



To
 Mr. Rupert Howes, Chief Executive
 Dr. Werner Kiene, Chair of the Board
 Marine Stewardship Council
 Marine House
 1 Snow Hill
 London EC1A 2DHD

OPEN LETTER

April 5th, 2019

Dear Dr. Kiene,
 Dear Mr. Howes,
 Dear MSC Trustees,

This is an open letter calling the MSC for action and we respectfully ask you to share this letter with all of your board members and the StAC.

Thank you for your letter dated 26 October 2018. As Prof. Dr. Michel Kaiser, who wrote this letter, is no longer with the MSC, we are addressing our response to you instead.

Please excuse that this response took longer than expected, but we were hoping to see some proactive and constructive progress from MSC to resolve this terrible issue. Unfortunately nothing has happened so far other than the start of a public consultation on shark finning of which the proposed options have unfortunately not been shared with the signatories of this letter upfront, so that we could have provided our expert & stakeholder input for the description of these proposals.

We have however shared and discussed your response with the signatories of the letter from last year and would like to share the outcome of these discussions with you today. In addition we also hope to draw your attention to some further research we have done in the meantime, which shows, that the issue of shark finning is by far not limited to the PNA fishery, which we had used as an example in our previous letter.

1. Executive Summary

The MSC claims to be committed to ensuring that shark finning does not take place in any fisheries that are certified as sustainable, via a clear, easily applied policy. However, evidence shows that the CABs are failing to properly apply the MSC standard as regards shark finning. In order to rectify this situation, the MSC certification should be revised to require that a “fins naturally attached” policy be in place and complied with in order for a fishery to receive a score of SG60. It is also imperative that MSC requires the CABs to apply the precautionary principle. CABs have repeatedly made determinations on the likelihood of the existence of finning despite noting a lack of data availability. If finning, bycatch, and compliance data are unavailable or insufficient, CABs should be prohibited from certifying the fishery with respect to shark finning. Finally, MSC must ensure that the CABs are correctly applying MSC shark finning score standards. In numerous certified fisheries over the past decade, CABs have determined that it is ‘unlikely that shark finning is taking place’ despite evidence of finning and no evidence of sanctions being imposed related to such finning. CABs should only be permitted to certify a fishery if the data conclusively show the result needed (i.e. SG60 if the data conclusively show that it is unlikely that shark finning is taking place).

2. Your Response to our Letter

We appreciate your response to our letter, however we would like to correct some factual misperception and incomplete facts that were presented.

2.1. Reducing the incidence of shark finning

We notice that your response referring to the newspaper reports and similar to the evidence submitted by Mr Howes/ the MSC following the EAC hearing is wholly inadequate for the following reasons:

- There are only 4/ 5 incidents reported in total.
- Three of the incidents reported are from July 2012. The MSC ban did not come into effect until 2013. Of the three reported, only two sanctions were imposed and one case was still ongoing.
- The two news reports from 2013 relate to long-liners, which are not part of the MSC certified fishery.
- The news reports from 2012 state that the sanction applied was a fine. Whilst the Marshall Islands Fisheries law provides a fine level that can be applied from \$25,000 to \$200,000 plus an amount equivalent to the value of shark fins confiscated, the two vessels reportedly fined had

been fined merely \$55,000. Therefore, not only was the fine at the bottom end of the scale but the level of fine is a drop in the ocean for most fisheries.

- Only one report talks of a ban, and that, as aforesaid related to a long-liner vessel that is not part of the certified fishery.
- All of the reports relate to sanctions reported to have been imposed in the Marshall Islands, yet the PNA is formed of 8 countries.
- The MSC has been unable to provide any evidence that a vessel in the PNA FAD-Free fishery has been appropriately sanctioned since the imposition of the MSC ban. Indeed, no evidence of any sanctions being imposed in the period from April 10, 2013 to the date of submission has been provided, a period of over 5 and a half years, or, 5 years if you take the date of the recertification of the PNA.

Therefore:

- **429** incidents of finning in the PNA between 2012-2015.
- 5 newspaper reports.
- 3 from before the MSC ban had come into effect.
- 2 relating to irrelevant long-liners.
- **426** cases for which the MSC has not provided any evidence, that vessels have been appropriately sanctioned in the PNA in the period 2012-2015. That is **99.3%** of cases.

