Sustainable Seafood Coalition (SSC)

Labelling Working Group

Location: Food and Drink Federation Offices**,** 6 Catherine Street, London WC2B 5JJ

Date: 27th September, 2012

Number of attendees: 15 total (including 4 ClientEarth staff: Facilitator, secretariat, minute taker, secretariat/presenter

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Labelling working group meeting: Summary of agreed points:

1. **Agreed & Action:** The code will be read over by a member of Seafish for feedback regarding tone and format.

2. **Agreed:** Two options for non-certified route to 'sustainable' to be presented to the Members:

Option 1: The wording in version 5 of the Code will remain, with amendments: "There may be an opportunity **in future** to provide an alternative, non-certified route to a claim regarding 'sustainability', **at least requiring risk assessment and extra evaluation steps. The necessary process is to be determined by the SSC as the need arises**". there will not be a non certified route to use of a 'sustainable' claim within the Code itself. To ensure an alternative option can be inserted as and when needed, a point will be inserted into the Terms of Reference in relation to amendments to the Codes.

Option 2: Reference to this option will be removed from the Code itself, and a point inserted into the SSC Terms of Reference to ensure that amendments can be made to Codes of Conduct as and when agreed by the Members. This would mean that a point on a non-certified route to 'sustainable' could be inserted into the labelling Code when a need arises in the future.

NB since the meeting ClientEarth have discussed a potential legal issue with this part of the code and are researching this before the labelling code is redrafted.

3. **Agreed:** Members were generally in agreement that if a Member is not able/does not want to engage with a high risk fishery/farm, they should still be allowed to source the fish and label it is long as another Member/company is engaged with the fishery/farm and has disclosed its actions. This is subject to agreement in upcoming sourcing Code working groups.

4. **Agreed:** A claim of 'responsible' can be made for a high risk fishery when the involvement/engagement begins.

5. **Agreed:** In the flow chart, reference to a transitional period (while the sourcing code is not yet fully implemented and high risk products are still being sourced but no actions are being taken) should be removed. The box using the word 'transition' should be substituted with 'no action'.

6. **Agreed:** The conditions for independent certifications will remain the same (see e.g. points (a) – (h) page three of the Code). In particular, point (h) on chain of custody and display of the eco-label will stay in the Code.

7. **Action:** ClientEarth will look at the Conservation Alliance for Seafood Solutions (USA and Canada based initiative) framework for fisheries improvements and will email to members.

Purpose of the meeting

1. Whether the tone and format of the Code is appropriate
2. Discuss the non-certified route to the label 'sustainable' and if it should be included.
3. To ensure that the labelling Code process integrates with the sourcing Code and AIPCE-CEP Principles document.
4. To clarify and agree where organic certification fits under the Code.
5. Discuss conditions for independent certification.
6. Add to important points in guidance and discuss how the document should look.

Agenda Item 1. Code Format.

- Are the tone and format of the Code appropriate for readability purposes?

Code format and tone - Discussion

- It was felt that the Code is suitably brief.

- Members agreed with the secretariat's suggestion that Seafish could review the Code once the content is agreed.

Agreed: There were no other concerns regarding the format and tone of the document but it should be reviewed by someone unfamiliar with the details of the Code.

Action: SeaFish will share with colleagues for feedback on tone and format once ClientEarth have sent version 6 to them.

Agenda Item 2. Non certified route to 'sustainable'.

Discussion

- Practical examples relating to this route were discussed, with no member able to suggest a specific example for when they would wish to make a claim of 'sustainable' in relation to a non-certified product and how this claim may be verified.

- However, it was pointed out that one possible instance where a Member might want to do so is where a fishery/farm has been certified previously, but decides not to pay for renewal of the certification.

- The secretariat made it clear to the Members that the secretariat would not be undertaking any assessments regarding non-certified sustainable claims, and issues for licensing, trademarks etc are for individual members to discuss with the certification schemes

- Despite concerns about governance of the option and how it could be equivalent to independent certification, it was considered important that there be a route within the Code in case a situation arises where a member would wish to label fish as 'sustainable' without it being certified.

- Suggestion that the possibility should be mentioned in the Terms of Reference rather than in the Code.

