

## **Sustainable Seafood Coalition (SSC)**

### **Member's meeting**

**Location:** British Retail Consortium, 21 Dartmouth Street, Westminster, London SW1H 9BP

**Date:** 22<sup>nd</sup> November, 2012

**Number of attendees:** 22 total (including 5 ClientEarth staff: facilitator, secretariat, member, legal advisor, minute taker)

## Summary of agreed points

**Note:** As set out below, it was agreed by the Members that, in order to satisfy competition law requirements, the SSC's draft Code of Conduct on Environmental Labelling and Self-Declared Environmental Claims of Fish and Seafood (the Labelling Code) should contain two routes to making claims of 'sustainability' with regard to fish and seafood. The first route is via certification to third party standard; the second sets out an equivalent alternative route. For ease of reference, these are referred to as Option 1 (certification to third party standard) and Option 2 (equivalent alternative route) in the summary below. For claims of 'responsibility' with regard to fish and seafood, there are four options set out in the code, as follows: Option 1 (certification to third party standard); Option 2 (equivalent alternative route); Option 3 (risk assessed as 'low risk' and appropriate actions being taken); and Option 4 (risk assessed as 'high risk' or 'medium risk' and appropriate actions being taken).

### Item 1: Claims regarding 'sustainability'

**Under the heading of "Minimum criteria for self-declared environmental claims regarding 'sustainability' in relation to both wild-caught fish and aquaculture" in Sections 5 and 6:**

- The alternative route set out under the heading "OR" (Option 2) to claims regarding 'sustainability' will remain (agreed by unanimous show of hands)- the Secretariat is to tighten the wording with regard to this option to ensure as much as possible that it is equivalent with the main certification to third party standard route to claims of sustainability (Option 1). In this context, it was noted that paragraph (b) might not be sufficient, so may need to be re-formulated to ensure an equivalent standard (the Secretariat will provide suggested wording).
- Under the heading "OR" (Option 2): paragraph (c) should provide for *annual* reassessment, not reassessment every five years.
- Under the heading "EITHER" (Option 1), first bullet point, paragraph (g): the words "where required" will be removed, so that it reads "the certification label is provided on pack/in the communication unless this is not required under conditions specified in the certification."

## **Item 2: Claims regarding 'responsibility'**

**Under the heading of "Minimum criteria for self-declared environmental claims regarding 'responsibility' in relation to both wild-caught fish and aquaculture" in Sections 5 and 6:**

- Under the heading "EITHER" (Option 1) remove:

- paragraph (d) "where relevant, the use of labels is consistent with the relevant ISO standard guidelines on product labelling";

- paragraph (f) "any certification is consistent with the FAO guidelines for the eco-labelling of fish and fishery products from marine capture fisheries";

- paragraph (g) "where required, the certification label is provided on pack/in the communication unless this is not required under conditions specified in the certification".

- Under the heading "OR" (Option 2) remove:

- paragraph (b) "audits are performed by independent auditors that are accredited to a standard by recognised international accreditation, meeting, at a minimum, ISO65";

- paragraph (d) "where relevant, the use of labels is consistent with the relevant ISO standard guidelines on product labelling";

- paragraph (e) "where relevant, any independent audit and confirmation is consistent with the FAO guidelines for the ecolabelling of fish and fishery products for marine capture fisheries / on aquaculture certification".

- Under the second "OR" heading (Option 3), second bullet point, which begins "has achieved a 'low risk' risk assessment evaluation", remove rest of paragraph ("and actions ... Fish Sourcing"); this will be discussed at a future working group regarding engagement, Aquaculture Improvement Projects (AIPs) and Fisheries Improvement Projects (FIPs).

- Under the third "OR" heading (Option 4), the secretariat will re-draft the wording around actions "being taken".

