

## 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
1.1	November 2023	<ol style="list-style-type: none"> <li>1. A reframing of the ToR to clarify the project’s intent, which is to revise the indicators in the ASC Farm Standard v1.0 to include the principles of FPIC, to be released under v1.1 or v2.0 of the ASC Farm Standard.</li> <li>2. In line with the above, to remove the additional decision on whether a full FPIC process will be included.</li> <li>3. Introduction of an extra phase in the project in which ASC asks experts to advise on the process (an Ad-Hoc Advisory Group).</li> <li>4. Introduction of a more intensive and longer period of stakeholder consultation that precedes/goes in tandem with the development of the first draft of the standard indicators, especially to consult with Indigenous people (stakeholder dialogues).</li> <li>5. A restructuring of the sections in this ToR to make the document flow better after inclusion of the additional elements listed in items 3 and 4.</li> <li>6. Removal of a timeline for the project to not impose external timelines on the stakeholder dialogues.</li> <li>7. Revision of risks to reflect the intent of the revision.</li> <li>8. Small wording updates.</li> </ol>	All

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## 1. 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 out 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](#).

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.

## 2. About this ToR document

This document describes the objectives, scope and process of a project that aims to conduct a standard revision focussing on the current Community Engagement Criterion in the ASC Farm Standard (3.13) and potentially the parts of the Criterion on Grievance Mechanisms (3.12) that apply to communities, to include the principles of 'Free, Prior and Informed Consent'. 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 responds to 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).

FPIC is seen as an integral process through which companies can engage with indigenous peoples, and other resource-dependent communities, to preserve their rights and mitigate risks from business practices and actions.

FPIC refers to the following<sup>1</sup>:

- **FREE:** Consent is free, given voluntarily and without coercion, intimidation or manipulation. A process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.
- **PRIOR:** Consent is sought well in advance of any authorisation or commencement of activities.
- **INFORMED:** refers to the engagement and type of information that should be provided prior to seeking consent and as part of the ongoing consent process.
- **CONSENT:** is a collective decision made by the rights-holders and reached through a customary decision-making process.

FPIC requires people developing projects to obtain the informed and freely granted consent of indigenous peoples before starting up projects on land that indigenous peoples traditionally own and use. It is a meaningful consultation process by which indigenous communities can determine how development decisions are made. In the international instruments FPIC is related to indigenous and tribal peoples, but some industry standards extend its application to all significantly affected local communities.

The 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 FPIC. This stresses the need for a careful decision-making process for this standard revision, that considers diverse viewpoints, and eventually includes a well-designed pilot to test new FPIC related indicators for the ASC Farm Standard.

### 3. Objectives of the FPIC project

The main objective of the project is to include the principles of the concept of Free, Prior and Informed Consent (FPIC) into a revision of the Community Engagement Criterion (3.13) and potentially the parts of the Criterion on Grievance Mechanisms (3.12) that apply to communities that are currently in the ASC Farm Standard v1.0.

As part of this revision, the project aims to:

- a) Decide on the scope of the target group for FPIC (Indigenous people only, or also communities in general).
- b) Decide on the scope of the application of FPIC (all farms or based on a species/country combination risk assessment).

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<sup>1</sup> <http://www.fao.org/Indigenous-peoples/our-pillars/fpic/es/>

- c) Decide on the steps and methodology this process would use.
- d) Formulate a robust set of indicators that represent the principles of FPIC.
- e) Develop guidance and other materials for successful implementation of FPIC by UoCs, and CABs.

## 4. Structure and scope of the FPIC project

The FPIC project aims to add requirements and/or revise current requirements in the ASC Farm Standard v1.0, to be launched in ASC Farm Standard v1.1 or 2.0. The development will follow the [ASC Standard Setting Procedure](#).

## 5. Guiding principles

Standard development follows the ASC's Standard Setting Procedure and the Guiding Principles described therein (to be replaced in 2024 by the new Programme Development and Revision Procedure).

## 6. Process of standard development (FPIC project)

The process for this standard revision, reflects the expected complexities and variety of opinions associated with the topic of FPIC and involves several different governance bodies and engagement processes. This includes additional processes on top of ASC's general standard revision process to ensure that key stakeholders, especially Indigenous people, are represented in this revision, ASC has also engaged the Consensus Building Institute (CBI) to help facilitate the project. Further information on ASC Governance is available [here](#). ASC is monitoring the participation of stakeholders, aiming for effective and balanced representation during the standard setting process. The following governance bodies and processes are engaged in the standard setting process.

