

Terms of Reference (ToR)

Inclusion of Free, Prior and Informed Consent in the ASC Farm Standard

This ToR is publicly available on the ASC website. Comments are welcome and appreciated.

| Version: | Date: | Description of amendment | Affected section |
|----------|-----------|--------------------------|------------------|
| 1.0 | June 2023 | N/A | N/A |
| | | | |
| | | | |

Contents

| | |
|---|---|
| Introduction | 2 |
| ASC Vision | 2 |
| ASC Mission | 2 |
| ASC Theory of Change | 2 |
| 1. About this ToR document | 2 |
| 2. Objectives of the FPIC project | 3 |
| 3. Structure and scope of the FPIC project | 3 |
| 4. Stakeholder engagement | 4 |
| 5. Guiding principles | 5 |
| 6. Process of standard development (FPIC project) | 5 |
| 7. Governance and decision making | 6 |
| 8. Assessment of risks | 6 |
| 9. Contact information | 9 |
| 10. Comments | 9 |

Introduction

The Aquaculture Stewardship Council (ASC) is an independent, not-for-profit organisation that operates a voluntary, independent third-party certification and labelling programme based on scientifically robust Standards.

The Standards define Criteria that help to transform the aquaculture sector towards environmental sustainability and social responsibility, as per the ASC Mission.

ASC Vision

A world where aquaculture plays a major role in supplying food and social benefits for humanity whilst minimising negative impacts on the environment.

ASC Mission

To transform aquaculture towards environmental sustainability and social responsibility using efficient market mechanisms that create value across the chain.

ASC Theory of Change

A Theory of Change (ToC) is an articulation, description and mapping of the building blocks required to achieve the organisation's vision. ASC has defined a ToC which explains how the ASC certification and labelling programme promotes and rewards responsible aquaculture practices through incentivising the choices people make when buying seafood.

ASC's Theory of Change can be found on the [ASC website](#).

Intended Change: ASC Standards are developed to deliver on the ASC Theory of Change by addressing key sustainability issues identified in the seafood sector and at the farm. Increased global demand for fish combined with rapidly growing and unregulated aquaculture practices will result in disruption of local ecosystems, negative impacts to biodiversity, wastewater, conflicts over resource use and poor working conditions. Certification against ASC Standards addresses these sustainability issues through market demand and recognition of responsible practices.

1. About this ToR document

This document describes the objectives and scope of a project that assesses the potential inclusion of the concept of 'Free, Prior and Informed Consent' into the ASC Farm Standard that is currently under development and details the process of this project. Further information on the FPIC project, and the ASC Farm Standard, is available on the ASC website.

'Free, Prior and Informed Consent' (FPIC) is a key principle of human rights law that protects the rights of Indigenous people. Two significant international instruments in this context are the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) and the International Labour Organisation (ILO) Indigenous and Tribal Peoples' Convention (ILO C169) (1989). ILO C169 is a binding international treaty, ratified to date by 23 countries,

which deals with the rights of Indigenous people to development, to their customary law (Art. 8), to their lands, territories, and resources (Arts. 13 to 16), to employment (Art. 20), and to consultation, participation, and consent (Arts. 6 and 7).

Initial scoping research by ASC on FPIC, carried out in the first half of 2023, has highlighted the complexity and sensitivity of this issue, and the degree of polarisation on the topic among key stakeholders in the aquaculture sector. It has also emphasised the challenges for implementation associated with the inclusion of FPIC in the Farm Standard. This stresses the need for a careful decision-making process on this topic, that considers diverse viewpoints, and eventually includes a well-designed pilot to test new indicators for the Standard.

2. Objectives of the FPIC project

The main objective of the project is to

- a) Assess whether and how the concept of Free, Prior and Informed Consent (FPIC) can be credibly incorporated into the ASC Farm Standard.

In case of a decision on inclusion of FPIC, the project aims to:

- b) Decide on the scope of the target group for FPIC (Indigenous people only, or also communities in general).
- c) Decide on the scope of the application of FPIC (all farms or based on a species/country combination risk assessment).
- d) Decide on the steps and methodology this process would use.
- e) Formulate a robust set of indicators on FPIC.
- f) Develop guidance and other materials for successful implementation of FPIC by UoCs, and CABs.

In case of a decision on not including FPIC, the project aims to:

- b) Decide on an alternative methodology to ensure Indigenous people's rights are recognised and respected.
- c) Decide on the steps and methodology this process would use.
- d) Formulate a robust set of indicators or alternative method.
- e) Develop guidance and other materials for successful implementation of the alternative method by UoCs, and CABs.

3. Structure and scope of the FPIC project

The FPIC project aims to add requirements to the ASC Farm Standard by adding additional indicators.

