

Chile Austral hake (*Merluccius australis*) industrial trawl and longline

# Certificate Holder Forced and Child Labour Policies, Practices and Measures

## 1 Introduction

Fisheries and at-sea Certificate Holders (CH) in the Marine Stewardship Council (MSC) program are required to provide a self-description of policies and measures, including regulatory requirements and procedures that are in effect in the Unit of Assessment, to protect fishing crew from forced labour or child labour, as well as any efforts by the private sector. The objective is to require certificate holders to communicate how government, industry, or other relevant entities protect against forced or child labour.

Each fishery and at-sea Chain of Custody client shall provide this information by completing this template. This template should be completed by the client in good faith and be based on information known and available to the client at the time of completion. The information provided should be representative of the range of measures known to the certificate holder.

The completed form will be uploaded to MSC database to be published on the MSC website at the same time as the Public Certification Report.

Guidance for filling in the template is found in the [Appendix](#) of this template. Information is required on all issues addressed in the template and should be provided in English, which is the official language of the MSC.

Please complete all unshaded fields. Please fill in N/A if an issue is not applicable, including a short justification for why it is not applicable.

## 2 Marine Stewardship Council certificate holder forced and child labour policies, practices and measures

**Table 2.1 – Certificate holder information**

1	Composition of fishery client group on behalf of who the statement is provided
	<ul style="list-style-type: none"> <li>- Characterise the composition of the fishery client group, including cost sharing entities.</li> <li>- Describe the relationship between cost sharing members of the fishery client group and the vessel owners and operators of the Unit of Certification (UoC).</li> </ul>
CH	<p>The client group for the Chile Austral hake (<i>Merluccius australis</i>) industrial trawl and longline is formed of four of the five fishing companies who participate in the Austral hake Industrial fishery that are represented by FEDERACIÓN DE INDUSTRIAS PESQUERAS DEL SUR AUSTRAL (FIPES). The referred four companies the client group (henceforth “members of the Client Group”) are:</p> <ol style="list-style-type: none"> <li>1) Pesquera Sur Austral S.A.</li> <li>2) Pesquera Grimar S.A.</li> <li>3) Deris S.A.</li> <li>4) Empresa de Desarrollo Pesquero de Chile S.A.</li> </ol> <p>Therefore, other eligible fishers are those vessels operated by the remaining company (Pesca Cisne S.A.) which is not part of the client group.</p> <p>The Units of Assessment (UoAs) for the fishery under assessment are: 1) UoA 1 – Industrial trawls and, 2) UoA 2 – Longline. The target specie is Austral hake/Southern hake (<i>Merluccius australis</i>) in both case.</p>
2	Responsibility for labour regulation
	<ul style="list-style-type: none"> <li>- What management authorities and laws, including flag state authorities, control labour-related regulations in the unit of assessment area?</li> <li>- How are laws enforced?</li> </ul>
CH	<p>The Chilean Ministry of Labour’s Inspection Agency (Dirección del Trabajo) is the main authority for Labour law enforcement, and it can also resolve disputes between employees and employers. Chilean Labour Law is contained mainly in the Constitution and the Labour Code.</p>
3	Risk identification and mitigation
	<ul style="list-style-type: none"> <li>- Describe the processes, including government and certificate holder measures, that are in place in the UoC to identify and mitigate any risk of child and forced labour.</li> </ul>
CH	<p>Although child labour is prohibited in Chile, underage labour it is not forbidden (<a href="https://www.dt.gob.cl/portal/1626/articles-95516_recurso_2.pdf">https://www.dt.gob.cl/portal/1626/articles-95516_recurso_2.pdf</a>).</p> <p>Under Chilean law any person older than 18 years can sign any type of employment contract without authorization. Between the ages of 15 and 18, an employee needs his parents’ authorization to work with a maximum of thirty hours per month. Child labour below 15 years old is forbidden in Chile. Persons between the ages of 15 and 18 can work only if they have the parents’ authorization, after finishing schoolwork and provided it is light work that does not affect their health. <b>None of the members of the Client Group does not employ and have never employed any underage person as a Company policy.</b></p>
4	Crew recruitment
	<ul style="list-style-type: none"> <li>- Describe the typical methods used to recruit crew in the UoC and describe the migrant composition of crew if any.</li> </ul>
CH	<p>Chilean Immigration Laws state that tourists are forbidden from undertaking any paid activities in Chile without the corresponding Special working permit. Also, working visa or temporary residence permit can be granted to foreigners who will develop paid activities in Chile for a longer period (up to one year for temporary residence and two years for working permit, renewable in both cases). If a company employs more than twenty-five employees, 85% of them must be Chilean. If it employs less than twenty-five employees, there is no limitation. It is both employers and employee’s obligation to comply with immigration</p>

