

Shark Finning - a Case Study Highlighting the Lack of Best Practice and Application of a Risk Based Need for Data Transparency and Monitoring to Combat IUU in MSC Certified Fisheries

“Combating Shark Finning, an IUU fishing activity that severely undermines conservation efforts”

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SHARKPROJECT is a member of the MAKE STEWARDSHIP COUNT¹ Coalition and a signatory to the “Shark Finning Letters” that were sent to MSC together with 44 other stakeholders in October 2018 and in April 2019 together with 57 other stakeholders, including M&S, Migros, Woolworths, and the South African Ministry of Agriculture, Forestry and Fisheries²

1. Abstract

The quantity and quality of data, management systems, and external validation in place need to justify scoring. Neither the definition of fixed numbers nor relying on CAB’s expertise provides such credible approach. The former generates excessive burden for small scale, low risk fisheries, while insufficient for large, complex fisheries. The latter fails to provide consistent and credible assessments.

Therefore, “risk based” data and management requirements apply pre-defined "risk categories" and pre-defined requirements for each category. Risk category based requirements are an effective and efficient approach to reduce bycatch, evaluate impacts on ETP species and eco-systems, and to combat illegal fishing activities. It improves consistency of certifications, simplifies assessments and the programme’s credibility.

Shark finning is actually an IUU activity and incentivised by huge profits made from the fin trade to globally overexploit shark populations, when a bowl of shark fin soup containing a few grams of shark fin (dried fin cartilage) achieves sales prices of 90 € and more³. Therefore, higher efforts are needed to detect and eliminate this from happening due to the criminal nature of the activity and the high probability of it to remain undetected, covered up and unprosecuted. There is a hugely negative impact of this wasteful activity on threatened shark species contradicting all conservation efforts, when no reliable numbers are available how many sharks actually get killed every year and identification of the shark species from intercepted fins requires time consuming DNA analysis⁴. The estimated number of killed sharks from fishing exploitation is therefore highly uncertain, ranging anywhere between 63 and 273 million animals per year as reported by IUCN.⁵

¹ MAKE STEWARDSHIP COUNT is an international Coalition of to date 89 NGOs, scientists and organisations who support critical improvements of the MSC Standard with regard to P2 as requested in an open letter to the MSC in January 2019

² Open letter available at https://www.prowildlife.de/wp-content/uploads/2018/05/shark-finning-letter-April-5th-2019_final.pdf

³ Kimley, Peter A. Peter, The Biology of Sharks and Rays, 2013, S. 451.

⁴ Food and Agriculture Organization of the United Nations: SharkFin Guide: identifying sharks for their fins

⁵ IUCN Shark Specialist Group, Frequently Asked Questions: Sharks, Rays, and chimaeras; assessed September 2019

If we want to ensure that there is a high certainty that finning will no longer be tolerated to happen in MSC certified fisheries and as this is also an important aspect with regard to the programme's credibility at consumers and retailers and the general public as such, a much more stringent and consistent approach to the assessment of shark finning is required for all fisheries.

Therefore, it is mandatory to have good management principles and good external validation of compliance with such principles in place and to adopt the globally acknowledged, existing best practice to prevent finning as a minimum requirement for fisheries to enter MSC certification. Only then will the programme be able to demonstrate credibility with consumers and other stakeholders, and to provide a strong incentive for fisheries enforcing the existing ban on shark finning also within their fishery.

In conclusion:

- 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 and 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 accordingly.

2. Background Information on Shark Finning

Shark finning refers to the practice of removing any of the fins of a shark (including the tail) while at sea and discarding the remainder of the shark at sea⁶. This often happens while the animal is still alive. Only the fins are kept as the remainder of the animal is mostly worthless and is thus discarded in order to save space, weight and fuel. The main issues associated with this practice are⁷:

- Excessive Cruelty: Sharks are thrown back into the sea where the sharks bleed to death, suffocate as unable to swim and breath, or are eaten alive by other predators or scavengers.
- Waste: Finning and discarding of shark bodies wastes protein and other potential products. Only 2-5% of the shark is utilised.
- Fishery management: This practice is vastly unregulated and not properly managed or reported. Therefore, it also hinders the estimation of stock status, jeopardising effective

⁶ Memorandum of Understanding on the Conservation of Migratory Shark, MOU, 2010

⁷ MSC Programme Improvements Database: <https://improvements.msc.org/database/shark-finning-2/history/issue>

management of sharks. As fins have often been stored at sea for several weeks and are mostly partially dried when landed, it is also extremely difficult to estimate the original live weight and the actual numbers of sharks that have been finned.