### **Item 3: For claims regarding both 'sustainability' and 'responsibility'**

**Under the heading of "Minimum criteria for self-declared environmental claims regarding 'sustainability' and regarding 'responsibility' in relation to both wild-caught fish and aquaculture" in Sections 5 and 6:**

- The first bullet point, starting "sufficient measures", to read: "independently audited chain of custody with sufficient measures in place...."
- Under the heading "EITHER" (Option 1), first bullet point, paragraph (e): a statement will be added to the effect that "the standard must be publically available upon request".
- Under the heading "Additional points", the following phrase in the first paragraph is to be re-worded: "...and/or the fishery no longer meets the conditions set out above..." to make it clear that the paragraph covers all potential claims of 'sustainability' (both Option 1, certification to third party standard; and Option 2, alternative equivalent approach), and that there should be a sufficient grace period to allow old stock to be sold.
- Under the headings "EITHER" (Option 1) and "OR" (Option 2), paragraph (c): amend paragraph to state that aquaculture audits should occur every two years rather than five.

### **Item 4: Section 7, under the heading "Re-assessment"**

- The flow chart should be amended to include an arrow directly from 'low risk' to 'responsible'.
- The word "periodically" in the first paragraph will be replaced with the word "annually".
- Everything in the second paragraph will be removed from the code and put into guidance, except the sentence "re-assessment should be a function of the outcome of the risk assessment".

### **Item 5: Section 8, under the heading "General commitments"**

- In the first sentence, the word 'robust' will be changed to 'sufficient'.
- The words "or voluntary environmental label used" in the first sentence will be deleted.
- Members to vote to give their preferred percentage tolerance for incidental elements, such as stock, in fish products or dishes. The options are 0%, 5% or 10%.

### **Item 6: Section 9, under the heading "Member's commitment"**

- The third paragraph ("Where any self-declared environmental claim... point of sale") will be removed and move into the guidance. A reference to publication on a web-site will also be inserted into the last sentence of this paragraph in the guidance.

### **Item 7: Mutual cooperation**

The wording in both the Labelling and Sourcing Codes will not be changed with regard to mutual cooperation (options for sharing engagement with fisheries and aquaculture). Any reference to this will be put in the guidance document. This will be discussed at a future working group regarding engagement, Aquaculture Improvement Projects (AIPs) and Fisheries Improvement Projects (FIPs).

### **Purpose of members' meeting**

1. To discuss the labelling code with regard to competition law.
2. To discuss and agree the risk assessment process for the labelling code.
3. To discuss the sourcing code, report on the progress and discuss engagement with high/medium risk fisheries/aquaculture.
4. To discuss communications, review designer quotes for SSC logo and agree next steps.
5. To discuss the SSC Key Performance Indicators (KPIs).

Please note that we did not have time to discuss all issues as set out in the Agenda. Outstanding issues were options for an SSC logo and SSC Key Performance Indicators.

### **Item 1: Amendments to the code regarding claims of 'sustainability' and competition law issues**

A ClientEarth competition law expert presented the potential implications of competition law for the labelling code. It was explained that the members, collectively, have a large share of the seafood market and thus their decisions within the SSC are likely to have an appreciable effect on the seafood market. This is relevant for the code in relation to claims regarding 'sustainability'.

The problem identified was that in the previous version of the code (version 5), there was only one way to make a claim regarding 'sustainability': certification to a third party standard. Although the code did not restrict this to one certification scheme only, it had become clear during the ongoing discussions surrounding the labelling code that currently there is, in fact, only one third party standard certification scheme that meets the conditions the members had agreed for 'sustainability' claims. This scheme is the Marine Stewardship Council's certification scheme. A number of benchmarking activities are currently in progress which may, in future, show which other third party certification

standards are suitably robust. However, they are not sufficiently developed yet to be able to say that there is definitely at least one alternative third party standard certification scheme.

Therefore, currently, by only providing for 'sustainability' claims where there is certification to a third party standard, the code would very likely infringe competition rules. If there was another certification body which met the criteria, there would not be a competition law issue.

