

Clarifying Details: Is tuna ecolabeling causing fishers more harm than good?

1. Readers will note that data on a private website may change over time and date-based versions can be confirmed with the help of a web archives reader (for example, <https://web.archive.org/>).
2. Fishing crew members are employees, according to the International Labour Organization, and not self-employed or dependent contractors unless they have registered independently as business entities in their country.
3. Fisheries certificate-holders are to provide a list of vessels that must be uploaded to the MSC database by the certifier (requirement 7.29.15di, MSC Fisheries Certification Process v3.0, October 2022). As clients they also fill a templated labour statement (requirement 4.1.1, Labour Eligibility Requirements v1.0, November 2022). Certifiers are to “confirm that all sections are filled and include all entities in the unit of certification” (7.4.2.7-8 in the Fisheries Certification Process (v2.2 2020). Clients are instructed not to include an entity that has been convicted for a forced or child labour violation in the last 2 years (requirement 3.1.1, Labour Eligibility Requirements). A ‘conviction for a serious crime’ within the past 2 years is grounds for clients to self-disqualify a vessel (requirement 1.1.5 in the Fisheries Standard v3.0, 2022). Like illegal fishing, trafficking in persons is listed as a serious crime. However, certifiers are not instructed to search the standing of vessels against published forced labour violations or the Combined IUU Black List. Requirements in the Chain of Custody standard (v5.1, 2023) state that certificate-holders must avoid purchasing fish from vessels on the black list yet no specific instructions for identifying those vessels were found in MSC documents. Fisheries certificate-holders are excluded (see footnote 6). Overall, the procedures instruct clients to follow an honour system.
4. Vessels are not a unit of assessment in the MSC program. One of 28 indicators in the MSC Fisheries Standard concerns compliance and references vessel compliance. However, it is specified to the fleet as a whole, such that the standing of individual vessels is unlikely to be assessed, and the scope of compliance is narrow and appears to exclude fisheries crimes. Performance indicator 3.2.3 for compliance and enforcement contains inferential language in scoring issue D which could imply a private sector responsibility for regulatory compliance, for example, but excludes fishing labour violations and IUU fishing. The scope is narrowly defined as “systematic non-compliance” by the fleet as a whole with “governing sustainable fishing practices on the water” which are specified as Monitoring/Control/Surveillance, Marine Protected Areas and habitats only; see MSC Fisheries Standard v3.0, 2022, page 94 and MSC Certification Process v3.0 2022, pages 42-43.
5. “Disclaimer: The Certificate Holder Forced and Child Labour Policies, Practices and Measures Template is intended for at-sea fishery and supply chain certificate holders to provide a statement on measures, policies and practice in place in the fishery to ensure the absence of Forced and Child Labour. Submission of this statement is a requirement to confirm eligibility to participate in the MSC program. It has not been audited or verified by any third-party entity. It is provided for information purposes and should not be construed to constitute certification of performance against a labour standard.”

6. Noting that the MSC's 2-year timeframe for convictions is poorly matched to the real world outcomes for a tuna fisher leaving forced work. They may have been at sea for years and as a forced worker would likely be low on or without funds. It could take years for a case to reach a decision, should the fisher bring one forward. Furthermore, it would more likely be a civil case taken in a labour, immigration, fisheries, or anti-trafficking process than a criminal court.

7. The MSC certificate states that 249 purse seine vessels are certified in the Parties to the Nauru Agreement fishery for Western and Central Pacific skipjack, yellowfin and bigeye tuna. It is the only tuna certificate that did not publish a vessel list on the MSC website. The certifier provided a hyperlink to a regional registry for the Parties to the Nauru Agreement (<https://www.pnatuna.com/registered-vessels>) where the number of purse seine vessels listed was greater than the 249 vessels noted in the certification documents, making it nearly impossible to distinguish those in the MSC program precisely. Purse seine vessels were also mixed with longline vessels on the registry. Parsing required hours of work and gear knowledge and could prevent labour advocates from identifying vessels.

8. This business duty entered force in 2011 when the U.N. Guiding Principles on Business and Human Rights (UNGPs) were adopted by the United Nations Human Rights Council in Resolution 17.4. Its legal framework is the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children of the United Nations Convention against Transnational Organized Crime was ratified by 180 countries in 2003. The UNGP "protect, respect, and remedy framework" has established a universal human rights yardstick for all business concerns that is a true departure from, and has replaced, previous notions of corporate social responsibility where companies could voluntarily determine how to behave in a socially responsible manner.

9. The word client appears 430 times in the ecolabel's process documents and the word fisher appears 44 times in the documents entitled MSC Chain of Custody Standard, Default version 5.1 2023 (client 7, fisher 0), MSC Fisheries Standard v3 2022 (client 48, fisher 3), MSC Fisheries Certification Process v2.2 2020 (client 201, fisher 7), MSC General Certification Requirements v2.4.1 2019, MSC Labour Eligibility Requirements v1 2022 (client 10, fisher 0).

10. The Marine Stewardship Council describes its Fisheries Standard as a set of requirements for sustainable fishing, which could be construed by some to mean that vessel practices for fishing must meet MSC requirements, which is not the case.

11. Question 2 in the client self-declaration template asks certificate-holders to state both the applicable labour regulations on the fishing vessels associated to the certificate and the flag state authorities. About half of the tuna certificate-holders stated incorrectly that the tuna regional management organization was the labour authority.