	laws, as sanctions and fines are considered for both of them. Some of the members of the Client Group employ Migrants, nevertheless none of them are in illegal or irregular situation.
5	Engagement with fish worker groups
	- Where there is known engagement with fisher, migrant, and worker rights groups, describe how this occurs and the organisations engaged with workers in the Unit of Assessment (UoA).
CH	Under Chilean law any Ship captain must be a Chilean citizen. And within the crew a maximum of 15% of foreigners is allowed. They must have their Registration, which is issued by the Directorate of the National Territory (DIRECTEMAR – “Dirección General del Territorio Marítimo y Marina Mercante”), in order to obtain their registration, they must undergo theoretical and practical tests, as well as a medical certificate indicating that their health is compatible with the work they are going to perform. Workers are free to form and join unions without prior authorization and there are different types of labour unions recognised by the law, including company labour unions, intercompany labour unions, temporary workers labour unions and independent workers labour unions. Most of the members of the Client Group Workers have formed their unions or they negotiate collective work contracts in accordance to Chilean law. There is also an intercompany Union of the Crew Workers that represents their interests before the members of the Client Group. Workers of each union meet regularly with representatives of the company to express their concerns, requests and/or suggestions. Even so, any worker can individually express the same concerns to the Personal Department too.
6	Crew contracts
	- Describe the nature of contracts or legal work agreements in place in the UoC and the issues addressed in such agreements.
CH	Under Chilean Law any employment contract must be in writing and executed within 15 days of the initiation of services, but if the labour contract is not put in writing within the aforementioned 15-day period, the terms and conditions thereof shall be those indicated by the employee. Additionally, the employer shall bear the burden of proof of the real conditions and terms agreed on (Article 9 of the Labour Code).  The labour contract must contain the following clauses: 1) Place and date of contract; 2) Individualisation of the parties, indicating nationality, birth date and the date the worker begins employment; 3) Nature of services to be provided and place or city where they are to be rendered. The contract may indicate two or more specific services that may be alternate or complementary; 4) Amount, form and payment period of the remuneration agreed to; 5) Duration and distribution of work schedule, except if the company has a work system based on shifts, in which case internal regulations must be observed and, 6) Term of the contract. 7) The parties may include other clauses they may agree upon in the labour contract; for example, voluntary benefits.
7	Audits and labour inspections
	- Describe any 3rd Party audits and certifications on labour, or labour inspections conducted within the UoC in the last two years.
CH	The Chilean Ministry of Labour’s Inspection Agency realise at least one visit in a year. There are no other audits from third-parties’ entities.
8	National minimum age requirements
	- Describe national minimum age requirements for crew members serving on vessels within the UoC. - Describe systems in place, both regulatory and private sector systems, to ensure that crew members meet national minimum age requirements. - Describe how this is checked, including enforcement within the UoC by the responsible governing authority or oversight body such as labour inspectors.
CH	Chilean Labour Code sets the minimum age for employment at 15 years, but Fifteen-year-olds are allowed only to do light work if they have completed compulsory education, and if the work will not affect their health, development or attendance in education and training programs. The Government of Chile ratified ILO