Your reference to the downward trend of finning in WCPFC technical and compliance committee report WCPFC-TCC14-2018-RP02 with 1019, 332, 130 and 22 reported incidences between 2014 and 2017 shows indeed a very much appreciated overall decline of finning in the region. While we agree that *“the measures in CMM 2013-08 [have] been the catalyst” for this encouraging decline, those numbers should still be evaluated with caution, especially the figure for 2017, as this figure “only represents approx. 50% of data collected in 2017”*. Furthermore it should be noted that WCPFC-TCC13-2017-RP02 actually had reported only 994, 190, and 97 cases of finning for 2014, 2015, and 2016, which obviously had to be corrected to higher values in the 2018 report for the years 2014 and 2015, as more data had become available.

We have also noticed that the surveillance audit of the PNA fishery has been scheduled for the week commencing 1st April 2019, and in light of our concerns about ongoing shark finning and the lack of prosecutions in this fishery, we will be keeping a close eye on proceedings from this surveillance audit.

2.2. Lack of Transparency

We were very disappointed to being referred back to the CAB for actual evidence of other prosecutions and the outcome of these, when the same CAB had already failed to provide such evidence during the assessment and objection process. As a standard setter the MSC itself should proactively investigate and uphold its standard when being made aware of such enormous discrepancies between the reported and prosecuted cases of violations of the ban in a certified fishery.

2.3. Moving Forward

Your suggestion that MSC might possibly consider changes in the upcoming standard review as to *“any vessel prosecuted for such [shark finning] would be excluded from the unit of certification”* clearly falls short of strengthening the enforcement of the current finning ban in light of these shortcomings in actual prosecutions to happen.

Therefore, we remain deeply concerned that while the MSC continues to inform the public that the abhorrent practice of shark finning is banned, it continues to take place in certified fisheries and, in view of your announcement of the upcoming public consultation on shark finning, we wish to summarise a number of outstanding issues for your urgent consideration.

- As a minimum we would have expected to see a “fins naturally attached policy” to be implemented as a mandatory requirement for all fisheries interacting with sharks. While “fins naturally attached” are already mandatory in EU since 2013 and other countries, the WCPFC, in its WCPFC-TCC14-2018-22, 5th Draft, 2018, proposes to implement the policy in order “*to evaluate and assess compliance, as it has not been able to assess compliance with the 5% fins to carcass ratio currently included in CMM 2010-07*”.
- MSC Fisheries Standard v2.01 (31 August 2018) recognises “*that a policy requiring the landing of all sharks with fins naturally attached is the most rigorous approach to ensuring that shark finning is not occurring*”, yet MSC has not made this a mandatory requirement for scoring SG60 or “likely” to ensure that a practice that is officially banned can indeed not happen in a certified fishery.
- The introduction of a “fins naturally attached policy” for landings of sharks and shark products was also requested in our October 2018 letter and has been proposed by other stakeholders, too. It states the globally recognised best practice to verify and ensure finning is not taking place.
- This should have been considered as a proposal for the current consultation.

3. Further Research Undertaken

The policy

The MSC’s policy on shark finning is very clear in stating, that “... *the CAB should not certify or maintain the certification of a fishery when there is objective verifiable evidence that indicates shark finning is taking place.*” CABs assessing fisheries must award a score of SG60 where it is likely shark finning is not taking place, SG80 where it is highly likely not taking place, and SG100 where there is a high degree of certainty finning is not taking place. Where the CAB knows finning is taking place, the fishery must receive a fail score on this indicator.

The policy in practice

Despite the clarity of this policy, its application has been subject to interpretation, notably from the MSC ‘Interpretation Log’.

For example, this Log states that “*if only one or two cases have been reported, for example, and the vessel/s involved have been appropriately sanctioned, then the team may still conclude that it is likely or highly likely that shark finning is not taking place in any significant way*”. This interpretation is not consistent with the practice being banned.

Shark finning in MSC-certified tuna fisheries

Even more concerning is that there appears to be a much wider tolerance of shark finning to happen in MSC certified fisheries beyond the example of the PNA fishery. So far we have reviewed this fishery as the most prominent example, however, after a more intensive review of other certification reports this appears to be far from being a one off incidence.

We have reviewed the assessment reports for a number of certified tuna fisheries and considered whether this interpretation is being applied in the way consumers would reasonably expect – please see table below.