**The Technical Advisory Group (TAG):** the TAG advises on technical issues, among others on further development, modification, and the technical and operational interpretation of the ASC Standards. TAG members are representatives of different relevant stakeholder groups and meet twice a year to make decisions. 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. The TAG recommendations are preferably made by consensus. If no consensus can be reached, agreement on advice by the TAG is made by a simple majority of members. In such circumstances, the TAG prepares a report to the Board which clearly indicates a summary of the minority and majority positions.

**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 of, or experience with, a specific topic. TWGs develop recommendations for review by the TAG.

To provide advice on the process of stakeholder dialogue, an **Ad-Hoc Advisory Group (AAG)** will be involved early in the process.

For this revision, there is a need to make further efforts to involve Indigenous and non-Indigenous communities in the revision process, therefore a more intensive **stakeholder dialogue** will be included that also starts earlier than the usual public consultations.

**Public consultations** take place by means of online surveys, regional, sectoral and/or criteria-based workshops in English as well as local languages as deemed necessary (e.g., Spanish, Vietnamese), and 1-on-1 interviews, and is supported by communications materials, e.g., a dedicated website landing page, short videos to summarise the technical topic and the consultation process, and social media to promote consultations and elicit feedback. 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 NGOs 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.
- Supply chain actors: including processors, retailers, foodservice and consumers.

A **pilot** phase will also be included to test a methodology and/or draft Standard Requirements to assess feasibility, practicability and auditability at farm and CAB level.

These groups are summarised in Table 1. There may be some overlap between the participants in the stakeholder dialogue and the pilot.

Table 1. Groups involved in Community engagement standard revision.

	TAG	TWG	AAG	Stakeholder dialogue	Pilot	Public consultation
<b>Role</b>	Provide advice and recommendations on the use of ASC's Standards and other technical issues.	Provide specific technical expertise to formulate indicators and tools for implementation of the standard.	Provide specific technical expertise to advise on process of stakeholder dialogue.	Provide specific input into objectives of the revision, the principles for the revision, the indicators, and associated resources needed to implement.	Test out feasibility of proposed indicators in practice.	Provide general feedback on the proposed standard revisions.
<b>Who is involved</b>	TAG members are selected for their broad technical expertise alongside representatives from the aquaculture industry, NGOs, academia, and the assurance sector.	TWG members are selected for their specific expertise in writing/implementing indicators for standards related to FPIC and community engagement, with representatives from certification schemes in other sectors, and CABs.	AAG members are selected for their specific expertise in Indigenous rights and economic activities.	Invited stakeholders that are (potentially) most impacted by changes in the ASC standard or represent these groups: <ul style="list-style-type: none"> <li>• Indigenous / tribal people</li> <li>• Local communities</li> <li>• Farms</li> <li>• (Local) NGOs</li> </ul>	Key stakeholders that have an interest in testing out the indicators and associated processes.	All ASC stakeholders who wish to participate. Announcements are sent by email to ASC's wider network and are posted on the ASC website and social media.
<b>Where</b>	Online/face-to-face meetings	Online meetings	Online meetings	Separate and combined facilitated workshops (depending on phase of the revision and status of the relationship between stakeholders) in at least 3 key locations around the world.	In one or several selected locations.	Online (workshops, survey, email, 1-on-1 meetings)
<b>When</b>	<ol style="list-style-type: none"> <li>1. Endorsement of project ToR</li> <li>2. Endorsement of draft 1 of indicators for public consultation</li> <li>3. Endorsement of draft 2 of indicators for public consultation</li> <li>4. Endorsement of final indicators</li> </ol>	Throughout the process to support writing of draft 1 and 2, and final indicators, to inform/support the writing of the interpretation and capacity development resources, and development of the pilot.	Throughout the process, but most importantly before the start of the stakeholder dialogues.	<ol style="list-style-type: none"> <li>1. As input into draft 1 of the new indicators.</li> <li>2. To comment on draft 1 of the new indicators and provide input into interpretation and capacity development resources.</li> <li>3. To comment on draft 2 of the new indicators and drafts of interpretation and capacity development resources.</li> </ol>	After draft 1 and before final indicators are developed.	<ol style="list-style-type: none"> <li>1. To comment on the project ToR</li> <li>2. To comment on draft 1 of the new indicators (60 days).</li> <li>3. To comment on draft 2 of the new indicators (60 days).</li> </ol>

Aquaculture Stewardship Council

<b>Who facilitates</b>	ASC (policy and programme management)	ASC (human rights team) CBI	ASC (human rights team) CBI	ASC (human rights team) CBI Partner in Asia TBD	ASC (human rights team)	ASC (human rights team)
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## 7. Key milestones

Table 2 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, directed to the contact person listed at the bottom of this ToR.