- Species-specific shark catch information is usually lost as it is extremely difficult to identify the shark species from the mostly dried fins upon landing. This often means that it becomes impossible to verify whether the fins have been removed from endangered, threatened and protected shark species or whether prohibited species, which must not be retained according to regional or national legislation, were taken.

Sharks most at risk of finning are large, pelagic sharks with large fins, such as hammerhead sharks, thresher sharks or whale sharks. However, in recent times, increasing numbers of the smaller shark species, such as blue sharks and silky sharks, have also become the focus of finning as the numbers of larger sharks have decreased dramatically over the last 30 years or so. Some pelagic sharks have thus faced a decline by more than 90% of their previous abundance. This also becomes apparent by the increasing number of shark species which are now listed at different degrees of 'threatened' by the IUCN or have recently had their status changed regarding their degree of 'threatened', e.g. silky sharks which were previously abundant in all tropical waters have just recently in 2017 been changed from 'near threatened' to 'vulnerable'. As sharks and especially large pelagic sharks reach sexual maturity very late (often reproducing for the first time only after 20 years), have long gestation periods and give birth to only a few offspring, they can't sustain the immense fishing pressure experienced over these past decades. This has been mostly caused by targeted catch for fins and unwanted bycatch in commercial fishing operations, with fins often being the only part that is utilised.

Shark finning is gaining recognition around the world as an unacceptable and illegal practice. Shark finning is recognized as illegal by more than 20 countries and most of the RFMOs have bans on shark finning. Further there are several UN General Assembly (UNGA) Resolutions that call for a ban of shark finning⁸.

3. MSC's Policy on Shark Finning

In 2011 the MSC stated that in line with their usual process of reviewing their standards and requirements in relation to current scientific understanding and global best practice in fisheries management, they were looking to review, and possibly revise and clarify the requirements with respect to shark finning⁹.

At its December 2011 meeting held in Berlin, the Marine Stewardship Council (MSC) Board of Trustees resolved that fisheries engaged in shark finning will not be eligible for certification to the MSC standard for sustainable fisheries¹⁰.

Changes to the Guidance to the Certification Requirements (GCR) and Certification Requirements (CR) were drafted to ensure fisheries undertaking shark finning practices were not eligible for MSC certification. The process to strengthen the guidance and requirements included two public consultation stages, targeted dialogues with stakeholders, Technical Advisory Board (TAB) Working Group 4 (WG) and MSC executive considerations. One of the core requirements of the MSC's revised shark finning policy was that regardless of a fishery's performance against the shark finning Scoring Issue (SI), the CAB should not certify or maintain the certification of a fishery when there is objective evidence that indicates

⁸ MSC Consultation Document on Shark Finning: https://improvements.msc.org/database/shark-finning-2/consultations/consultation-shark-finning/Consultation_document_shark_finning.pdf

⁹ MSC Programme Improvements Database: https://improvements.msc.org/database/shark-finning-2/history/copy_of_adfa

¹⁰ MSC Programme Improvements Database: <https://improvements.msc.org/database/shark-finning-2/board-decision-shark-finning>

shark finning is taking place. Objective evidence was described as “any documented statement or fact based on observations, measurements or tests which can be verified”¹¹. Current MSC requirements prohibit shark finning; and the MSC have said that “a fishery will be scored on the level of certainty that shark finning is not taking place. The conformity assessment body (CAB) should not certify or maintain the certification of a fishery when there is objective verifiable evidence of shark finning”¹².

The MSC have stated that “best practice for ensuring that shark finning is not occurring comes from sharks being landed with fins naturally attached (FNA). Thus, when fisheries land sharks with FNA, scores of 80 or 100 will be achieved depending on the level of external validation in place. Where landing sharks with FNA is not possible, for example when sharks are destined for processing and utilisation on board, an adequate level of regulation, full documentation of the destination of shark bodies and independent observation are required”¹³.

Although the MSC have stated that sharks being landed with FNA conforms with best practice, a fishery does not have to apply such a policy to achieve a score of 80.