We note that this review hasn't even included any fisheries that directly target sharks or any other fisheries outside tuna, some of these fisheries have even larger bycatch of sharks, such as e.g. long-liners targeting swordfish.

Having done so, we have three concerns:

1. The practical application of MSC's policy on shark finning in practice;
2. The application of the precautionary approach to the assessment of fisheries where shark finning is taking place;
3. The lack of consistency and the impact on consumers.

Fishery	CAB's assessment and MSC's application of shark-finning ban
<p>PNA Western and Central Pacific skipjack and yellowfin</p> <ul style="list-style-type: none"> ▪ Certified since 2011 ▪ Re-certified in 2018 <p>https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@assessments</p>	<ul style="list-style-type: none"> ▪ At least 429 instances of shark finning during period considered by the CAB (2012-2015). ▪ Evidence recently submitted by MSC to UK Parliament's Environmental Audit Committee did not demonstrate that the vessel/s involved had been appropriately sanctioned. Evidence shared covered just 4/5 incidents, of which 3 pre-date the ban coming into effect and 2 relate to long-liners not part of the MSC fishery. ▪ Despite 429 incidences of finning and an absence of appropriate sanctions, a score of 80 was assigned on this SI and the PNA recertified in 2018. ▪ No more recent data have been provided although observer data from the RFMO have been published...
<p>Tri-Marine Western and Central Pacific Skipjack and Yellowfin Tuna fishery</p> <ul style="list-style-type: none"> ▪ Certified since 2016 <p>https://fisheries.msc.org/en/fisheries/tri-marine-western-and-central-pacific-skipjack-and-yellowfin-tuna/@@assessments</p>	<ul style="list-style-type: none"> ▪ Acknowledged in assessment report that 21 instances of shark finning occurred 2010-2013. ▪ The CAB SCS noted that finning was a "rare event" but also acknowledged concerns expressed by the TCC (TCC 10 2014) "about the level of reporting, the ambiguity of the fin-to-carcass ratio method for monitoring compliance, the subsequent inability of the WCPFC to determine compliance with this measure, and the lack of any clear sanctions for the few reported cases on non-compliance. The requirements of the SG 80 level are therefore not considered to be met". ▪ Despite SCC noting "there is not yet evidence that the rare examples [of shark finning] are followed by appropriate sanctions...", they scored the relevant SI at 75. ▪ A condition was placed requesting that 'by the fourth surveillance audit demonstrate that it is highly likely that shark finning is not taking place or that, if rare cases are reported, that measures are taken to address the issue.'

Fishery	CAB's assessment and MSC's application of shark-finning ban
<p>WPSTA Western and Central Pacific skipjack and yellowfin free school purse seine</p> <ul style="list-style-type: none"> ▪ Certified in 2018 <p>https://fisheries.msc.org/en/fisheries/wpsta-western-and-central-pacific-skipjack-and-yellowfin-free-school-purse-seine/@@assessments</p>	<ul style="list-style-type: none"> ▪ SCS confirmed for the Chinese UoC that they <i>“were not provided with data from the observer databases on the number of shark finning events recorded for the relevant vessels... our scores instead reflect the low levels of shark finning that have been recorded on other WPFPC purse seine vessels.”</i> ▪ Regarding sanctions, SCS noted <i>“Our assessment also reflects the general concerns expressed by the TCC (TCC 2014) about... the subsequent inability of the SCPFC to determine compliance with this measure and the lack of any clear sanctions for the few reported cases on noncompliance.”</i> ▪ Despite this acceptance that there were <i>“low levels of finning”</i>, and a lack of any clear sanctions imposed, it was still scored at 75. ▪ The CAB was satisfied by placing conditions that for China / Chinese Taipei by the third/second surveillance audit the fishery has to <i>“provide evidence that is sufficient to demonstrate that it is highly likely that shark finning is not taking place”</i>
<p>The North-Eastern Tropical Purse Seine yellowfin and skipjack tuna fishery</p> <ul style="list-style-type: none"> ▪ Certified in 2017 <p>https://fisheries.msc.org/en/fisheries/northeastern-tropical-pacific-purse-seine-yellowfin-and-skipjack-tuna-fishery/@@assessments</p>	<ul style="list-style-type: none"> ▪ The CAB confirmed shark finning was taking place – the number of instances was small. ▪ Regarding sanctions, the CAB stated that CONAPESCA provided evidence of a case of shark finning by a vessel and the vessel was found guilty. ▪ However, that vessel was not from the UoA and it was stated the case was subject to appeal and ongoing (CONAPESCA, 2015b). ▪ <i>“There are no recent data from the Compliance Committee, however, on the level of compliance with C-05-03 and no information through the IRP on sanctions for any non-compliance. We therefore do not consider it to be highly likely that shark finning is not taking place.”</i> The CAB recorded a score of 70. ▪ The CAB placed a condition for Silky sharks and oceanic whitetips, requesting that <i>“by the fourth annual surveillance, provide evidence that it is highly likely that shark finning is not taking place.”</i>
<p>SZLC CSFC & FZLC FSM EEZ Longline Yellowfin and Bigeye Tuna</p> <ul style="list-style-type: none"> ▪ Certified in 2019 	<ul style="list-style-type: none"> ▪ The UoA is predominantly made up by Chinese and Taiwanese vessels ▪ With only 57 trained observers available for both the long-line and purse seine fleet) no observers have been placed on non-FSM flagged long-line boats in recent years. For this assessment, NORMA provided observer data for 2015 and 2016, corresponding to 3 and 6 trips for those years respectively. ▪ <i>“At national FSM level, all elasmobranchs (sharks and rays) are</i>

