

Being open, transparent, inclusive

Developing-country fisheries, and small-scale ones, in particular, have been marginalized in the Marine Stewardship Council certification system

Protecting consumers from unsafe food, the environment from overexploitation of resources and pollution, and workers and producers from unjust labour and trade relations, are generally considered, in development circles, as objectives worthy of intervention whether through regulation or, increasingly, through the establishment of voluntary standards and codes of conduct. Yet, abstract principles are eventually applied in concrete situations and have a variety of effects on differently endowed countries, groups and individuals. What may seem a good idea to consumer groups or government agencies in a Northern setting, may not turn out to be so advantageous to producers in the South even though the initial stimulus in the North may have been exactly to safeguard these producers.

Food safety, environmental and social standards have become key features in the trade of agro-food products in the last 15 years. International organizations, government agencies, industry associations, and non-governmental organizations (NGOs) behind the formulation of these standards were initially defensive of efforts aimed at critically examining their effects in different settings. Questioning the inherent 'justness' of these initiatives was considered reactionary and necessarily intended to discredit them. Recently, there has been a more open attitude towards reaching a better understanding of the contradictions, limitations and differential impact of these standards. From a 'defensive' phase, these organizations and NGOs have now moved into a 'constructive dialogue' phase, where they are making efforts to be more inclusive (sometimes for public-relations reasons), and to reflect upon past experiences to improve the content,

monitoring and management of their standards. In other words, they are trying to 'make their system management-right'. This means that standards development procedures, governance structures, indicators, monitoring, verification and management systems have become much more sophisticated than even a decade ago. Where there has been little movement so far has been in acknowledging that standards are developed and applied in specific political economies, within complex power relations, and in extremely diverse local conditions and politics. In a sense, an increased focus on systems management brings these initiatives even further away from a politico-economic understanding of their effects.

The focus of much of the work to make ecolabels 'better' is based on the principles of non-discrimination and equality of opportunity. In this line of thought, explicitly adopted by the Marine Stewardship Council (MSC), if the system has been devised openly, is monitored transparently, and is administered properly, standards simply provide fuller information to those involved in transactions. Where clear disadvantages are highlighted for certain countries, groups or individuals, technical assistance and capacity-building instruments are provided, or simply suggested, as solutions.

Smaller players

It follows that one of the arguments posed by environmental NGOs to defend their standards and codes of conduct is that they provide a level playing field for all players in an industry, and that affirmative action targeted at smaller players would damage their credibility. But, if anything, the Forestry Stewardship Council (FSC) special provisions for

community forestry certification demonstrate the contrary.

Facilitating access to special projects for smaller fisheries' certification, improving outreach, and holding workshops in Africa or South Asia are not sufficient to make artisanal fisheries better equipped to be MSC-certified. As the only third-party ecolabel for capture fish, MSC bears responsibility for the inability of developing-country fisheries, in general, and artisanal fisheries in these countries, in particular, to be certified. Exceptions are found only in some fisheries of upper-middle-income countries—South African hake, Mexican Baja California red rock lobster, and Patagonian scallop are all MSC-certified, while Gulf of California (Mexico) sardine and Chilean hake are currently undergoing assessment.

Does this mean that MSC is 'bad' and should be shut down? No. It means that an organization that portrays itself as open, transparent and inclusive should actually behave so. SAMUDRA Report has hosted a heated debate on the governance of MSC since its inception, although, for some reason, the debate has basically died out after 2002, with a small reprise in 2004. Perhaps this is because most will agree, rightly so, that the governance structure of MSC, its procedures and its market coverage have improved substantially in the 2000s.

Is this enough? No. The plight of 'sustainable fisheries' that can not achieve certification in developing countries, and especially of small-scale fisheries in least-developed countries, has not been tackled seriously enough. Special flexibilities in the interpretation of certification guidelines are not sufficient. Barriers to achieving MSC certification in developing countries range from institutional weakness (lack of knowhow) to financial costs. Numerous projects and funds have been set up by, or with the contribution of, MSC. This is a welcome development, but the range of funding and the scope of activities involved are unlikely to help a substantial number of these fisheries to achieve MSC certification. For example, the 'Sustainable Fisheries Fund' can only make small grants to "help ensure broadbased stakeholder input into fishery assessments . . . It will not be in a position to support large-scale research projects" ("Funding support", SAMUDRA Report No. 32, July 2002).

Three components

The costs of MSC certification to the client industry can be broken down into three components: (i) pre-assessment; (ii) fishery assessment; and (iii) annual audits. Pre-assessment costs range from a few thousand dollars to over US\$20,000. Direct costs for a full assessment have varied between under US\$35,000 for a small, simple fishery to almost US\$350,000 for a large, complex fishery. The overall cost of

obtaining certification depends on the nature of the problems uncovered in the assessment and the corrective actions that have to be undertaken.