See SA 2.4.6¹⁴: *When scoring SI (e) at SG80, the expectation shall be that one of the following subparagraphs applies:*

- SA2.4.6.1: *All sharks are landed with fins naturally attached;*
- SA2.4.6.2: *If sharks are processed on board:*
 - a. *There are regulations in place governing the management of sharks;*
 - b. *There is full documentation of the destination of all shark bodies and body parts*
 - c. *Good external validation of the vessels’ activities is available to confirm that it is highly likely that shark finning is not taking place.*

SA2.4.6.2 says that “if sharks are processed on board”. This refers to ‘legal processing’ where FNA policies do not apply, but fins and carcasses are still landed together in compliance with the relevant fin/carcass ratio.

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.

4. Fishing-Induced Shark Mortality and Shark Finning in the WCPFC

Observer reports from the relevant tuna Regional Fisheries Management Organisation (RFMO), the Western and Central Pacific Fisheries Commission (WCPFC), show that shark bycatch from large purse seine fleets has increased markedly since 2011, when the PNA fishery was first certified, and in 2016 approximately 68,000¹⁵ sharks, 88% of which were silky sharks, were caught in the WCP.

According to the CAB’s assessment report for the PNA recertification in 2017, the bycatch of *Carcharhinus falciformis* from ‘free school’ sets for the fishery under assessment, the PNAFTF (PNA Western and Central Pacific skipjack and yellowfin, unassociated / non- FAD

¹¹ MSC Programme Improvements Database: https://improvements.msc.org/database/shark-finning-2/history/copy_of_adfa

¹² MSC Programme Improvements Database: <https://improvements.msc.org/database/shark-finning-2>

¹³ MSC Summary of Changes: Fisheries Certification Requirements version 2.0. 1 October 2014 - <https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-requirements-v2-0-summary-of-changes.pdf>.

¹⁴ MSC Fisheries Standard (Annexes S) and Guidance v2.0, 1 October 2014, MSC.

¹⁵ SCIENTIFIC COMMITTEE THIRTEENTH REGULAR SESSION, Rarotonga, Cook Islands 9-17 August 2017; Summary of purse seine fishery bycatch at a regional scale, 2003-2016; table 10, p 30

set, tuna purse seine fishery) was reported as only roughly 224 metric tons (mean for 2014 and 2015.)¹⁶

On top of the shark mortalities reported by observers, it is very likely that an even higher, but unknown number of sharks, also die, following entanglement with the more than 80,000 dFADs¹⁷ which are deployed in the region each year. This entanglement mortality can be 5–10 times higher than the known bycatch from the region's purse-seine fleet as demonstrated by Filmhalter (2013) for the Indian Ocean.¹⁸ No such estimates are available for the WCPO, but there is sound evidence to suggest that dFADs deployed by the vessels participating in the MSC-certified PNA fishery contribute to the ghost fishing of sharks and sea turtles in the region. While many purse seine fleets have begun to voluntarily use non-entangling FADs, and ICCAT, IOTC and IATTC are now requiring a transition to such FADs, no such transition measures have yet been adopted at the WCPFC (Murua 2016)¹⁹ and there is also no requirement, or so called condition, under the fishery's MSC certificate to address this.

Despite the fact that tuna caught on FADs result in high bycatch levels, and that these tuna are caught on the same day by the same vessels as MSC certified tuna, there is no requirement to report and evaluate this bycatch during MSC assessments nor do certified FAD-free fisheries have to meet conditions that are aimed at reducing such bycatch levels during the period of certification.

5. WCPFC Shark Finning Measures

Tuna RFMOs also started recognising the need to strengthen shark conservation measures and in 2010, the WCPFC adopted CMM 2010-07, which specifies that contracting parties have to take the necessary measures to require their fishers to fully utilize any retained catches of sharks, with all parts of the shark excepting head, guts and skins to be retained to the point of first landing or transshipment.

The WCPFC also adopted CMM 2011-04 in 2011, which specified that no oceanic whitetip sharks (*Carcharhinus longimanus*) must be retained in whole or in part. Followed in 2013, by CMM 2013-08, which specified that no silky sharks (*Carcharhinus falciformis*) must be retained in whole or in part.

While “fins naturally attached” have been mandatory in EU since 2013 (EU REGULATION (EU) No 605/2013), and have been introduced also in the USA, Canada, South Africa, Columbia, and many other countries, as well as the GFCM, now also WCPFC is evaluating in its WCPFC-TCC14-2018-22, 5th Draft report, 2018 (TCC14)²⁰, 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” In the report a proposal is made “to replace, among others, para 7 of CMM 2010-07” as follows “In order to implement

¹⁶ Catch profile for the PNAFTF, 2014-2015, based on confirmed, processed observer data.

