certification bodies currently operating in eight countries (in addition, highly developed countries): Germany, South Africa, Canada, USA, Italy, Netherlands, United Kingdom and Switzerland.⁷⁸ In these countries, the accredited certification bodies may certify forest management enterprises that meet the FSC Principles and Criteria. This allows granting licenses and permits to use the FSC registered mark for certified forestry products. As for the scope of the accreditation, it is worth noting that in some cases the accreditation covers the supervision of the chain of custody, while in other cases it covers the forest management operations as well. In the same sense, the accreditation's geographical scope may be narrowed to a specific geographic area, or spread to all over the World and all types of forests.

The recent suspension of the accreditation formerly granted to a certification body clearly shows the rigorousness of the control that the FSC carries out over them. In fact, the FSC gave notice recently of the suspension of the authorization to award certifications previously granted to SKAL⁷⁹ (The Netherlands), provided that the annual audit demonstrated that the operational practices of this body did not fully comply with the FSC procedures. Despite these rigorous requirements, the main problem of the FSC is its inability or unwillingness to properly control its accredited auditors or certifiers, of logging companies and to ensure that the FSC's standards for forestry are actually upheld.⁸⁰ The rigorous requirements for the accreditation of the certification bodies include the following parameters:⁸¹ Compliance with and adhesion to the FSC Principles and Criteria; Independence; Rigorous evaluation procedures; Transparency; Reciprocity; Public information; Verification of the Chain of Custody; Compliance with the applicable Laws; Equitable access; Keeping the adequate documentation; Appeal procedures; and Integrity of claims and grievances. Among these parameters, the most important ones relate to the adhesion to the FSC

78. As for instance, Rainforest Alliance and Scientific Certification Systems (USA), and SGS Forestry and Soil Association (in the UK).

79. Press Release, Forest Stewardship Council (March 30, 2001), at FOREST STEWARDSHIP COUNCIL, FSC NEWS: PRESS RELEASES, http://www.fsc.org/en/whats_new/news/press_releases.

80. THE RAINFOREST FOUNDATION, REFORM OF THE FOREST STEWARDSHIP COUNCIL, at <http://www.rainforestfoundationuk.org>.

81. See Kloven, *supra* note 3, at 51.

Principles and Criteria, the adherence to the FSC Guidelines for Certification Bodies, and the existence of specific national or regional forest management standards approved by the FSC.⁸²

The existing data shows relevant figures concerning the total area of certified forests in an increasing number of countries (and constantly increasing). In fact, although the percentage of certified forests still constitutes a small part of the world's forests, it has been increasing during the most recent years, since the demand of FSC's certified wood and wood products is increasing accordingly (mainly in developed countries).⁸³ The FSC operates in a large number of countries, there are accredited certification bodies in eight countries as we have mentioned above, and the certified forests with the FSC registered mark spread beyond 60 countries and more than 45 millions of hectares. Nonetheless, as Table 1 shows, its regional distribution clearly points out that its success, and in general the success of the sustainable labeling and certification processes, has basically been focused in developed countries.⁸⁴

Table 1. FSC. Certified areas. Regional totals.⁸⁵

Europe	27.007.811 ha
Africa	1.855.405 ha
Latin America	5.993.697 ha
Asia-Pacific	1.709.294 ha
North America	9.369.794
Grand Total	45.936.001 ha

3. Local, national and regional standards for the implementation of the FSC Principles and Criteria

As it has been previously pointed out, the FSC supports the development of standards at this level for the purpose of implementing its Principles and Criteria. These standards are developed by national and

82. See DUDLEY ET AL., *supra* note 7, at 150.

83. Mainly in the UK, Sweden, USA or Netherlands.

84. On the discussion and evaluation of the forestry certification processes, in terms of developing and developed countries, see Xavier Pons Rafols & V. Sánchez Sánchez, *Sustainability Labeling Certification Schemes on Forest Management*, in SUSTAINABILITY LABELLING AND CERTIFICATION, *supra* note 17, at 330-31.

85. FSC REGIONAL TOTALS, INFORMATION ON CERTIFIED FOREST SITES ENDORSED BY FOREST STEWARDSHIP COUNCIL, at <http://www.certified-forests.org/region.htm>.

regional working groups⁸⁶ in order to achieve a broad consensus among the participants and organizations involved in the conservation and management of forests all over the world.⁸⁷ As stated previously, these Working Groups reflect the decentralized action of the FSC and constitute a national or regional initiative at this respect.