Fishery	CAB's assessment and MSC's application of shark-finning ban
https://fisheries.msc.org/en/fisheries/szlc-csfc-fzlc-fsm-eez-longline-yellowfin-and-bigeye-tuna/@assessments	<p><i>protected under Section 913 of its FSM Code Title 24. The regulation does not ban the landing of sharks, but stipulates that all sharks caught alive must be released and that any shark dead upon hauling may be landed with its fins naturally attached. At state level (Chuuk, Pohnpei, Kosrae and Yaap), shark sanctuaries are in place and sharks are only allowed to be targeted for traditional use". However, this does not affect the UoA as this fishery takes place outside the 24nm limit!</i></p> <ul style="list-style-type: none"> ▪ <i>"Since the regulations were adopted in 2015, NORMA reports a good level of compliance by all long-line fleets, including the UoA. One side-effect, however, has been that sharks that were previously retained and therefore reported in logbook data, are now more frequently cut off at the line which has likely resulted in under-reporting".</i> ▪ <i>"This means that the observer data are now the only reliable source on interactions with sharks in this fishery. While the team agreed that the available observer data provides some objective basis for confidence that the strategy will work (SG80 is met), the evidence base was lacking to provide high confidence. SG100 is not met".</i> ▪ <i>Data availability: "For this assessment, logbook data for 2015 and 2016 were obtained for the entire UoA, as summarised in Table 10. The reason why only two years' data are presented in the report is related to the implementation of the shark regulations at the start of 2015. In addition to a ban on shark finning, long-line vessels were no longer permitted to target or land sharks as a result of these regulations. Only sharks that were dead upon hauling are now permitted to be landed, with fins naturally attached."</i> ▪ <i>"The team therefore determined that logbook and observer data prior to 2015 were not representative of the current UoA".</i> ▪ <i>Shark finning was considered as "not relevant as the target species is not a shark" and "sharks are all protected in FSM and are therefore considered under ETP species"</i> ▪ <i>Therefore not scoring is available and no condition has been placed on shark finning despite the low observer level (and literally no observers on the Chinese and Taiwanese vessels!</i>

In our view, each of the above fisheries failed / fails to meet the required compliance with the standard.

Failure to apply the precautionary principle

The MSC, following the FAO International Code of Conduct for Responsible Fisheries (1995) and the UN Fish Stocks Agreement (1995), states its intention for the precautionary approach to be applied through certification requirements.

Again, while this policy is clear, its application with regards to shark finning in the fisheries as highlighted above is anything but.

- For example, a unit being scored at 75 despite no data being provided on the number of shark finning events, and a lack of clear sanctions on the few reported cases of non-compliance, does not appear to be an evident application of the precautionary approach.
- And it also appears incompatible with an precautionary approach, that a fishery operating with Taiwanese and Chinese vessels gets certified setting only a condition that the fishery has to demonstrate within a time frame of 2-3 years that shark finning is most likely not happening. Although there is public knowledge as recently published by EJF <https://ejfoundation.org/search/results?searchbar=shark+finning>, that especially Taiwanese vessels are still often engaging in shark finning, and that neither China nor Taiwan are strictly enforcing the ban on shark finning.
- Or shark finning is not scored at all with reference to “*shark finning is banned and sharks must not be retained*”, as the sole justification for not scoring. Yet at the same time the CAB acknowledges that only little observer data and literally no observer for the predominantly Chinese or Taiwanese vessels in the fishery are available to verify the numbers and the fate of an estimated 1600 silky sharks caught by this fishery per year.