N.B. Sampling was of 20,029 (11,037 successful) sets in 2014, and 15,113 (9,086 successful) sets in 2015), and cover > 60% of the total PNAFTF tuna catch from each year. (Acoura Marine Final Report PNA Western and Central Pacific skipjack and yellowfin, unassociated / non FAD set, tuna purse seine fishery, table 15, p.55)

¹⁷ SC12-WCPFC12-03, Scientific Committee Twelfth Regular Session, First Meeting of the FAD Management Options – Intersessional Working Group Summary Report. 3-11 August 2016, Bali, Indonesia.

¹⁸ Filmalter, J. D., Capello, M., Deneubourg, J. L., Cowley, P. D., & Dagorn, L. (2013). Looking behind the curtain: quantifying massive shark mortality in fish aggregating devices. *Frontiers in Ecology and the Environment*, 11(6), 291-296.

¹⁹ WCPFC. 2016. First Meeting of the FAD Management Options – Intersessional Working Group Summary Report. SC12-WCPFC12-03 (WCPFC12-2015 - 22_Rev2)

²⁰ TECHNICAL AND COMPLIANCE COMMITTEE, Fourteenth Regular Session, 26 September – 2 October 2018, Majuro, Republic of Marshall Islands, 5th Draft Consolidated Text for the Conservation and Management Measures for Sharks (for review by TCC14), WCPFC-TCC14-2018-22

the obligation in paragraph 8, in [2019, 2020, 2021] as an interim measure, CCMs shall require their vessels to land sharks with fins naturally attached to the carcass or to take alternative compatible measures to ensure that individual shark carcasses and their corresponding fins can be identified on board the vessel” (WCPFC15)²¹

6. Shark Finning in the WCPFC on large Purse Seine Vessels

The annual reports of the regional observer program for 2014 and 2015 confirm that shark finning has continued on a regular basis during those years on the region’s purse seine fleets, of which the PNA accounts for the largest proportion of the tuna catch. This happened despite the fact that finning has been banned in the WCPFC since 2011 and only recently have the number of finned animals reported by observers dropped to low numbers.

- In 2014, 789 silky sharks (*Carcharhinus falciformis*) and 9 Oceanic whitetips (*Carcharhinus longimanus*) were finned, and 233 silky sharks were retained with fins. (TCC 2015)²²
- In 2015, 314 silky sharks and 1 oceanic whitetip were finned, and 38 silky sharks and 7 oceanic whitetips were retained with fins (TCC 2016)²³
- In 2017, 22 silky sharks and 1 oceanic whitetip were finned, and 17 silky sharks and 4 oceanic whitetips were retained with fins (TCC 2017)²⁴
- In 2018, 9 silky sharks and 3 oceanic whitetips were finned, and 23 silky sharks and 1 oceanic whitetips were retained with fins (TCC 2018)²⁵

²¹ The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Fifteenth Regular Session of the Commission, Honolulu, Hawaii, USA, 10- 14 December 2018, p 56

²² 7th ANNUAL REPORT FOR THE REGIONAL OBSERVER PROGRAMME; Technical Compliance Committee. Eleventh Regular Session, 23 - 29 September 2015, Pohnpei, Federated States of Micronesia. WCPFC-TCC11-2015-RP02., p.6

²³ 8th ANNUAL REPORT FOR THE REGIONAL OBSERVER PROGRAMME; TECHNICAL COMPLIANCE COMMITTEE; Twelfth Regular Session 21 - 27 September 2016, Pohnpei, Federated States of Micronesia. WCPFC-TCC12-2016-RP02_rev2., p.5

²⁴ 10th Annual Report for the Regional Observer Programm, WCPFC15-2018-IP10, 2 Sept. 2018, WCPFC-TCC14-2018-RP02/, page 5, <https://www.wcpfc.int/node/32643>

²⁵ 11th Annual Report for the Regional Observer Programm, TECHNICAL COMPLIANCE COMMITTEE; Twelfth Regular Session 21 - 27 September 2016, Pohnpei, Federated States of Micronesia WCPFC-TCC15-2019-RP02 , 23 August 2019, page 7