In order to help the action of these Working Groups, the FSC has elaborated certain Guidelines for the development of regional certification standards. These standards must simultaneously consider the particular environmental, social and economic circumstances, and the FSC Principles and Criteria for Forest Management.⁸⁸ The objective is that the inspections for evaluating the forest management operations have a higher credibility, and constitute a fairer, more transparent and equitable procedure, by being based upon regional standards.⁸⁹ In this sense, the importance of these standards cannot be understated, since the FSC Principles and Criteria are not primarily intended for being used in the "field certification."⁹⁰

The approval of such standards also requires conducting a specifically defined consultation process.⁹¹ The Working Group plays a pretty important role within this process, since it will not only support the development of the standards, but also recommend them to the FSC for approval. As we have previously stated, these standards must encompass the FSC Principles and Criteria, and the local environmental, social and economic conditions. Even though both requirements have to be verified by the FSC in order to recognize the standards, the secondly mentioned will be only recognized as far as the standards are widely supported and approved by the regional interested agents that support certification.⁹² In other words, Working Groups should ensure that the standards reflect consensus of a wide range of interested groups.⁹³ Among them, the FSC insists on the need for undertaking supplementary efforts addressed to the

86. In many cases in association with other NGO's, some of which may be members of the FSC as well. For instance, the Spanish national initiative is carried out under the auspices of WWF-Spain.

87. FSC BY-LAWS, *supra* note 19.

88. See generally FOREST STEWARDSHIP COUNCIL, FSC PROCESS GUIDELINES FOR DEVELOPING REGIONAL CERTIFICATION STANDARDS, at <http://www.fsc.org/en>.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. These groups of interests include environmental organizations, forests' community groups, forest industry, academic and research institutions, groups for the defense of human and social rights, indigenous communities, organizations for the development, timber traders associations and associations of timber traders, and governmental representatives.

integration of certain interested groups that are frequently excluded from the decision-making processes, such as minority social and ethnical groups, women, rural communities, or persons whose means of life are forestry-dependant.

Certification bodies are obviously included under the heading of "interested persons." At this respect it has to be pointed out that, although their motivations for participating in the standards-making procedure are pretty clear, particular safeguards must be adopted at this point, since potential conflicts of interests may arise. It is necessary to ensure that the consultation process is not under the control of these entities, so guaranteeing an independent adoption. In short, the wide support of the national and regional interested parties must not imply that any group with particular interests controls its design and implementation, but rather an adequate balance of interests, including environmental, social and economic interests. This basically means a democratic participation in the elaboration of such standards, and the will to reach consensus on their contents to the greatest extent possible. In any case, the consultative process must also include a dispute resolution mechanism, although the FSC Dispute Resolution and Accreditation Appeals Committee may play this function in the absence of any provision on this matter.

In a different context, it is worth noting that the FSC promotes the decentralization of its activities and the highest participation at the local scale (similarly to what happens with the development of regional, national and local certification standards). In this respect, the FSC recognizes and encourages national and regional initiatives that follow the procedures, guidelines and processes established by the FSC. These initiatives are developed through a formal agreement concluded with the FSC Secretariat.⁹⁴ The recognition of such initiatives allows for a distribution of the FSC's activities and a decentralized management, although no kind of local interpretation of the FSC's formal documents is admitted. This decentralized national or regional structure, which must be fitting to the model and the balances of the FSC, may be established in any of the following forms: A contact person (that may be an individual member or a delegate of an organization associated to the FSC), an FSC working group (which constitutes a suitable way for elaborating national or regional standards), an FSC Consultative Council, or a national or regional FSC office.

B. Main elements on the functioning of MSC.

As we have mentioned above, the objective of the MSC is 'to work for sustainable marine fisheries by promoting responsible, environmentally

94. FSC BY-LAWS, *supra* note 19.

appropriate, socially beneficial, and economically viable fisheries practices, while maintaining the biodiversity, productivity, and ecological processes of the marine environment.⁹⁵ The MSC label provides the opportunity for consumer demand for fish produced in a sustainable manner to influence fishing practices.