A solution, devised by the secretariat, was presented to the members. This was to insert an alternative route to the use of claims regarding 'sustainability', which does not involve 3<sup>rd</sup> party auditing, but 1<sup>st</sup> or 2<sup>nd</sup> party auditing.

### Discussion and comments

- Several queries were discussed regarding whether Marine Stewardship Council (MSC) certification is really the only body which fits the criteria detailed in Version 6 of the code for making a claim of 'sustainable', as were questions of whether the alternative route is really necessary to comply with competition law.
- There was a suggestion that the certification scheme 'KRAV' may satisfy the conditions of the third party certified route to claims regarding 'sustainability', but there was uncertainty about the system and whether it would be applicable in the UK.
- It was clarified by the legal expert that if there was one other certification scheme which met the criteria for the 'certified route to sustainable' there would not be an issue with competition law.
- It was clarified that the SSC does not want to solely endorse any one standard. If a member does not believe that the MSC provide a robust enough system to enable the use of a claim regarding 'sustainability' then they are not required to use such a claim.
- The suggestion was made that the Alaskan scheme might qualify in this context. However, it was clarified that the Alaskan scheme only uses the term 'responsible' and therefore does not apply to claims regarding 'sustainability'.
- Queries were raised in relation to enforcement and traceability of the proposed alternative route to making a claim regarding 'sustainability'.
- It was agreed that the alternative route must be truly equivalent to the certification route to claims regarding 'sustainability' in order to ensure that claims regarding 'sustainability' can only be made if similarly high standards are met.
- It was also agreed that the wording of the alternative route to a claim regarding 'sustainability' will need to be further amended to ensure this is the case.
- It was clarified by the secretariat that the alternative route to using labels regarding 'sustainability' has to be ISO65 compliant, and making the alternate route equivalent has been considered.

- In response to a question about whether it was necessary to refer to ISO in the alternative route, secretariat clarified that ISO is a standard setting body, not a certification body, and therefore for claims regarding 'sustainability' the auditors would need to conform to those standards.
- A member raised an issue concerning the comprehensiveness of current or potential future alternative certification schemes for claims regarding 'sustainability'. It was suggested that although the Global Sustainable Seafood Initiative (GSSI) benchmarking process may show which standards are suitably robust, the results will not be available for some time. A list of certification benchmarking studies currently underway will be circulated to the members. The results of these may inform decisions regarding which certifications are credible and robust.
- A number of members queried how the alternative route to a claim regarding 'sustainability' would be enforced.
- Two members stated that they use a certification other than the MSC for the seafood products they sell. In both cases this was Friend of the Sea. However, when questioned whether the members regarded this certification as 'sustainable' and equivalent to the MSC certification (and satisfying the conditions set out in the code for meeting third party certification standards), all agreed that they were not equivalent and would not meet the conditions set out in the code.
- Some members stated that they would prefer not to have the alternative route to a claim regarding 'sustainability', suggesting that reference to third party standards is crucial if the code is to be robust. However, to comply with competition law, if more than one suitably robust standard is not available, the code must have an alternative route to a claim regarding 'sustainability'.
- It was raised that the alternative route has to be consistent with the FAO Code of Conduct for Responsible Fisheries and would require a rigorous and trustworthy auditing system.
- It was agreed that the alternative route to claims regarding 'sustainability' should remain in the code. In the future, when the SSC is certain that another certification standard meets the conditions of the code, the alternative route can be taken out. Having an alternative route at this stage eliminates any risk surrounding competition law, as the SSC cannot currently be certain that there is more than one certification to a third party standard that meets the conditions in the code.

**Agreed:** As written in the summary points for Item 1.

**Actions:**

- Secretariat to re-draft the code according to agreed actions above.
- Secretariat will circulate an update on current benchmarking studies from Seafish.

## **Item 2: Amendments to the code for claims regarding 'responsibility'**

### **Discussion and comments**

Members were of the opinion that some of the criteria for Options 1 and 2 were not necessary for claims regarding 'responsibility'.