Furthermore, as the last article on MSC that appeared in SAMUDRA Report ("Amend principles, criteria", SAMUDRA Report No. 38, July 2004) highlights, financial arrangements for certification are left to private negotiation between clients and certification agencies. The same article calls for MSC to channel such negotiations, which would allow discounts and 'soft' payment options for selected fisheries. It also calls for a revision of principles and criteria, either amending them to fit developing-country fisheries and small-scale fisheries, or devising a separate set of principles and criteria for these fisheries. Two years on, these calls have gone unheard.

To its credit, MSC has recognized that its standards and certification procedures are not geared towards the realities of developing-country fisheries, especially small-scale and data-deficient ones. A special program (MSC Developing World Fisheries Programme) has been seeking to improve the awareness of MSC in developing countries and to develop guidelines for the assessment of small-scale and data-deficient fisheries.

The project aims at developing guidance for certifiers on the use of 'unorthodox' information on fisheries, such as traditional ecological knowledge and management systems. It also aims at using a 'risk-based' approach to qualitatively evaluate fisheries. But the aim of this project is not to write a separate standard, but rather to develop 'operational interpretations' to assess small-scale and data-deficient fisheries.

There is evidence that MSC was advised on a different approach for implementing special systems of compliance and verification to cater to the needs of developing countries and small-scale fisheries. These suggestions included the development of *specific* indicators that are appropriate to developing-country fisheries, and the use of analysis of hazard (a specific threat to sustainability posed by the practice) when analysis of risk (the calculated probability of a practice having

a negative impact) is not possible, practical or is too expensive.

Furthermore, and unfortunately, discriminating in favour of small-scale fisheries seems to go against the 'Guidelines for Ecolabelling of Fish Products' of the Food and Agriculture Organization of the United Nations (FAO). These guidelines include the need for independent auditing, transparency of standard setting and accountability, and the need for standards to be based on 'good science'. They also lay down minimum requirements and criteria for assessing whether a fishery should be certified and an ecolabel awarded, drawing on FAO's Code of Conduct for Responsible Fisheries. Unfortunately for artisanal fisheries in developing countries, transparency and inclusiveness in standard setting do not work retroactively. Also, instead of calling for special standards and verification systems to be applied in developing countries, the FAO guidelines simply call for 'financial and technical support'. This needs to be changed.

Elsewhere, in a paper for the Trade Law Centre for Southern Africa, I have analyzed the process of certification of South African hake, based on extensive fieldwork in the country in addition to a general assessment of MSC (*Ecolabels and Fish Trade: Marine Stewardship Council Certification and the South African Hake Industry*. <http://www.tralac.org/scripts/content.php?id=5212>). I highlighted that ecolabeling is not simply about science and management, but also about politics. I did not suggest that MSC itself played politics, but that to understand 'real-world' ecolabeling, one has to look at how certain interest groups use certification for their own purposes, and not necessarily for the welfare of fisheries and the environment. I also highlighted some problems with MSC's definition of 'certification unit', which, to my eyes, needs rethinking. I would like to summarize some of the findings here.

Evolution process

MSC certification of the hake trawl industry in South Africa was the result of an evaluation process that lasted almost two years, and that started with an application prepared by the South African

Deep-sea Trawling Industry Association (SADSTIA), the body representative of most (but not all) hake-trawling companies in the country.

It helps understanding the motivations behind seeking MSC certification that, within SADSTIA, the drivers of the initiative were large companies that, at that time, had an interest in defending their quota allocation from further erosion to the benefit of other trawling companies and the longline industry. This threat was arising from the process of (belatedly) 'transforming' the post-apartheid hake-trawl industry. The overall cost of fishery certification to the industry was US\$100,000 in direct costs of certification, plus US\$100-200,000 to meet conditions in the mid-term.

The assessment conducted by the certification body resulted in a relatively high scoring on the first of the three principles of the MSC standard stock management (88 points out of 100; the minimum pass is 80). According to industry sources, this was expected, as there has been a relatively long history of proper monitoring of the resource in South Africa. In relation to the second MSC principle (ecosystem impact), the South African hake industry barely made the grade (80 points). Gaps were identified in four areas: (i) by-catch management; (ii) ecosystem relations; (iii)

the impact of trawling on the benthic habitat; and (iv) the impact of trawling on seabird populations. In relation to the third MSC principle (fishery management system), the industry's score was relatively high (88 points).

In my working paper, I highlighted that MSC certification of the South African hake industry raises at least two problematic issues: (1) the trawling sector has been certified, but not the longlining sector even though they exploit the same stock; and (2) there are questions about whether the stock is shared with Namibia, which is not certified either. I do understand that the MSC definition of 'certification unit' allows for the certification of one part of an industry but not another, even though they exploit the same stock. But adopting an unsuitable definition is a technical fix and does not, in itself, ensure 'sustainability' of a fishery.