4. Stakeholder engagement

Key ASC stakeholders in this process are:

- Representatives of Indigenous people.
- Producers: certified farms and those seeking certification across all species currently under the scope of the ASC standards, in all regions and of all sizes.
- Civil society: social NGO's and civil society organisations, especially those that support Indigenous Peoples.
- Conformity Assessment Bodies (CABs): and their auditors conducting ASC audits.
- Governments/regulators: including intergovernmental organisations.
- Scientists/Academia: researching relevant aquaculture impacts.
- Processors/Supply chain: including processors, suppliers, and retailers, foodservice and consumers.

For the topic of FPIC, specific attention is needed to include representatives of Indigenous people. A specific mapping exercise and participation plan will be prepared for this process. In general, ASC is employing several strategies to engage stakeholders in the development process. These include:

- Representation of stakeholders in decision making bodies (Technical Working Groups, Technical Advisory Group and Supervisory Board);
- Public consultations, by means of:
 - online surveys, and
 - regional, sectoral and/or criteria-based workshops in English as well as local languages as deemed necessary (e.g., Spanish, Bahasa Indonesia, Vietnamese)

and supported by communications materials, e.g.:

- a dedicated website landing page,
- short videos to summarise each technical topic and the consultation process; and
- social media to promote consultations and elicit feedback.

A pilot will also be conducted testing the methodology and draft Standard Requirements to assess feasibility, practicability and auditability at farm and CAB level.

ASC is monitoring the participation of stakeholders and aims for effective and balanced representation during the standard setting process. Should stakeholders experience discontent with this process a procedural complaint can be filed through the public ASC Complaints Procedure.

5. Guiding principles

Standard development follows the [ASC Standard Setting Procedure](#) and the Guiding Principles described therein.

6. Process of standard development (FPIC project)

The timeline for this standard development process reflects the expected complexities and variety of opinions associated with the topic of FPIC. Table 1 summarises key milestones in the development process. The ASC website includes information on the latest opportunities for stakeholders to engage in the process. Apart from the public consultation periods, ASC welcomes inputs and comments anytime during the process, provided to the contact person listed at the bottom of this ToR.

Table 1. Major activities in the FPIC project

| Date | Activity | Outcome/Deliverable | Engagement opportunity |
|---------------------|---------------------|--|------------------------|
| Jul 2023 | TAG meeting | Project ToR approval | |
| Sep 2023 | TWG meeting 1 | Kick-off Agreement on TWG scope, objectives, and timelines Discussion on FPIC inclusion | |
| Oct 2023 | Public consultation | Public consultation on Project ToR | 30 days |
| Nov 2023 | TWG meeting 2 | Feedback from PC on ToR Discuss internal decision on FPIC indicators yes/no Input into alternative methodology if needed | |
| Jan 2024 | TAG meeting | Approval of decision on FPIC inclusion | |
| Jan 2024 | TWG meeting 3 | Alternative methodology / draft indicators | |
| Mar 2024 | TWG meeting 4 | Draft indicators Design of pilot | |
| Jul 2024 | TAG meeting | Presentation of draft indicators to TAG for PC1 | |
| Sep/Oct 2024 | Public consultation | Public consultation on draft indicators 1 | 60 days |
| Sep 2024 – Mar 2025 | Pilot | Piloting with Indigenous People, farms and CABs in selected countries | |
| Dec 2024 | TWG meeting 5 | Results of PC1 Update on pilot | |
| Apr 2025 | TWG meeting 6 | Results of pilot Revised indicators | |
| Jul 2025 | TAG meeting | Presentation of draft indicators to TAG for PC2 | |
| Sep/Oct 2025 | Public consultation | Public consultation on draft indicators 2 | 60 days |
| Nov 2025 | TWG meeting 7 | Results of PC2 Final indicators | |

| | | | |
|----------|---------------------------------|---|--|
| Jan 2026 | TAG meeting | Final approval of indicators | |
| Feb 2026 | TWG meeting 8 | Input into guidance | |
| Q1 2026 | Board meeting | Board approval | |
| TBD | Add indicators to Farm Standard | Indicators added to the first revision of the ASC Farm Standard | |

7. Governance and decision making

Technical governance for Standard development at ASC is made up of several bodies:

- The Technical Advisory Group (TAG): the TAG's role is to provide advice and recommendations on the use of ASC's Standards and other technical issues, including (but not limited to) further development, modification and the technical and operational interpretation of the ASC Standards and the application of these interpretations. TAG members are representatives of different relevant stakeholder groups and meet twice a year to make decisions.
- Technical Working Groups (TWGs): TWGs are formed as needed, to provide additional technical expertise and recommendations to the TAG. These TWGs also include representatives of different stakeholder groups and are selected for their knowledge on or experience with a specific topic.