1. Principles and criteria for fisheries management.

The MSC Principles and Criteria for Sustainable Fishing are based—as we have mentioned above—on the FAO Code of Conduct for Responsible Fisheries, which were further developed through a process of international consultation with stakeholders from around the world during eight workshops and two expert drafting sessions.⁹⁶ The key elements of the MSC's Principles and Criteria are:⁹⁷

- 1) The maintenance and re-establishment of healthy populations of targeted species;
- 2) The maintenance of the integrity of ecosystems;
- 3) The development and maintenance of effective fisheries management systems, taking into account all relevant biological, technological, economic, social, environmental and commercial aspects; and
- 4) Compliance with relevant local and national local laws and standards and international understandings and agreements.⁹⁸

The MSC Principles and Criteria relate only to marine fisheries activities up to the point at which the fish are landed. The MSC does, however, recognise other complementary certification programs (e.g., ISO 14000) that may provide evaluations of post landing activities related to fisheries products certified to MSC standards.⁹⁹

Although the MSC standard setting process did involve a range of stakeholders, it has faced criticism over the dominant stakeholder groups involved, and this has subsequently affected the widespread acceptability of the scheme. The MSC is a purely private initiative and retailers have had a strong influence on the MSC from the start. There is a perception on the part of some fisheries managers, the fisheries sector, and environmental organizations (other than WWF) that the MSC was established without a sufficiently open consultation process involving all relevant stakeholders.

95. INCORPORATING BIODIVERSITY, *supra* note 5.

96. MSC PRINCIPLES AND CRITERIA, *supra* note 17.

97. *Id.*

98. *Id.*

99. *Id.*

2. Procedures for MSC accreditation of certification bodies.

The MSC's set of Principles and Criteria are used as a standard for third party, independent certification. In order to obtain accreditation from the MSC to assess fisheries and award the MSC certificate, certification bodies must meet certain requirements as stated in the MSC Accreditation Manual. Since 1999, the MSC has accredited five certification bodies to assess and certify fisheries around the world. Only three of them have actually performed a full certification process so far. Costs of certification will vary depending on the standards in question and the complexity of the fishery being certified. Rough estimates of certification costs are \$10,000 for a small simple fishery, and \$100,000+ for a large complex fishery.

In terms of market success, since the first MSC certification of fisheries took place in the year 2000, almost 200 different certified fish products have been introduced in 17 countries, including the United States, Japan, and much of Europe. In its annual report 2001/2002,¹⁰⁰ the MSC insists that 'these regions are certainly the most open to the idea of eco-labeling, but that it will continue to maintain a strong global outlook.'¹⁰¹ The MSC is currently certifying fisheries in the waters of the United States, United Kingdom, Australia, New Zealand, South Africa, South Georgia and Mexico.¹⁰² Table 2 gives an overview of the target species involved, the country, the year of certification, and an indication of the yield in tons. It clearly shows that the yield volumes differ greatly from very small scale to large-scale fisheries. In addition, there are currently 15 fisheries undergoing certification. Of the ten types of fish that are currently available, New Zealand hoki, South African hake and Alaskan salmon have the highest market penetration. The other seven types of MSC certified fish are sold in specific markets and are marketed in unprocessed form, thus not under a specific brand name. The Western Australian rock lobster is mainly exported to Southeast Asia, the USA and Europe. The three British fisheries all have a considerable domestic market and also export their products to Southern European countries.

100. MARINE STEWARDSHIP COUNCIL, ANNUAL REPORT 2001/2002, at http://www.msc.org/html/content_460.htm.

101. *Id.*

102. MARINE STEWARDSHIP COUNCIL, MARINE STEWARDSHIP COUNCIL ANNUAL REPORT 2001/2002, at <http://www.msc.org>.

Table 2. Fisheries certified to the MSC standard (situation on 16 September 2004).¹⁰³

<i>Fishery name</i>	<i>Country</i>	<i>Starting year of certification</i>	<i>Indication of volume in tons</i>
Western Australian rock lobster fishery	Australia	2000	10,000
Thames herring driftnet fishery	United Kingdom	2000	121
Alaska salmon	USA	2000	Fluctuates
Burry Inlet cockle fishery	United Kingdom	2001	7,135
New Zealand Commercial hoki Fishery	New Zealand	2001	200,000
South West mackerel handline fishery	United Kingdom	2001	1,750
Loch Torridon Nephrops creel fishery	United Kingdom	2003	125
South African Hake	South Africa	2004	166,000
Mexican Baja California Red Rock Lobster	Mexico	2004	1,300
South Georgia Toothfish	South Georgia	2004	4,420

3. Local, national and regional standards for the implementation of the MSC Principles and Criteria

In addition to the need for broad stakeholder inclusion in setting principles and criteria, there is also a need for more flexibility in the application of certification standards to fisheries of different scales and in different settings. There is a case for adjusting MSC criteria to reflect the characteristics of the fisheries to which they are applied, and to reduce the burden of information requirements for small-scale fisheries. The MSC

103. MSC WEBPAGE, *supra* note 11, at CERTIFIED FISHERIES, http://www.msc.org/html/content_476.htm.

aims to promote equal access to its certification program irrespective of the scale and location of the fishery. Given the concern on the part of developing country fisheries that labelling schemes for fisheries products have in part been developed with the intent to protect developed country domestic industries and restrict market access for those less able to meet foreign labelling and certification standards, it is particularly important that MSC certification is relevant and accessible to developing countries. With respect to this, the MSC has attempted to contact and inform stakeholders in developing country fisheries through its Developing World Fisheries Program. To facilitate the involvement of developing country stakeholders, the MSC is attempting to develop to a regionally structured outreach process.