7. Case Study: Shark finning in MSC-certified tuna fisheries

Several examples from MSC certified tuna fisheries are provided to demonstrate the associated problem and the inconsistency of assessment of the IUU activity of shark finning in fisheries with the same risk profile and despite either a high risk of finning to happen or even confirmed cases of finning.

a) Shark finning in the PNA – analysis of the downward trend between 2012 and 2017

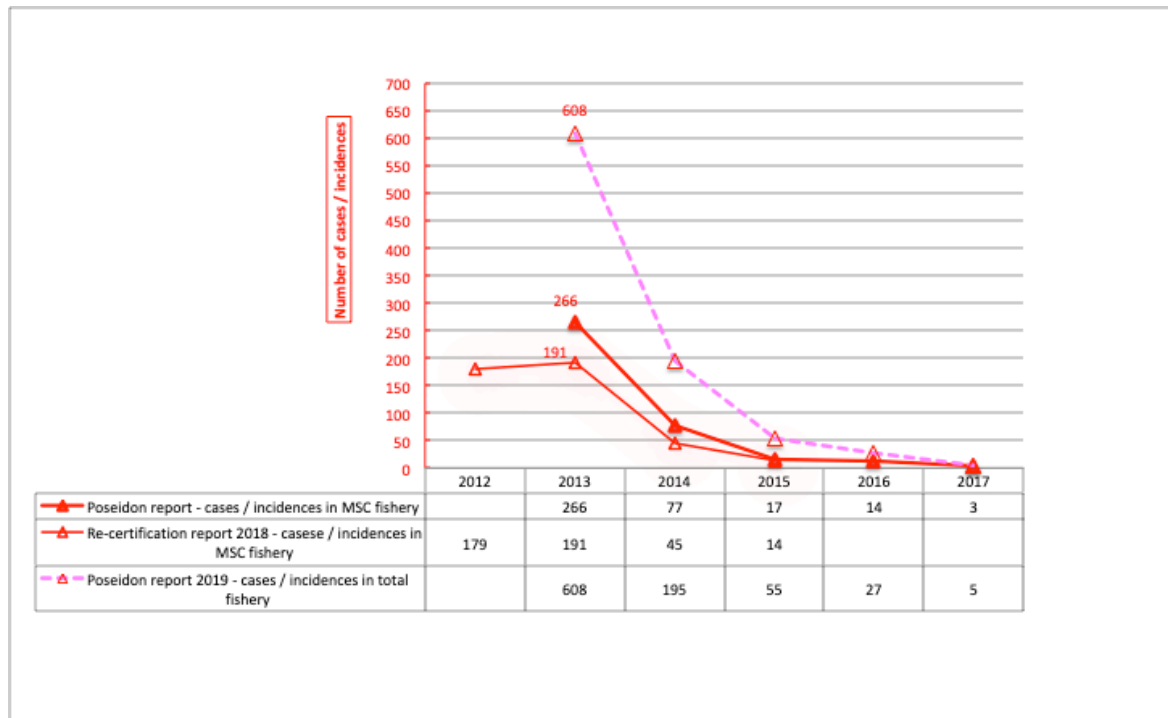


Table 1: Incidences of shark finning incidences or cases reported for MSC certified part of the PNA fishery and the non certified FAD fishing part of it

Before 2016 the reported cases / incidences of finning in the complete PNA fishery were substantial e.g. 608 cases in 2013 and as outlined in the Poseidon report²⁶ more than twice the numbers of the cases in the certified fishery parts throughout most of those years but still not reported or evaluated by the CAB prior to certification or re-certification.

The numbers provided by the fishery for the past years (i.e. 2013, 2014 and 2015), that had been reported in the re-certification report (2018), are now considerably higher than reported back at the time of re-certification, indicating that additional cases have been reported since then for the past years. For example the number of cases of finning in 2013 was said to be 191 in the recertification report, but is now shown to be 266 in the surveillance report. Therefore, we can possibly expect to see a similar upward correction of numbers also for 2016 and 2017.

