

**Comments to the Marine Stewardship Council regarding proposed labor requirements
April 15, 2018**

I submit the following comments to Marine Stewardship Council's consultation on labor requirements for fisheries and supply chains on behalf of the Thai Seafood Working Group. 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 have welcomed engaging in dialogue with you about how MSC should proceed into revising its labor policy and developing labor requirements for fisheries and at-sea supply chain entities. The two-tiered approach suggested in the latest consultation document, with a disclosure form rather than a declaration form proposed in the near-term, is a significant improvement over the first iteration of MSC's plans. We are glad you have reflected previous comments into your current proposal, and appreciate your efforts to avoid overpromising on what MSC is able to deliver on monitoring labor conditions within certified bodies.

We reiterate our concerns on the long-term plan to develop labor standards applicable to MSC fisheries from either the Responsible Fishing Scheme (RFS) or Fair Trade USA, both of which we have serious reservations about in terms of their ability to be scaled to a global standard for labor auditing on fishing vessels, particularly in fisheries at high-risk of human trafficking. We maintain that establishing a credible third-party monitoring system for fishing vessels is a challenging proposition that, if it is feasible at all, will need to be carefully and thoughtfully designed with a mind toward the considerations outlined in our previous comments.

MSC would likely better serve its mission by developing commitments for certified bodies that lead to more granular improvements by incentivizing particular changes. We stand ready to work with you on how MSC could make changes within the existing certification structure that would reduce the likelihood of labor exploitation and promote the ability of worker-led monitoring of working conditions on fishing vessels. For example, this could include commitments to install mandatory vessel tracking systems and communications systems for crew to utilize onboard, public reporting on ship movement, prohibiting unobserved transshipment at sea, and incentivizing adoption of global enforcement mechanisms such as ILO Convention 188, the Port State Measures Agreement and the Cape Town Agreement. As human rights and labor organizations, we are well-positioned to develop improvement-bound approaches for certified bodies to adopt that reduce risk of forced labor, but doesn't open MSC up to criticisms of overstepping its mandate or certifying claims that cannot be verified.

In the short term, the disclosure form as proposed has highly relevant information useful to organizations like ours that try to identify and remediate labor abuses. For it to have value, the information collected through the declaration form process will need to be made searchable and available to the public, and we are encouraged by MSC's commitment to do so. In addition, there are ways we believe the form could be strengthened to improve information gathering. This will be the focus of the remainder of our comments.

Documenting forced labor

In 2012, the International Labour Organization (ILO) released guidance on developing operational indicators to assess presence of forced labor in the *Hard to See Harder to Count* methodology. The indicators were derived from the two elements of forced labor MSC includes in its guidance documents: involuntariness and menace of penalty. They were grouped under three dimensions — unfree recruitment, work and life under duress and impossibility of leaving the employer — that correspond to the three phases during which employers can coerce workers into forced labor: to force them to take the job, to force them to work or live under conditions with which they do not agree, and to prevent them from leaving or moving to another employer. The form proposed by the MSC includes disclosure on policies related to some, but not all, of the dimensions identified in the ILO methodology. Some categories will need to be added in order to gather necessary information from Units of Certification (UoC). We thus suggest a reordering of the items on the template, with the addition of two categories and reinterpretation of two items, to better align with best practices of identifying forced labor risk. The proposed reordering groups questions related to the regulatory framework up front, then puts the items related to indicators of forced labor together, and ends in items related to policies to identify and remedy forced and/or child labor:

Proposed revision to items on the self-disclosure form:

1. Composition of fishery client group
2. Responsibility for labour regulation
3. Flag state status and law on forced and child labour
4. National minimum age requirements
5. Risk identification and mitigation (NOTE: Remedy shifted to new category below)
6. Crew recruitment
7. Crew contracts
8. Debt bondage
9. Identification documents
10. Living and working conditions
11. Wages and hours
12. Audits and labor inspections
13. Engagement with fish worker groups
14. Operational-level grievance and remedy mechanisms (NOTE: Replaces “crew voice” item)
15. Repatriation
16. Additional comments

Commentary on specific items from the proposed reordering

#5 Risk identification and mitigation (item #4 in original MSC proposal)

The corporate responsibility to respect human rights, as outlined in the United Nations Guiding Principles on Business and Human Rights (UNGPs), entails four steps of human rights due diligence: 1) Assess human rights risks; 2) Take necessary actions to prevent and mitigate specific human rights impacts; 3) Track company performance on preventing and mitigating negative human rights impacts; and 4) Communicate such performance to a range of stakeholders. This item should ask certificate holders what processes and practices are in place to

complete these four steps. The question of remedy is a very important one, so important in fact that it deserves its own item, which is discussed below.

#6 Crew recruitment (item #5 in original MSC proposal)

Information on recruitment, contracts and debt bondage are all closely intertwined and the data gathered for each of these items should be considered as an integrated whole. The guidance on this item should make clear that “migrant composition of crew” includes not only country of origin, but number of crew from each sending country. In addition, we suggest that the guidance require the following information:

- Do any vessel owners within the UoC have an employer-pays policy in place for recruitment fees? If so, how is it being implemented?
- What percentage of migrant crew are legally registered to work on fishing vessels? What visa programs for relevant countries are used to bring crew onboard?
- Describe any policies to prevent threat of denunciation to authorities of undocumented or improperly documented crew to be used to compel workers to remain in employment, and how they are enforced.
- How much do vessel owners within the UoC pay per crew member to recruit them? Are those costs later charged to workers?