	<p>Convention 138, Minimum Age for Admission to Employment, on February 1, 1999 and ILO Convention 182, Worst Forms of Child Labour, on July 17, 2000.</p> <p>The Chilean Ministry of Labour's Inspection Agency enforces child labour laws in the formal sector, while the National Service for Minors within the Ministry of Justice investigates exploitative child labour related to criminal activities. Scrutiny by the Ministry of Labour's Inspection Agency are frequent, and they could be initiated after a specific complaint or as the result of regular Controls.</p>
9	Repatriation
	<ul style="list-style-type: none"> <li>- Describe how repatriation issues are dealt with in the UoC with respect visits end of contract, voluntary and involuntary termination, and freedom of movement and the extent to which these are included in contracts.</li> </ul>
CH	<p>All the members of the Client Group declared that they only hire foreigners with temporary or permanent residence in Chile, who have all their documentation in order according to the Chilean legislation. Although the applicable Laws for foreigners are almost the same as for Chileans, there are some differences, for example, Labour contracts for foreigners also need to include in some cases special clauses, such as the declaration that the term starts after the foreigner has obtained the corresponding visa or permit, and a travel-expenses clause stating that back home tickets in case of termination by any cause will be borne by employer. In accordance with the provisions of subsection 2, article 37 of the Aliens Regulation, D.S. No. 597 of 1984, in cases of travel clause, the employer agrees to pay, at the end of the employment relationship (either by contract, dismissal or resignation), the return ticket of the worker and the members of your family to be stipulated, to your country of origin or to which the parties timely agree. The repatriation or travel clause is required in some work contracts in which the worker has a Visa Subject to Contract, that is to say, the residence permit that entitles the holder to perform remunerated activities is linked exclusively with the employer with which signed the contract. The employer's obligation will exist until the foreigner leaves the country or obtains a new visa or permanent stay. If the temporary residence was issued under another formula or with another justification, there is no obligation for this kind of repatriation clause. There is also no obligation for of repatriation clause in the case of citizens of the States parties to the Mercosur (Argentina, Bolivia, Brazil, Paraguay and Uruguay, or foreigners who have ties to a Chilean Citizen (for example marriage), family ties with permanent residents, professionals and technicians of a higher level, or investors, for example. In that case and for the residence or definitive permanence there is also no obligation for repatriation clause. Summarizing Chilean law requires the repatriation clause only in cases of visas subject to contract with a single employer. The members of the Client Group do not employ people in these conditions, but temporary or permanent residence enable foreigners to work with any employer so there is no obligation for repatriation clause.</p>
10	Debt bondage
	<ul style="list-style-type: none"> <li>- Describe if there is evidence of systemic practices to impose costs on crew members for placement or brokerage fees, travel to the workplace, visa, medical, safety gear, clothing/protective gear, food at the workplace, communications access, remittance fees, repatriation, etc.</li> <li>- If so, describe such practices and how debt bondage is avoided.</li> </ul>
CH	<p>Under Chilean Law the employer is obligated to observe health and safety standards in the workplace, to implant measures to prevent accidents, and others alike. Every company, establishment, job or economic unit, whether commercial or industrial, that has more than ten employees, needs to adopt Internal Health, Safety and Hygiene Regulations (company's Internal Code) that must set down the prohibitions and obligations imposed upon employees in regard to their jobs, permanence and life in the respective company or establishment. Every employer must also pay special work accident and occupational disease insurance for each employee. The amount of the payment depends on the risks associated with the job, and the basic rate is 0.95% of the salary.</p> <p>Regarding this legal obligation, each of the members of the Client Group declared that they deliver to all its personnel On board and process plant staff the following Safety equipment and provisions: 1) Food (only during working) 2) Suitable work clothes for the working section (e.g. thermal suits for freezing area) 3) Suitable Warm clothes 4) Safety equipment: goggles, helmet, safety shoes, reflective vests, sunscreen, etc 5) Money allowance for transportation from their home to the company or transportation by the company 6) All clothes are washed by the company in most of the members of the Client Group.</p>
11	Grievance and remedy mechanisms
	<ul style="list-style-type: none"> <li>- Please list any policies or measures (e.g. hotline) that are in place for crew voices to be heard and to report and remediate any instances of forced or child labour.</li> </ul>

CH	The main authority for resolving disputes between employees and employers and to protect labour rights is the Chilean Ministry of Labour's Inspection Agency. Employees can personally apply for its protection and represent themselves without the need of a lawyer. Disputes can also be settled by the labour courts and even the Constitutional Court (The Chilean system also allows to apply for an urgent protection of constitutional rights by the Supreme Court). The Immigration Authority or the Labour Inspectorate can enforce the foreign workers laws. As mentioned, the Chilean Ministry of Labour's Inspection Agency and the National Service for Minors within the Ministry of Justice enforces child labour laws.
12	Identification documents
	- Describe policies and practice in place across the UoC to ensure that crew members have free and timely access to their identification documents, including National ID, passports, visas, etc.
CH	Under Chilean law the employer is not allowed to retain any kind of identification documents from his workers, and usually the worker's personal folder only contains copies of the signed contract and copies of the identification documents. Each of the members of the Client Group declared that they only operate Chilean Flagged Ships. Chilean law does not require the vessel owner or captain to hold the crew members' official identification for national Flagged Ships, but every worker On board should carry a special crew member authorization and Identification ("Matrícula de Tripulante") that could be registered by the public officers.
13	Additional comments
	- Do you have additional comments on labour practices within the UoC?
CH	
14	Date this template was last updated
	- DD/MM/YYYY
CH	26/08/2019

