

Comments to the Marine Stewardship Council regarding proposed labor requirements May 14, 2017

I submit the following comments to Marine Stewardship Council's consultation on labor requirements for fisheries and supply chains as the facilitator of the Seafood Working Group.¹

The Seafood Working Group is a coalition of nearly 60 environmental, human rights and labor organizations from about a dozen countries dedicated to the eradication of all forms of worker exploitation, including human trafficking and forced labor, in the seafood trade, particularly in Thailand. Our membership includes leading organizations with expertise in ridding supply chains of labor rights abuses and protecting the ocean's ecological resources by combatting IUU fishing.

We are deeply concerned with the proposed policy to include labor standards into MSC's Fishery and Chain of Custody (CoC) programs. With a carefully structured approach, the MSC could serve a positive role in this space by encouraging transparency in fishing supply chains and using your position as a well-regarded environmental certification program to encourage meaningful social dialogue that could address labor problems in the industry. However, the voluntary self-declaration approach currently proposed is utterly insufficient. It carries a serious risk, in fact a near certainty, that fisheries will paper over serious abuses and has the potential to seriously undermine implementation of genuine reforms that might be more effective in addressing labor concerns.

It would be nearly impossible to determine that “the client/applicant fishery or supply chain is free from forced and child labour in their operations,” even with a comprehensive and ongoing monitoring process. Noting that the MSC is undertaking work to “simplify and reduce the cost of the assessment process,” it is irresponsible of the MSC to allow certified fisheries to make such a sweeping claim about absence of forced or child labor based on the limited methodology proposed. The consequences for workers of certifying poor working conditions as safe has been dire in other sectors. A paper published in 2015 found that in the previous decade 1,800 workers had died in factory fires and building collapses in garment-producing facilities that had been audited and certified as compliant with voluntary corporate codes.²

We believe this proposal poses a significant risk to the credibility of the MSC and urge a more measured approach. If MSC is not going to invest the resources required to implement an effective labor monitoring mechanism (more on how to develop effective labor monitoring is included in our detailed comments below), it would better serve its mission by either not entering into the labor space at all or working with worker organizations to incentivize particular changes that could reduce the likelihood of workers being trafficked, such as mandatory vessel tracking systems with public reporting on ship movement and prohibition on transshipment at sea.

¹ All Working Group members were invited to engage in the review and drafting of these comments, and many members contributed to the drafting and editing process. However time limitations prevented us from doing a formal sign-on process, and thus endorsement by any particular organization cannot be assumed. A list of Seafood Working Group members is attached at the end of these comments.

² Claeson, Bjorn, “Emerging from the Tragedies in Bangladesh: A Challenge to Volunteerism in the Global Economy,” Comment and Commentary section, *New Solutions*, Vol. 24(4) 495-509, 2015

In practice, effective labor certification programs are exceedingly difficult to implement. There is a long track in multiple industries that has at best mixed results, and has at worst inflicted real harm on workers and their communities.³ A recent evaluation of labor certification programs in the agricultural sector completed by the U.S.-based NGO Fair World Project concluded that:

*To be effective, voluntary certification programs must have strong enforcement mechanisms and include workers in all levels of decision-making, governance, and enforcement. This includes independent auditing programs, worker control of claims made regarding labor practices, and complaint mechanisms that result in correction of violations. To make a market claim, programs must include rigorous standards that go far beyond legal requirements, along with meaningful economic leverage, both to encourage proactive compliance with those standards and to enforce them when necessary.*⁴

Credible certification systems should incorporate as fundamental principles the following standards and practices: a fair wage for workers paid in a timely way; inclusion of independent worker organizations at all stages of standard-setting, monitoring and enforcement, and remediation; a secure complaint reporting and resolution mechanism with a strictly enforced policy of zero tolerance for retaliation; and a focus on enforcement, with binding legal agreements that ensure real consequence for non-compliance.

The remainder of our comments will focus on best practices in labor monitoring that we think MSC would be wise to consider before seriously undertaking any labor certification program. They are organized according to the categories for which MSC requested feedback, but because the particulars of the questions asked are often subsumed by concerns about the overall approach, we are submitting these comments directly to you instead of completing the online survey.

1. Format of self-declaration forms

We are unaware of any instance in which self-declaration has improved conditions for workers in supply chains. MSC does not rely on self-declaration for its environmental standards because, as rightly noted on the MSC website, first-party programs are likely to be biased and have a low level of assurance. MSC prides itself on a robust eco-certification model that meets the highest international standards with, “an independent assessment [that] shows that the organisation, product or service meets standards that have been established by impartial experts.” It should expect the same high standards for all portions of its certification regime, including on labor issues.