Table 2. Major activities in the FPIC project (some take place simultaneously)

Activity	Outcome/Deliverable	Engagement opportunity
TAG meeting	Project ToR approval	
Public consultation	Public consultation on Project ToR	60 days
TAG meeting	Approval of revised project ToR	
AAG	Advice on consultation process	
Stakeholder dialogue	Gather input into: <ul style="list-style-type: none"> <li>• Status of relationships between communities and farms and current community engagement practices.</li> <li>• Processes desired by communities in engaging with farms.</li> <li>• Indigenous peoples' goals with regards to aquaculture and FPIC.</li> <li>• Principles for draft indicators</li> </ul>	
TWG meetings	Kick-off Agreement on TWG scope, objectives, and timelines Advice on first draft of indicators Advice on other elements (interpretation manual, capacity development resources, audit resources etc.) Advice on design of pilot	
TAG meeting	Presentation of draft indicators to TAG for PC1	
Public consultation	Public consultation on draft indicators 1	60 days
Pilot	Piloting with Indigenous People, farms and CABs in selected countries	
Continued stakeholder dialogue	Feedback on draft indicators	
TWG meetings	Results of PC1 Update on pilot Advice on revision of indicators	
TAG meeting	Presentation of draft indicators to the TAG for PC2	
Public consultation	Public consultation on draft indicators 2	60 days
TWG meetings	Results of PC2 Final indicators	
TAG meeting	Final approval of indicators	
Board meeting	Board approval	

Include indicators in ASC Farm Standard	New indicators included in revision of the ASC Farm Standard	
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## 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 3). The ASC M&E Framework will eventually support monitoring of the intended outcomes from new indicators/a new methodology on FPIC in the ASC Farm Standard and learnings against these identified risks. These learnings will inform future review and revision of the ASC Farm Standard.

Table 3. Risks and mitigation measures for the FPIC project

Risk aspect	Evaluation of risk	Mitigation strategy
<b>Long timeline for FPIC project</b>	The initial version of the Farm Standard will not include FPIC requirements or an alternative methodology, which presents a reputational risk.	<ul style="list-style-type: none"> <li>The longer timeline is deemed necessary to ensure all views are considered. The ASC Farm Standard that will be launched in autumn 2024, already has requirements for a grievance mechanism for communities, on licences to use land and water and on dialogue and engagement with local communities.</li> <li>Throughout the revision process ASC will communicate progress on the FPIC page on the ASC website.</li> </ul>
<b>Inclusion or non-inclusion of FPIC</b>	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.	<ul style="list-style-type: none"> <li>With over 2000 farms certified, ASC understands farm performance and what levels of improvement are achievable.</li> <li>Key invited stakeholders will be involved early on in the revision process to provide input in the standard indicators.</li> <li>Other 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 will flag if the ASC Farm Standard becomes too lenient. Current certified farms will flag if new requirements are not feasible to implement.</li> </ul>
<b>Implications for costs of certification for farms</b>	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.	<ul style="list-style-type: none"> <li>Pilot testing and consultation will seek to evaluate this risk to allow informed decisions on trade-offs in delivering impact.</li> <li>If needed, guidance can be developed for a simplified process for small to medium-sized farms.</li> </ul>

		<ul style="list-style-type: none"> <li>The Improver Programme by ASC provides a pathway towards certification and potential recognition for producers currently unable to meet the ASC Farm Standard.</li> </ul>
<b>Implications for complexity and compliance for farms</b>	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.	Impacts of proposed changes on all stakeholders will be assessed during the development of the indicators, and clearly communicated.
<b>Implications for auditors and auditing costs</b>	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 audit costs and requires a different auditor skillset.	<ul style="list-style-type: none"> <li>Impacts of proposed changes on all stakeholders will be assessed and clearly communicated.</li> <li>Auditors will be trained, and other capacity development materials developed to ensure auditing can be done in an effective and cost-efficient way.</li> </ul>

## 9. Contact information

Froukje Kruijssen, Programme Manager Human Rights: [HumanRights@asc-aqua.org](mailto:HumanRights@asc-aqua.org)

## 10. Comments

ASC welcomes stakeholder feedback. Interested stakeholders may forward concerns related to the ASC document development or revision process following this procedure to [complaints@asc-aqua.org](mailto:complaints@asc-aqua.org). Please see <https://asc-aqua.org/human-rights/human-rights-in-aquaculture-free-prior-and-informed-consent-fpic/> for more information about the latest opportunities to get involved.