#7 Crew contracts

The question on the template and in the guidance asking UoCs to detail contract provisions related to forced and child labor is not sufficient to assess how contracts are used to mitigate risks of forced labor. The relation between contracts and forced labor is that either workers are not properly informed about working conditions before beginning employment, or those conditions are changed at some point in the employment process against the worker’s will. What MSC should be trying to determine is if UoCs require written contracts (making it easier to hold employers accountable to agreed-upon working conditions) and what policies are in place to ensure they are enforced. Thus, after the question, “Are written contracts between vessel operators and crew members the norm in the fishery UoC,” in the template, we suggest adding, “If so, are contracts provided to crew in languages they can understand? Please describe how contract provisions are enforced.”

In the guidance section, UoCs should include information on government or company policy on:

- Provisions of copies of written contracts to crew in relevant languages;
- Efforts to ensure crew understand their rights and responsibilities under their contract;
- Preventing contract substitution or replacement between the point of recruitment and beginning of work;
- Mechanisms to ensure contract provisions are enforced.

#8 Debt bondage (item #11 in original MSC proposal)

In addition to what MSC has proposed, the guidance on this item should ask for very specific information about deductions, including:

- Do workers ever arrive in debt to an employer within the UoC? If so, under what conditions? Is debt ever used as a reason to restrict workers’ ability to leave employment?

- What deductions, specifically, are permitted to be taken from workers' pay? What percent of workers' pay is permitted to be withheld in deductions?
- Are deductions required to be provided to workers in writing on pay slips? UoCs should submit anonymized copies of pay slips for the record.
- Are pay advances permitted? If so, what provisions are in place to ensure those advances do not inhibit workers' ability to leave employment?

#10 Living and working conditions (proposed addition to template)

Life and work under duress is an important indicator for forced labor, particularly on fishing vessels where employers largely dictate both living and working conditions. We suggest adding this item to the template and asking, "Describe how crew within to UoC gain information about living and working conditions prior to beginning employment? What policies are in place to prevent threats of violence against crew or their family members occurs, or that denial of basic provisions (food, water, sleep, medicine, etc.) is used as punishment on board vessels within the UoC?"

In the guidance section, UoCs should be directed to provide specific information about policies governing life aboard fishing vessels, including:

- How is freedom of movement for crew onboard vessels when at sea, or on land when at port, protected? Are crew surveilled or required to remain in certain places when at port, and if so, why?
- What policies are in place to prevent captains, skippers or other senior crew from physically assaulting crew, threatening violence or engaging in violent behavior in front of other crew?
- How is adequate food, water and medicine guaranteed for crew? What policies, if any, prevent denial of provisions from being used as a punishment onboard?
- What policies exist regarding drug use onboard vessels? Do those policies prohibit captains, skippers or other senior crew from providing crew with stimulants or other drugs to encourage longer working hours?

#11 Wages and working hours (proposed addition to template)

Forced overtime and withholding of wages are important indicators of forced labor that have not been included in the proposed MSC template. We thus suggest adding this item to the template and asking, "Please describe policies indicating required rest hours (i.e. how many hours of work versus rest required on a daily, weekly or other time-delineated period) and how often crew to supposed to be paid. How are these policies conveyed to crew?"

In the guidance section, UoCs should be directed to provide specific information about policies governing wages and working hours, including:

- How is "rest" defined among vessel owners within the UoC? Are fishing schedules structured to provide crew adequate time to sleep?
- Acknowledging the volatile nature of fishing schedules onboard, what policies are in place to avoid forced overtime? How is overtime defined among vessel owners within the UoC?

- How are wages paid to workers? What policies are in place to ensure regular wage payments, according to an agreed-upon schedule? What systems are in place for tracking that workers receive wage payments?
- Are wages permitted to be withheld for not completing quotas related to production or time worked? If so, please describe how.

#13 Engagement with fish worker groups (#6 in original MSC proposal)

Collectively negotiated bargaining agreements should be added to the list of the ways in which worker organizations can be engaged in the guidance section.

#14 Operational-level grievance and remedy mechanisms (replaces item #12 “crew voice” in original MSC proposal)

Worker voice is a fundamental component to mitigating risks of human trafficking. But it is also increasingly being used to describe systems that provide workers the capability of reporting exploitative conditions (i.e. via surveys, apps or hotlines) without the proper mechanisms in place to ensure any access to remedy. Individual “worker voice” without the option for collective voice to compel actual changes in working conditions is not effective. Businesses that provide access to remedial mechanisms, but do not provide effective remedy at the end of the grievance process, are neither accountable to their workforce nor to society at large. Thus, we recommend that this item be reframed in the language of the UNGPs to assess access to operational-level grievance and remedy mechanisms.

UoCs should be asked on the template what, if any, operational-level grievance and remedy mechanisms have been established. The guidance section should not only seek information on the ways crews can share information about and report labor violations, but how those mechanisms operate:

- Who has access to worker complaint data?
- How is it acted upon once received? How are complaints resolved?
- Are crew themselves involved in the administration of the grievance mechanism or in determining what appropriate remedy is?
- How many times has this mechanism been used in the past year?
- How are the results of the complaints and the resolution reported back to crew?

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
 Thai 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