In addition, we are very concerned with the decision to limit the scope to include only forced and child labor. The ILO Declaration on Fundamental Principles and Rights at Work, which is

³ See, for example, the International Labor Rights Forum report, “[Golden Veneer: How McDonald’s Empty CSR Promises Failed Workers at Taylor Farms](#),” (2015) the AFL-CIO report, “[Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Worker Rights](#),” (2013) and Human Rights Watch report, “[Without Rules: A Failed Approach to Corporate Accountability](#),” (2013)

⁴ Lindgren, Kerstin, Fair World Project, “Justice in the Fields: A Report of Farmworker Justice Certification and an Evaluation of the Effectiveness of Seven Labels,” 2016, p. 5, available at: <https://fairworldproject.org/campaigns/farmworker-justice/>

considering binding on all members of the ILO, lists four categories of rights to which all people are entitled, regardless of nationality or country of origin: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in respect of employment and occupation. We consider the selective use of ILO core standards as unacceptable. To prevent serious labor abuses in seafood supply chains requires respect for all fundamental rights at work, and any program MSC establishes on labor should require respect for all of these rights equally.

Regarding the proposed proxies, the items in section A are vague and aspirational rather than demonstrable, and will be difficult for certified bodies to verify are being enforced. The items in section B are closer to being proxies for the forced labor indicators listed in section A, and the information requested in that section would be useful to collect from certified fisheries and supply chains and make available to the public. Collecting relevant documentation on contracts, pay slips and recruitment practices, however, would require extensive investigation from MSC's certification bodies and would not actually be a good indicator of labor exploitation in the absence of a functioning worker grievance mechanism.

Regarding the Trafficking in Persons Report, while a very useful advocacy tool, the TIP report is not meant to be used as a risk assessment tool in the way proposed by MSC. It is also important to note that in the last several TIP reports trafficking was documented in more than 50 countries, not all of which were on Tier 3 or the Tier 2 Watch List. Unfortunately, practices currently widespread in the fishing sector -- including an over-reliance on labor subcontracting for temporary workers, dependence on a migrant workforce procured through illegal labor brokers, and the isolation of fishing vessels with no satellite tracking or vessel-based communications systems accessible to crew -- makes it difficult to isolate the risk to only countries identified in the TIP report. As the Associated Press expose on Hawaiian fishing fleets shows, individual vessels may be at high risk of serious labor abuse regardless of the sophistication of fisheries oversight or ranking in the TIP report.

Exemptions to self-declaration

As we have made clear above, we do not believe self-declaration should be considered as a viable or credible procedure for certification of labor standards. MSC should require companies to report on positive evidence of compliance, using impact indicators that are reported publicly and can be verified by workers and their advocates. If MSC continues with the self-declaration plan, then no exemptions should be allowed for provision of the very basic level of information being requested and it should be made clear that fisheries, supply chains, and the MSC are not permitted to make any claims about working conditions on certified fisheries and supply chains based on the information requested.

We reiterate, however, that this is an extremely slippery slope. If MSC moves forward as proposed, we predict that the most likely outcome is that claims will be made about labor conditions in MSC-certified fisheries that cannot be verified, which will do immeasurable harm to MSC's credibility if and when egregious labor exploitation is discovered in an MSC-certified supply chain. In such a situation, MSC should expect that the members of Seafood Working

Group would work diligently to ensure that such information, along with our analysis, reaches all the stakeholders involved with the MSC.

Process: Auditing requirements

While determinations on eco-labeling can be made by assessing stock health of particular species and in specific regions, that is certainly not true of labor certification. Labor certification requires vessel-level verification, and MSC should absolutely expect its certifying bodies to check that underlying documentation on labor conditions exists. However, this is a very low bar and if MSC intends to move into labor certification, it will need to establish more robust auditing mechanisms to do it effectively.

Workers are the best monitors or auditors of their workplace, and any certification system should rely on and reinforce worker participation rather than try to supplant it. The first, critical step in empowering workers to act as frontline defenders of their own rights is mandatory, accessible, in-depth worker education for all workers, conducted in collaboration with any local trade unions and/or independent, representative worker organizations, at the work site and on the clock about their rights under the certification program. This step is particularly difficult with fishers at sea because of the lack of connectivity. However, ILO Convention 188 on Work on Fishing requires vessel owners to provide on-board occupational health and safety trainings. Worker rights information could be included into such trainings, though careful consideration would need to be made regarding what information was provided and by whom.