²⁶ MSC Press Release, 13 May 2019, published online <https://www.msc.org/media-centre/press-releases/press-release/99-reduction-in-shark-finning-in-the-pna>

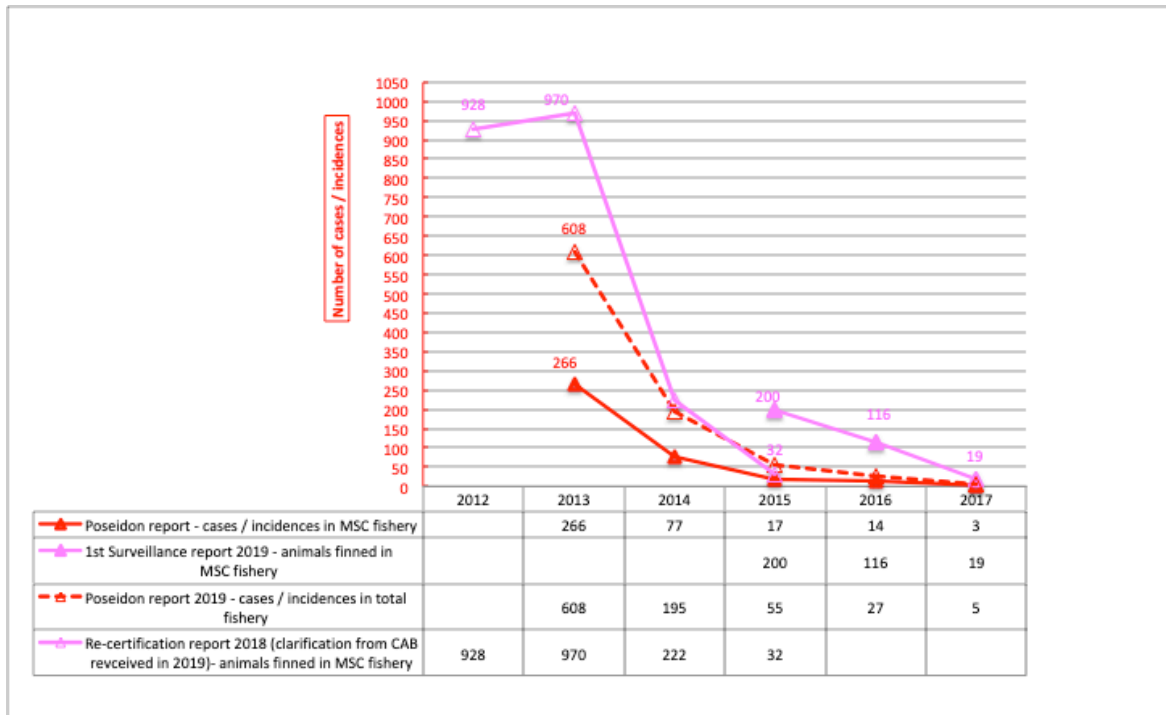


Table 2: Comparison of Incidences of shark finning or cases reported for MSC certified part of the PNA fishery and the complete fishery with the number of finned animals

The number of finned sharks for 2017, 2016 and also for previous years shown in the Poseidon report are quite different when compared to the numbers presented by the fishery itself, with numbers from the fishery actually being higher although these are only provided for the certified part of the fishery, while the Poseidon report claims to present numbers from all fishing practices, i.e. free sets, log sets and drifting FAD sets. The cause of this difference is that the Poseidon report only lists cases / incidences of finning, while the fishery has provided the actual numbers of finned animals for the surveillance report!

Therefore, the number of animals finned in 2016 and 2017 is actually NOT as low as the graph in the press release suggests! The surveillance report²⁷ thus demonstrates that more than 135 animals were still finned in these last two years in the certified part of the fishery alone, involving e.g. the finning of 20 or 74 animals on a single trip and incidence!

In light of the now available 1st surveillance report it also becomes clear that the number of sharks identified as "retained" in Table 16 (page 59) of the 2018 re-certification report may actually refer to the number of finned sharks rather than the number of illegally retained sharks. As such the "incidences" of finning may have been equivalent to "cases" of finning rather than number of animals. Thus, the actual numbers of finned animals in the certified part of the fishery between 2012 and 2015 would have been significantly higher than the 429 cases listed and might have been amounting to 2152 animals and possibly more, as the number of cases / incidences are now higher than when reported back in 2018!

And when comparing the number of finned animals reported in the first surveillance report

²⁷ PNA Western and Central Pacific Skipjack and Yellowfin Unassociated / non FAD set tuna purse seine fishery, 1st surveillance report 2019, MSC-SA Template 2.01 LR 20190402, page 43ff (<https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@assessments>)

with those reported by the WCPFC observer program for the years 2016 - 2017²⁸, in total these numbers are very much in line with the trend of an overall decrease of finning in the whole region as a result of the implemented CMMs, rather than driven by the lead of the MSC certification as claimed in the press release.