## **3 Appendix – Guidance on filling in the Certificate Holder Forced and Child Labour Policies, Practices and Measures Template**

### **3.1 Composition of the fishery client group on behalf of who the statement is provided**

If a fishery is in full assessment and the cost-sharing participants and arrangements are not yet determined, provide as much detail as possible regarding the expected cost-sharing entities that will comprise the client group, should the fishery achieve certification, and the relationship between such client group representatives and the vessel owners and operators in the Unit of Certification (UoC).

### **3.2 Responsibility for labour regulation**

Provide information on laws and regulation and the authorities that have responsibility for labour regulations in the area in which the fishery operates, including flag state authorities where this is applicable. Describe how these are enforced.

### **3.3 Risk identification, mitigation and remediation**

The information required in this section includes information known by the certificate holder on processes and practices that are applicable in the UoC to identify, assess, prevent and mitigate forced and child labour risks. The information may include government policy or measures, or where applicable, measures being implemented by the certificate holder.

### **3.4 Crew recruitment**

The information required here includes information on the methods used to recruit crew in the UoC, any widespread use of migrant labour, the countries that crew come from and information on recruitment agencies used where this information is available and known to the certificate holder. It may also include information known of visa programs used to bring in workers to the UoC and on payment of recruitment fees.

### **3.5 Engagement with fish worker groups**

In some countries, there may be engagement with fish worker groups or other types of organisations that work to address risks of forced labour. Where this occurs provide information on such engagement. This may include information on any organizations in the port area which support crew members socially, e.g. seafarers' ministry, fishers' association, local committees.

### **3.6 Crew contracts**

Contracts are legal work agreements with labour duties and payments clearly spelled out. Describe the nature of crew contracts in the UoC, specifically features related to forced and child labour, whether the contracts are written in languages understood by crew and how provisions in the contract are enforced.

### **3.7 Audits and labour inspections**

Describe any government labour inspections or social audits and certifications of working conditions within the UoC in the past 2 years. Where the information is available provide a link to the criteria against which the audit took place.

### **3.8 National minimum age requirements**

For this section describe national minimum age requirements and provide a description of regulatory and private sector systems in place to confirm that minimum age restrictions are met. Include information on any exceptions to statutory minimum age requirements which are used by the UoC and information on policy for hiring young workers in compliance with national legislation. This should also include description of any policy or practices for monitoring including hours of work and rest for young workers. This may include information on any other programs which are monitoring labour in your UoC fishing area.

### **3.9 Repatriation**

This section requires a description of how departure of crew members across the UoC is handled. This may include information about government, and/or where known, any applicable company policy on end of crew members' contracts; involuntary termination; leave (including family visits and medical treatment); freedom of movement during the work term and departure terms within crew member contracts.

### **3.10 Debt bondage**

Deductions for costs of work from pay can cause debt bondage and put crew at risk of forced labour. Examples of such work costs include costs of getting to work, placement/broker fee, medical costs, safety gear, food at the workplace, remittance fees and repatriation costs.

Describe systems in place to avoid debt bondage. If there is evidence of systemic practices to impose costs on workers, what measures are in place to avoid debt bondage.

### **3.11 Grievance and remedy mechanisms**

Provide a description of systems known to be in place that allow crew to share information, access assistance and report labour violations and how the systems work to address such reports and provide remediation.

### **3.12 Identification documents**

Describe provisions across the UoC for crew to access their official identification (passports, visas, seafarers book). Where the law in a jurisdiction requires the vessel owner or captain to hold the crew members' official identification, describe the protocol, including government regulations in place to ensure that crew members can access their personal documents and have freedom of movement.

## 4 Template information and copyright

This document was drafted using the 'Certificate Holder Forced and Child Labour Policies, Practices and Measures Template v1.01'.

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### Template version control

Version	Date of publication	Description of amendment
1.0	17 December 2018	Release alongside Fisheries Certification Process v2.1
1.01	28 March 2019	Minor document change for usability

A controlled document list of MSC program documents is available on the [MSC website](http://msc.org) (msc.org).

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