V. FINAL REMARKS

The successful action (in relative terms) of the FSC might be partially understood by considering the broad support given to its action by environmental NGO's and some important companies that have joined to different groups of traders backing the FSC trademark. Even certain governments (e.g. Austria) have clearly supported and given financial aid to the FSC. This wide support is not only captured by the FSC membership and its chamber structure, but also by the broad participation that takes place in the process of the elaboration of the national and local standards. It can be said without any reservation that participation constitutes one of the strongest and most relevant aspects of the FSC.

The Marine Stewardship Council is the second multi-stakeholder council, itself being based on the FSC, and it has been postulated that there is an emerging model for environmental and social certification overseen by councils comprised of multiple stakeholders.¹⁰⁴ Whereas the establishment of the FSC was a bottom-up process led by members, the MSC has been a top-down process led by 'experts', and this difference has meant that the MSC has faced more questions about its legitimacy, especially from Southern NGOs. The MSC has largely remedied this criticism by becoming independent of its two original founding organizations (Unilever and WWF) and adopting a much broader membership and transparent and open governance structure.

It is our understanding that the establishment, structure and development of the FSC and the MSC, specially concerning the stewardship council model, has resulted in a larger credibility and transparency of the

104. Penny Fowler & Simon Heap, *Bridging troubled waters: the Marine Stewardship Council, in TERMS FOR ENDEARMENT BUSINESS, NGOS AND SUSTAINABLE DEVELOPMENT* (Jem Bendell ed., 2000).

certifying process before the industry, governments, non governmental organizations and consumers. On the other hand, in terms of the content of the MSC and FSC standards and the way in which social issues have been downplayed in their respective principles and criteria for certification, it can be argued that, currently, it may be easier to translate environmental issues into a business/financial case for a labeling scheme than it is to translate the social aspects of sustainable development.

The FSC has been widely recognized and its accreditation processes have spread to a considerable number of countries. It can be said that the FSC has succeeded in designing and spreading out a valid and effective forest certification scheme. In this sense, the responsibility of ensuring that wood and wood products come from sustainable managed forest rests with the forest industry. This is because if the industry ignores "sustainability" regarding the raw materials (with a risk of overexploitation), it would be in a vulnerable position. In addition, the industry has to face an increasing demand of products of reduced environmental impacts.

In any case, although both cases are voluntary mechanisms that the industry accepts as a good business opportunity and as a possibility of raising its market share, it has obvious positive impacts in the sustainable forest and fisheries management. They constitute an innovative example of a new approach to addressing conservation issues through an international multi-stakeholder consultative process. Besides, as far as they are not imposed by any government, the schemes do not interfere with the multinational regulation of trade, and do not constitute a barrier to the international trade. This market-based approach can be therefore considered as an adequate perspective for improving sustainable forest and fisheries management.

Finally, the common characteristics of FSC and MSC show their specificity. To our mind, the most relevant elements are, in the first place, their composition, especially in the case of the FSC and, in general, their structure, in the sense that they allow the widest participation of relevant stakeholders (NGOs, industrial corporations, consumers) and that they establish advisory decision-making processes that try to be well-balanced. In the second place, it must be underlined that these entities adopt their own principles and criteria, from social and environmental perspective, thus developing what at the international level constitutes only mechanisms of soft law, as the proposals and action measures adopted in the framework of the international dialogue on forests and the process undertaken by the *Intergovernmental Panel on Forests (IPF)* and its successor, the *Intergovernmental Forum on Forests (IFF)* or, on the other hand, the *FAO Code of Conduct for Responsible Fisheries*. We understand, lastly, that it is relevant to point out that these bodies do not act as certification entities and

only endorse, through a system of accreditation, other organizations that act independently as certification entities. The importance of this operational aspect lies in the fact that the independent verification of the processes used to provide certification services can increase its credibility and, at the same time, keep a constant promotion of higher levels or standards of sustainability.