8. Shark finning in the PNA – analysis of the prosecution of offences

When MSC claims that there is publicly available proof of prosecution and sanctioning of vessels, please note, that no single "prosecution" of any of the cases of finning in 2016 and 2017 has occurred. The 1st surveillance report²⁹ explains that PNA itself has followed up on each case of finning providing explanations why no prosecution has taken place:

- *“Cases involving Kiribati flagged vessels in 2016 – Fisheries Administration’s response to these alleged offences were that implementing regulation was deemed to be insufficient to prosecute and, on advice from a legal advisor, the small number of cases would be unlikely to be prosecuted because low number and not deemed systematic. In all cases, warnings were issued.*
- *In one case, involving a single trip (no. 12777), 74 silky sharks were finned and discarded, because of the weakness in regulation, the vessel was given a warning. This Kiribati Implementing Regulation has now been strengthened and any cases identified from 2017 onwards would likely face prosecution. There were no repeat cases by KI flagged vessels in 2017.*
- *2 Korean vessels reported to have finned across a number of EEZs. A vessel was responsible for finning more than 20 sharks and was reported to the flag State (Korea) by at least one country (Solomon Islands).*
- *Awaiting formal response from PNG, Tuvalu and Nauru to other 2016-2017 identified cases. Numbers involved not considered being high.”*

The above examples demonstrate the difficulty of court prosecution of finning and the low likelihood of such ever being achieved, especially in remote areas with many, small island fisheries involved.

9. Shark finning in other tuna fisheries – examples from purse seine and long lining fisheries

Furthermore, 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.

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

²⁸ 10th Annual Report for the Regional Observer Program, WCPFC15-2018-IP10, 2 Sept. 2018, WCPFC-TCC14-2018-RP02/, page 5, <https://www.wcpfc.int/node/32643>

²⁹ PNA Western and Central Pacific Skipjack and Yellowfin Unassociated / non FAD set tuna purse seine fishery, 1st surveillance report 2019, MSC-SA Template 2.01 LR 20190402, page 43ff (<https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@assessments>)

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). • The CAB's reasoning in the PNA fishery was clearly flawed. They applied SA2.4.6.2 to justify their score of 80. They could only do this, as there is no FNA policy in the PNAFT fishery. Although they admitted that shark finning is taking place in the fishery they claimed that there are regulations in place prohibiting this, thereby complying with (a). They provided no evidence to demonstrate compliance with (b) and claimed that the 100% observer coverage of the fishery demonstrates 'good external validation' of no shark finning, although they also admitted that it is happening! • Evidence 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.
<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) "<i>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</i>". • Despite SCC noting "<i>there is not yet evidence that the rare examples [of shark finning] are followed by appropriate sanctions...</i>", they scored the relevant SI at 75. • A condition was placed requesting that '<i>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.</i>'
<p>WPSTA Western and Central Pacific skipjack and yellowfin free school</p>	<ul style="list-style-type: none"> • SCS confirmed for the Chinese UoC that they "were not provided with data from the observer databases on the number of shark finning events recorded for the

Fishery	CAB's assessment and MSC's application of shark-finning ban
<p>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>	<p><i>relevant vessels... our scores instead reflect the low levels of shark finning that have been recorded on other WPMC purse seine vessels."</i></p> <ul style="list-style-type: none"> • 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 <p>https://fisheries.msc.org/en/fisheries/szlc-csfc-fzlc-fsm-eez-longline-yellowfin-and-bigeye-tuna/@@assessments</p>	<ul style="list-style-type: none"> • The UoA is predominantly made up by Chinese and Taiwanese vessels • <i>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> • <i>At national FSM level, all elasmobranchs (sharks and rays) are 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</i>

Fishery	CAB's assessment and MSC's application of shark-finning ban
	<p><i>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. This does not affect the UoA however 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> • Data availability: <i>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>

10. 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 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.

11. 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.

12. 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 confirmed incidents of finning.

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.

13. Requested improvements to prevent shark finning from being tolerated in MSC certified fisheries

As shark finning is an IUU activity and incentivised by huge profits from the fin trade, therefore higher efforts are needed due to the criminal nature of the activity in order to ensure that there is a high certainty that finning will no longer be tolerated to happen in MSC certified fisheries. A more stringent and consistent approach is required for all assessments having good management principles and external validation of compliance with these in place.