Once educated on their rights, workers must have access to a fully functioning complaint mechanism or grievance procedure that protects worker confidentiality and includes a strictly enforced zero-tolerance policy prohibiting retaliation against workers who file complaints. Workers are uniquely positioned to monitor conditions in a workspace, but in our experience, any certification scheme without a protected complaint mechanism will fail to catch violations. Setting up such a mechanism is also complicated by the isolation of fishers at sea. Thus, we encourage vessel owners to install satellite-based vessel tracking systems that also provide basic communications capabilities to crew. Frequent returns to port and robust port-based inspection programs can also assist workers in reporting labor abuses.

In addition, audits conducted by independent and qualified third-party organizations should take place at least yearly and should include interviews with a broad, representative sample of workers in a secure place off the boat where workers can speak freely, free from influence of vessel owners, captains or other representatives of management. Unannounced audits should also be utilized routinely on a subset of certified entities. Auditors should be familiar with regional/sectoral labor issues, be fluent in the local language as well as the language of majority of fishers, and be extensively trained and certified in the applicable standards. These audits can serve to complement the worker complaint mechanism, but we emphasize that audits alone are insufficient mechanisms to monitor compliance without worker enforcement.

All audit report findings with recommended improvements or corrective actions noted should be accessible to workers and, where applicable, to their representative organizations. Workers should be able to appeal the results of the complaints filed and/or discuss with worker representatives coordinating the complaints process their perspectives on the results and on the

complaints process, in order to document their input and improve the handling of future complaints.

Process: Complaints

As with auditing, complaints mechanisms are very complex. To be effective they require involvement of worker organizations, transparent reporting, worker consultations, and support for workers to understand and utilize the mechanisms without fear. Few certifiers have done this well, and we know of no existing effective models on labor issues in the seafood sector. The complaints process as laid out by the MSC does not seem to include any on-the-ground investigation or interviews with workers about labor conditions, which is a huge oversight that we predict will make any genuine settlement of complaints impossible.

We believe the process will be complicated further for the MSC because it is likely many workers within MSC-certified fishing vessels and supply chains do not even realize they are on vessels that participate in a certification program, especially one that is to start declaring compliance with labor requirements. The comments in the section above on worker education and grievance mechanisms established in line with the [UN Guiding Principles on Business and Human Rights](#) would also be critical to an effective complaint mechanism.

In addition, worker grievances will be very difficult to support given the lack of connectivity at sea. Fishers need basic telephone and internet access, or regular access to worker leaders, to communicate a complaint, and this will be inordinately difficult in an industry where vessel owners are often challenged to know exactly where their ships are at sea at any given moment. This is an area where MSC could play a helpful role by promoting technology that allows for greater communication at sea, entirely separate from this discussion of establishing a labor component in its certification process

MSC should also consider that many fishermen are likely too afraid to raise worker rights issues because they are debt bonded to their employer, fear wage deductions for disobedience, or worry about losing all their wages because they are working on a contract that pays their wages only after a designated period of between six months to two years. Other fishermen fear permanently losing their identity documents which have been seized by the fleet owner or captain, and thus their legal work status. Victims of trafficking aboard vessels as well as fishermen who voluntarily decided to board the vessel also fear that the regular use of physical abuse by captains and boatswain employed to keep fishermen compliant would be used against any one complaining about their rights. So it is clear that any grievance mechanism would require confidentiality for the complainant and serious consideration about how to protect a complaining worker protection in the lag time between when he files a complaint and when the certification process addresses the problem.

In addition to educating on core labor standards and provisions of national labor laws applicable to fishermen, any rights training programs should also include coverage of what human trafficking is, based on international standards such as ILO conventions and the Palermo Protocol, given the variances between national law in defining these crimes.

Regarding the resolution of complaints, MSC's current proposal indicates no further requirements against the client/applicant entity are required if the complaints receiving panel decides to dismiss, in part or whole, a worker's complaint. This is not sufficient, in our view, and a system for following up on the complaint to ensure that the panel's determination was accurate should be implemented. At a bare minimum, there needs to be a transparent public report of the results of the complaint process, including the panel's entire report on the decision, and opportunity for the worker to appeal an adverse decision. And as noted previously, the MSC would also need to put in place a mechanism to protect the complainant during the entire complaint and appeal process. Finally, the MSC should maintain a public watch list/register containing detailed information about any vessel for which a complaint has been received by MSC, and ensure the listing continues for while the complaint is active and for some period of time after the complaint is resolved.

Finally, the MSC fails to provide details about what it will do if forced or child labor are found in certified fisheries or supply chains. For the workers, access to remedy is an important component and the UN Guiding Principles on Business and Human Rights outline a clear obligation for businesses with egregious abuses in their supply chains to ensure victims of those abuses receive suitable compensation to make themselves whole. In the case of employer non-compliance with a complaints panel decision, MSC should require clear, time-bound plans to remedy violations that include a clear delineation of costs and financing agreed upon by the producer and buyer. If situations are not remedied within the timeframe set out in such a plan, then mechanisms should be in place for the publicly-announced denunciation of the employer's actions, and removal of the certification and any associated benefits.