Paradoxical situation

Hake longliners (and handliners) have not been certified in South Africa, either because they lacked a strong association that could represent them and guarantee a proper management system or because they are one of the potential threats to the incumbent oligopoly. A paradoxical situation has thus been created, where the trawling sector in a fishery is certified as 'sustainable', while the smaller-scale longline sector catching the same stock is not. Yet, the overall stock is deemed to be

'sustainably managed'. Furthermore, since the MSC approach is to divide up fisheries into management units, even though they may share the same stock, the South African hake industry was certified without its Namibian sister industry, even though it is widely believed that they share the same stock.

A strict interpretation of sustainable management of stock would suggest that the South African fishery could only be 'sustainable' if both it and the Namibian fishery were certified, but the latter either did not want, or was not invited, to participate in the certification process. Therefore, the certification team stated that "although mixing [of the South African and Namibian stocks] will inevitably occur, from a fishery-management perspective, the South African hake populations may be considered as a discrete stock". Is this 'fishery management perspective' leading to better sustainability of the stock (one of the main objectives of MSC)? If one believes recent reports suggesting that the hake stock is in danger, and that catches are at historically low levels (*Southern Africa Fishing Industry News*, June 2006, p. 10; *Mail & Guardian*, 30 June 2006), perhaps some doubts are justifiable. Is South African hake going down the same way as New Zealand hoki did? (Both are MSC-certified.)

In 2005, the South African hake industry was subjected to the first surveillance exercise by the certifying team. This resulted in a surveillance report released in May 2005 that covers progress in all the conditions that were set at the time of certification. The overall assessment of the monitoring team was a positive one, and continuation of certification was recommended, despite some major problems (see my working paper for details). No MSC-certified fishery has been de-certified so far. Is this an instance of 'path dependency' or a sign of improved management?

South African observers of the fish industry made it clear that with the current rate of loss of scientists and managers at Marine and Coastal Management (MCM), the agency in charge of fisheries management, there will be no capacity to properly monitor the use and

possible abuse of quotas. Thirty-five scientists have left MCM between 1996 and 2005. In January 2005, two of the key management figures at MCM resigned. According to an industry source, current management at the regulatory agency lacks deep understanding of allocation issues. After the 2006 allocation, which, for the first time, assigned quotas for a period of 15 years (instead of one year, or, more recently, five years), compliance by industry to regulation is likely to decrease. A review of allocation should follow every two or three years to assess compliance with the terms of the allocation policy, but there is no capacity at the regulatory agency at present to undertake that.

Yet, whatever happens to MSC certification in South Africa, it is important to highlight that the drivers of the initiative have achieved two other objectives anyway. First, the longlining industry has not been allocated a higher proportion of the hake total allowable catch (TAC) in 2006. But, even more importantly, the regulatory agency, in its own policy that guided the 15-year allocation of 2006, formally embraced the argument that fewer players are better for conservation than a larger number of players. No new entrants were assigned quotas, and some of the smaller existing quotas were not renewed. Although some of the large companies lost a proportion of their quotas (a sizeable volume for one of the main players), the allocation of long-term rights is likely to create a secondary market for quotas. As a result, an even more concentrated industry may emerge in the mid-term (for details on the 2006 allocation of hake rights in South Africa, see Stefano Ponte and Lance van Sittert, "The Chimera of Redistribution", *DIIS Working Paper 2006: 32*; available at: www.diis.dk/sw29692.asp).

Conservation discourse

MSC certification, far from being simply a neutral and equal instrument yielding better conservation for humanity, is achieved in the context of global and local competition, special-interest battles, and local politics. In South Africa, although couched in a discourse of conservation, MSC was one of the instruments used to justify positions in debates that had race relations and possible redressing of past wrongs under apartheid as the main

issues at stake. It was played as a tool against the redistribution of quotas away from main, white-owned, quota holders to the possible benefit of black-owned smaller quota holders and new entrants within the deep-sea hake sector. It was also used as a tool to avoid redistribution of quota away from the large, mainly white-owned, deep-sea trawling sector to the advantage of the mostly black-owned longlining sector. Local politics and the situated political economy of conservation do matter for 'sustainability' certifications.

Developing-country fisheries, and small-scale ones, in particular, have been marginalized in the MSC system. Only three fisheries in South Africa, Argentina and Mexico have been certified so far. Delivering 'sustainability' at no additional cost and in large volumes demands standards that are tough in terms of systems compliance, but actually quite approachable in terms of the thresholds of sustainability indicators. Entry barriers to 'sustainability' entail economies of scale and scope that require managerial resources and access to networks. Since managerial and systemic objectives are harder for developing-country actors to match, this creates a hidden imbalance in favour of more endowed participants. ¶

This article, by Stefano Ponte (spo@diis.dk), Senior Researcher at the Danish Institute for International Studies, is based on a working paper published by the Trade Law Centre for Southern Africa