Adoption of the globally acknowledged best practice to prevent finning should be used as a minimum requirement for fisheries to enter MSC certification.

- 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.

14. Review of outcome of the most recent MSC consultation on shark finning

Earlier this year MSC has conducted a public consultation on 2 proposed options on how to improve enforcement of the existing ban on shark finning in MSC certified fisheries.

We reviewed the feedback from other stakeholders as published by MSC³⁰ as outcome of the consultation on shark finning.

- 12 out of 27 (although there were 30 submissions 3 of these were "empty" listings without any answers to the provided questions and / or topic) commented that the MSC has so far not taken a firm enough stance to solve the problem and needs to do so now!
- There is a strong advocacy for a FNA policy, with 8 out of 27 “real” submissions requesting this to be introduced.

³⁰ Marine Stewardship Council, Consultation Topic: Shark Finning, Public consultation feedback: 4 March to 4 April 2019; results published at MSC website <https://improvements.msc.org/database/fisheries-standard-review-1/documents/public-consultation-february-to-april-2019/Shark%20finning%20public%20consultation%20feedback%20-%20March%202019.pdf>

- Many groups did not consider the provided solutions as viable, however, some groups may have misunderstood what option 2 actually will be able to deliver, as they were not aware of the absence of adequate sanctions or prosecutions for finning offences in most of the regions as outlined earlier in this paper.
- A third of all “real” answers (9 out of 27) also considered both provided options as taking too long and not being effective in resolving the problem.
- 7 groups explicitly warned of a reputational risk for MSC, if this problem doesn’t get fully resolved quickly.
- 3 groups explicitly outlined the problem of the Interpretation Log’s reference of “systematic” finning being misleading for the CABs, when they are assessing compliance with the finning ban.

Analysing the additional feedback provided by various stakeholders, in this consultation, the following proposals appear to be specifically capable in resolving the existing problem:

- Implement a FNA policy for SG60 phasing it in within 1 year as a scope change
- External verification of compliance with the ‘fins naturally attached’ policy needs to be demonstrated by a minimum level of observer coverage (human observers and/or electronic surveillance)
- The mandatory minimum level of observer coverage needs to be defined for each fishery prior to entering assessment following a risk based approach, which is based on e.g. target species, gear type, catch size, FAO region, and these observer coverage rates need to be harmonised throughout all UoAs within the same risk category.
- MSC needs to provide improved technical overview and execute oversight on CABs’ compliance with the scoring requirements. MSC must scrutinise that scorings are harmonised between CABs and between comparable fisheries.
- Implementation of a FNA policy, both at the level of the fishery and at a RFMO level
- Improve consistency for scoring of finning by addition of a new scoring PI for Finning in P3 of the assessment in order to assess compliance with the ban on finning for all sharks caught by the fishery, regardless whether they are primary, secondary or ETP species
- MSC added a new clarification in the interpretation log in 2015, stating that “No systematic shark finning is undertaken in the fishery” (<https://mscportal.force.com/interpret/s/article/Shark-finning-requirements-1527262010507>) thereby increasing the room for interpretation. Therefore, the word “systematic” should be removed immediately to ensure the initial intent of the Board to ban finning is enforced
- Strengthen the precautionary approach by redefining SG60 as „highly likely that finning is not taking pace“ and to define required probability of „highly likely“ to be e.g. a probability of 80%
- Define the minimum acceptable observer coverage for external validation of the compliance of fisheries with a FNA policy, based on the “risk category” of a fishery to be at least e.g. 20%

All these proposals clearly do help to improve clarity for the CABs when scoring a fishery, thereby achieving more comparable outcomes for similar fisheries and comparable risks, but just as importantly they would also strengthen credibility about the MSC’s intent to ban shark finning.

Also implementation of these measures and especially the requirement for a risk based approach as requested by MAKE STEWARDSHIP COUNT and others are essential to effectively combat IUU activities such as shark finning. By the introduction of adequate management measures, risk based monitoring requirements, and a risk based surveillance coverage for fisheries, those fisheries with a high risk of finning to happen would have to demonstrate proactive improvements prior to certification and be obliged to higher

monitoring and surveillance measures, while low risk fisheries and e.g. small scale fisheries with an overall lower impact risk even in case of a potential non compliance would not have to be unnecessarily over-burdened by additional measures and costs.