TWGs develop recommendations for review by the TAG. The TAG reviews proposals and endorses drafts ahead of public consultation. The TAG then reviews consultation feedback and provides advice for next steps or recommendations to the ASC Supervisory Board who take the final decision to adopt revised Standards. The ASC Standard Setting Procedure guides the development process.

TAG recommendations are preferably made by consensus. If no consensus can be reached, agreement on advice by the TAG is made by simple majority of members. In such circumstances, the Executive prepares a report to the Board which clearly indicates a summary of the minority and majority positions.

Further information on ASC Governance is available [here](#).

8. Assessment of risks

ASC has identified the following risks and mitigation strategies for the FPIC project and (potential) resulting requirements in a revision of the ASC Farm Standard (

Table 2). The ASC M&E Framework will eventually provide for the monitoring of the intended outcomes from new indicators / a new methodology on FPIC in the ASC Farm Standard and provide for the learning against these identified risks. These learnings will inform future review and revision of the ASC Farm Standard.

Table 2. Risks and mitigation measures for the FPIC project

| Risk aspect | Evaluation of risk | Mitigation strategy |
|---|---|---|
| <p>Long timeline for FPIC project</p> | <p>The long timeline of the FPIC project implies that the initial version of the Farm Standard will not include FPIC requirements or an alternative methodology, which presents a reputational risk. Non-inclusion of FPIC may also be the final outcome.</p> | <ul style="list-style-type: none"> • The long timeline is deemed necessary to ensure all views are considered. The ASC Farm Standard that is going out for public consultation in September 2023, already has requirements for a grievance mechanism for communities, a requirement on licenses to use land and water, and one on dialogue and engagement with local communities. • If a decision is made that inclusion of FPIC is currently not feasible, either an alternative methodology will be developed, or alternative indicators for the Farm Standard that have the same intent of protecting the rights of Indigenous people (and local communities). |
| <p>Inclusion or non-inclusion of FPIC</p> | <p>ASC's mission is to transform aquaculture towards environmental sustainability and social responsibility using efficient market mechanisms that create value across the chain. If there are no FPIC requirements in the ASC Farm Standard, 'business as usual' will be certifiable and no transformation will be achieved. If FPIC requirements in the ASC Farm Standard are too complex, few aquaculture farms will be able to obtain certification and no transformation will be achieved.</p> | <ul style="list-style-type: none"> • With over 2000 farms certified, ASC understands farm performance and what levels of improvement are achievable. • Stakeholders are given the opportunity to provide feedback on the proposed requirements in multiple rounds of public consultation, in pilots and through engagement mechanisms provided on the website. Stakeholders would flag if the ASC Farm Standard became too lenient. Current certified farms would flag if new requirements were not feasible to implement. |
| <p>Implications for costs of certification for farms</p> | <p>Adding FPIC requirements to the ASC Farm Standard may increase certification costs, which may create a barrier for small and medium-sized farmers seeking certification.</p> | <ul style="list-style-type: none"> • Pilot testing and consultation will seek to evaluate this risk to allow informed decisions on trade-offs in delivering impact. • If needed, guidance can be developed for a simplified process for small to medium-sized farms. |

| | | |
|---|---|---|
| | | <ul style="list-style-type: none"> ASC's Aquaculture Improvement Programme provides a pathway towards certification and potential recognition for producers currently unable to meet the ASC Farm Standard. |
| Implications for complexity and compliance for farms | <p>New FPIC requirements in the ASC Farm Standard will be more demanding on engagement processes, data collection, measuring and monitoring than earlier versions of the Community Engagement criterion, increasing cost, complexity, and compliance issues for some farms.</p> | <p>Impacts of proposed changes on all stakeholders will be assessed during the development of the indicators, and clearly communicated.</p> |
| Implications for auditors and auditing costs | <p>FPIC could be difficult to audit and would likely require additional time to interview community members and verify that FPIC has been given and is based on a continuous process. This would increase costs of the audit and requires a different skillset of auditors.</p> | <ul style="list-style-type: none"> Impacts of proposed changes on all stakeholders will be assessed and clearly communicated. Auditors will be trained, and other capacity development materials developed to ensure auditing can be done in an effective and cost-efficient way. |

9. Contact information

Froukje Kruijssen, Senior Coordinator Social Standards

Froukje.Kruijssen@asc-aqua.org

10. Comments

ASC welcomes feedback on these Terms of Reference at any time. Please see <https://www.asc-aqua.org/programme-improvements/xxxx/> for more information about the latest opportunities to get involved.