Lack of consistency

The examples highlighted above also demonstrate a clear lack of consistency in scoring. For example, the PNA fishery, where there were at least 429 incidents of shark finning, was awarded a score of 80 (i.e. highly likely that there is no shark finning taking place). Meanwhile, the Tri-Marine fishery, where there were 21 reported incidents of shark finning, received a score of 75 (‘likely’ that there is no shark finning taking place).

Consequently, there is not only a discrepancy between consumers being told shark finning is banned and its continued incident in certified fisheries, but also significant discrepancies in the way in which the MSC’s shark finning policy is applied. These make it difficult for a consumer to understand, and have confidence in, that policy.

Conclusion

To conclude, MSC’s stated policy on shark finning appears to be clear, easy to apply and providing certainty to consumers. This policy is altered by the Interpretation Log’s statement that a fishery should not fail for shark finning if the “*one or two*” incidents have been appropriately dealt with and the vessels sanctioned. If that were how MSC policy was applied, then it does not seem at odds with a statement that the practice is banned.

However, in reality, the above examples demonstrate that CABs have concluded it is “*likely or highly likely shark finning is not taking place*” even in cases where there is little or no data, little or no evidence of sanctions, or the fact of 429 confirmed incidents.

Also applying a precautionary approach certification of fisheries that are at high risk of being involved in shark finning, such as fisheries with Chinese or Taiwanese vessels, should require a much higher scrutiny during assessment and certification to identify whether shark finning can be realistically assumed as “*likely*” or “*highly likely*” not to happen. Setting a condition by which the fishery has to provide such proof within a time frame of 2-3 years after certification is far from taking a precautionary approach.

- Shark finning should preclude a fishery upfront from entering the certification process. Before certification, fisheries that have a high risk of interacting with sharks, as either targeting sharks or having high shark bycatch in secondary species or in ETP species, shall have in place a ‘fins naturally attached policy’ and CABs must verify prior to certification that the policy is in place and complied with. MSC Fisheries Standard v2.01 (31 August 2018) recognises on page 36 *“that a policy requiring the landing of all sharks with fins naturally attached is the most rigorous approach to ensuring that shark finning is not occurring”*, yet MSC has so far not made this a mandatory requirement for scoring SG60, to ensure that a practice that is officially banned can indeed not happen in a certified fishery.
- Availability of adequate external verification for bycatch data and compliance with the ban on shark finning is essential to justify the scoring of the CAB. While both, representative human observer coverage or electronic surveillance measures may be adequate measures, the extent of coverage must be consistent throughout fisheries with similar risks and no longer at the discretion of the CAB to decide, which extent to consider adequate.
- The ongoing misapplication of the FCR must not be allowed to continue. MSC must strictly enforce the terms of the FCR only allowing 1 or 2 incidents where there is clear, unequivocal publicly available evidence that the vessels have been appropriately sanctioned. Where CABs have not adopted such a stance, MSC must intervene. If the current rules do not allow this, they should be revised as soon as possible.

We, as a group of leading conservation organisations, small non-profits dedicated to shark conservation and the eradication of shark finning, ethical retailers, and responsible seafood suppliers, are keen to work with you in finding solutions so that the scourge of shark finning is permanently eliminated from all MSC-certified fisheries. The MSC can play an important leadership role by ensuring that your board decision on shark finning is fully implemented and that your organisation is seen to champion a no tolerance approach with respect to this abhorrent practice.

We hope that you will see this letter as a constructive engagement, setting out steps that you can take to protect sharks from finning in existing and future MSC-certified fisheries. By doing this you will also be fulfilling your duty to protect consumers from buying fish that has been associated with this wanton and highly destructive practice, while they actually believe that they are helping to protect endangered species and the biodiversity of our oceans, through their “sustainable” choices.

We are sure you agree that the MSC label should never be associated with this abhorrent practice.

Yours sincerely,

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