**Agreed:** As written in the summary points for Item 2.

**Actions:** Secretariat will redraft code according to agreement.

## **Item 3: Amendments to the code for claims regarding both 'sustainability' and 'responsibility'**

An issue was discussed regarding use of the MSC logo on products, referred to in Sections 5 and 6, under the heading "EITHER" (Option 1), paragraph(g): "where required, the certification label is provided on pack/in the communication unless this is not required under conditions specified in the certification". At previous labelling working group meetings it has been stated by a representative from the MSC that according to the trademark laws surrounding the MSC logo, if a business wishes to be able to use MSC certification to justify a claim regarding 'sustainability', then the MSC logo must be displayed on the product packaging and chain of custody must be in place. The code requires that members are able to prove their claims regarding 'sustainability' on request. If a member chooses not to display the MSC logo on the pack, then they would not be able to name MSC certification as justification for that claim.

Following clarification from the MSC at the working group, we received a number of queries on this issue from members, and so had a telephone call with MSC which confirmed the details outlined above.

### **Discussion and comments**

- The decision to use the MSC logo on product packaging is an internal marketing decision for each member to decide, and to agree with the MSC.
- The secretariat pointed out that this is also an issue of traceability and transparency, key elements of the code. If a member wants to use MSC certification to justify their claim, but does not want to use the logo on pack, they will not be able to name the MSC as the certification standard used.

**Agreed:** As written in the summary points for Item 3.

**Actions:** Secretariat will redraft code according to agreement.



#### **Item 4: Amendments to the code in Section 7, "Re-assessment"**

**Agreed:** As written in the summary points for Item 4.

**Action:** Secretariat will redraft code according to agreement.

#### **Item 5: Amendments to the code in Section 8, "General commitments"**

##### **Discussion and comments**

A member suggested there should be a percentage tolerance, such as 5 or 10 per cent, to allow for traceability uncertainties relating to some incidental elements. An example of this would be stock, which is often made using trimmings, and where whole pieces of fish do not remain in the final product. It was suggested this would only be applicable to incidental elements and not whole fish or seafood, and that members should vote on their preferred percentile in order that the secretariat can amend the code as necessary.

**Agreed:** As written in the summary points for Item 5.

##### **Actions:**

- Secretariat will redraft code according to agreement.
- Members to respond to a Doodle poll organised by secretariat to give their preferred percentage tolerance (either 0%, 5% or 10%) for incidental elements in fish products or dishes.

#### **Item 6: Amendments to the code in Section 9, "Member's commitment"**

**Agreed:** As written in the summary points for Item 6.

**Action:** Secretariat will redraft code and write the guidance according to agreement.

## **Item 7: Mutual cooperation in relation to both the Labelling and Sourcing Codes**

At a previous working group the definition of “active engagement” was discussed. It was felt that a working group on this topic should be organised, in order to create some guidance. This could include a discussion on Fisheries Improvement Projects (FIPs) and mutual cooperation.

Additionally, a number of members had discussed the idea of mutual cooperation for engagement with fisheries and aquaculture operations. The issue was discussed again at this meeting.

Please note the sourcing code was not discussed further at this stage as intended, however the issue of engagement with fisheries and aquaculture is relevant to both codes.

### **Discussion and comments**

It was raised whether the engagement of a business with a fishery or aquaculture operation (whether or not the business is an SSC member) should allow other members to benefit from this work. This would allow them to source or label from the fishery or aquaculture operation in question. Some members were worried about the issue of freeloading whilst others felt that the SSC should work for the greater good and that members’ cooperation was key.

**Agreed:** As written in the summary points for Item 7.

### **Action:**

Secretariat will arrange a working group meeting to discuss what is meant by ‘active engagement’ including advice on FIPs. The working group will also discuss the issue surrounding engagement by one member or business and the option for other members to benefit from this engagement. A member offered to invite a contact with expertise in this area.