Process: MSC Labor panel

The Seafood Working Group has stated clearly that any oversight body tasked with assessing working conditions must include a suitable number of representative workers and their representatives in the composition of the Labor Panel. It is disconcerting that such a simple provision is currently lacking in both proposals for composition of the Labor Panel.

However, our bigger concern is that this body, or any entity associated with enforcement of MSC requirements, will not be expected to do any actual monitoring of labor conditions. In fact, the MSC's current proposal is, in our view, an incredibly ad hoc approach that makes it clear the scheme will not be using defined standards to make its assessments. While the proposal lists standards in the fishing sector that could be used, it fails to reference any research done to determine if they are effective, and openly acknowledges that standards simply do not exist for some fisheries. Moreover, the panel as currently proposed simply does not appear to have the necessary expertise required to sort through these complicated issues of labor standards. If the MSC is serious about its responsibilities and reputation in this matter, it should initiate a process to develop relevant standards to be used, with worker organizations involved each step of the way from design of the standards, through implementation, and naturally onto a labor panel or other entities set up to resolve disputes.

We recognize the importance of the MSC's role and hope it can have positive impacts on the difficult situation of fishermen. MSC could help strengthen our call for a moratorium on unobserved transshipments at sea by refusing to certify seafood that has been transhipped. MSC

could also call for a prohibition on recruitment fees within the seafood industry and partner with worker organizations to help certified fisheries and supply chains change labor sourcing practices to implement such a prohibition. MSC could also use its global status to encourage ratification of ILO Convention 188 (Work in Fishing) and help develop market incentives for countries to adopt the convention and improve labor laws and regulations for the fishing industry in line with that convention's requirements.

We are sure that these and other innovative ideas can come out of an ongoing dialogue between the Seafood Working Group, our member organizations in the human rights, labor and environmental fields, and the MSC on your possible future role on issues of labor rights on fishing vessels. But first we would like to work with you to ensure that MSC does not embrace a system of providing assurances that cannot be substantively verified about labor conditions on the many far flung fishing vessels the MSC currently oversees as part of your Fisheries and Chain of Custody program.

We sincerely hope that the MSC find these comments helpful as it begins the very difficult work of considering how to incorporate labor standards into its certification scheme.

We welcome further dialogue with you on how to best move forward. You can contact me at (202) 347-4100, ext. 113 or abby@ilrf.org.

Sincerely,
Abby McGill
Seafood Working Group facilitator

List of organizations participating in the Seafood Working Group

1. AFL-CIO
2. Antislavery International
3. Australian Congress of Trade Unions
4. Business and Human Rights Resource Centre
5. Center for Alliance of Labor and Human Rights (CENTRAL) Cambodia
6. Child Labor Coalition (U.S.)
7. Concordia
8. Environmental Justice Foundation
9. Ethical Trading Initiative
10. Fair World Project
11. Fairfood International
12. Finnwatch
13. FishWise
14. Food Chain Workers Alliance
15. Fortify Rights
16. Freedom Fund
17. Freedom United
18. Fund to End Slavery
19. Green America
20. Greenpeace
21. Human Rights and Development Foundation (Thailand)
22. Human Rights at Sea
23. Human Rights Now (Japan)
24. Human Rights Watch
25. Humanity United Action
26. International Justice Mission
27. International Labor Rights Forum
28. International Pole and Line Foundation
29. International Transport Workers Federation (ITF)
30. International Union of Foodworkers (IUF)
31. Issara Institute
32. Lawyers Rights Watch Canada
33. Legal Support for Children and Women (LSCW)
34. Liberty Asia
35. Migrant Workers Rights Network
36. National Consumers League
37. National Guestworkers Alliance
38. National Resources Defense Council
39. New Orleans Workers' Center for Racial Justice
40. NYU Stern Center for Business and Human Rights
41. Oceana
42. Oxfam International
43. Pew Charitable Trusts
44. Slave Free Seas
45. Solidarity Center
46. State Enterprises Workers' Relations Confederation (SERC)

47. Stop the Traffik Australia
48. Sustainability Incubator
49. Swedwatch
50. The Mekong Group
51. Trades Union Congress (UK)
52. United Food and Commercial Workers (UFCW)
53. United Nations University Institute on Computing and Society
54. Uniting Church Synod of Victoria and Tasmania
55. Verite
56. Waxman Strategies
57. World Wildlife Fund