Agreed: Two options will be presented to Members:

1) The following phrase will be included in the text of the Code (as in version five, with slight amendments): "There may be an opportunity **in future** to provide an alternative, non-certified route to a claim regarding 'sustainability', **at least requiring risk assessment and extra evaluation steps. The necessary process is to be determined by the SSC as the need arises".**

Or

2) Reference to this option will be removed from the Code itself, and a point inserted into the SSC Terms of Reference to reflect the fact that the Codes are dynamic documents and may be subject to amendments as and when agreed by the Members. This would mean that a point on a non-certified route to 'sustainable' could be inserted into the Code when a need arises in the future.

Action: ClientEarth as Secretariat will send the new wording to those members who were not present at the meeting for feedback and arrange a working group to discuss further, if necessary. **NB since the labelling WG meeting, ClientEarth have discovered a potential legal issue with this route and are currently researching before redrafting the labelling code/discussing at the members meeting**

Agenda Item 3. Labelling Code Process

1. Engagement with high risk fisheries.

- The facilitator asked whether Members thought it would be appropriate for other Members of the Coalition who are not investing in improvement of a high risk fishery/farm to be able to source from that fishery/farm if another coalition member engaging with it? This would benefit businesses (e.g. small/medium enterprises) who choose not to engage themselves, or cannot do so. However some businesses who are doing the engaging may not feel comfortable with this/disclosing their actions on improvement projects.

- Does the engagement need to be conducted by a member of the SSC or can it be any company?

Discussion

The issue of defining engagement was raised and was clarified that engagement is clearly outlined in the AIPCE-CEP document and members should use these guidelines to establish improvement initiatives.

Agreed: Members were generally in agreement that if a Member is not able/does not want to engage with a high risk fishery/farm, they should still be allowed to source the fish and label it as long as another Member/company is engaged with the fishery/farm and has disclosed its actions. This is subject to agreement in upcoming Sourcing Code working groups.

Action: It will be included in the Code that engagement with a high risk fishery should be according to the AIPCE-CEP Principles.

2. Transition period between the labelling and sourcing code.

- The labelling Code is likely to be in effect before the sourcing Code. For this transition phase prior to the sourcing Code completion there is an issue regarding labelling of fish and seafood which are being sourced from high risk fisheries but where actions are not being taken to drive improvement. When the sourcing Code comes into effect, sourcing from a high risk fishery will not be possible unless actions are being taken. The secretariat reflected this in the flow chart in version five of the labelling Code.

Discussion

- A high risk fishery should not have a claim relating to 'sustainability' or 'responsibility'.
- Many members felt it would be more appropriate for the Codes to come into effect at the same time.

- The transition box is confusing and should be removed from the diagram.

- Issue raised regarding stock which has already been labelled, prior to the labelling Code being implemented. This relates to implementation period and should be considered when considering the implementation timeline.

Agreed/Action: Changes were made on the screen to the presentation of the diagram which were agreed by all members.

A claim of 'responsible' can be made for a high risk fishery once the

involvement/engagement begins: see figure below

3. The certified route to a label of 'sustainable'.

- Changes to layout for low risk outcomes have unintended consequences.

- MSC breach of trademark issue in a situation where 'sustainable' claim is being made, and certification is the justification for that claim, but member does not use eco-label and/or does not have chain of custody for the certified fish.

Discussion

- Risk assessment process discussed, first step of risk assessment should be to see if the fishery is certified. This advice should be written in the guidance document. The Member may then choose whether to carry out a full risk assessment themselves, or just to use independent certification (that meets criteria in the code) to justify sourcing and labelling.

- Issue regarding the MSC trademark. Any claim based around the MSC must have the MSC trademark displayed on the pack or product. The MSC hold a licence for their name to be used and their name cannot be mentioned unless they give permission, legally requiring the label to be displayed on the product. If the MSC name is used, without their logo displayed on products and/or chain of custody, it is a breach of their trademark and they have the right to take action against this.

- This is important to the Coalition because a principle of the Coalition is to have transparency about sourcing and labelling. Theoretically, if a retailer had a supply of fish from a certified fishery, but did not want to pay for the MSC certification for the product, they would not be able to disclose that the fishery is MSC certified, even though it is a statement of fact: If they were asked to justify this label, they would have to explain where the fish was caught and other factors, and could go as far as to say that the fishery/farm is independently certified, but could not mention which certification as this would then be in breach of trademark. The solution for the situation described, would be for the retailer making a self declared environmental label of 'responsible'.

- Discussion regarding conditions for certification in the Code (e.g. points (a) – (h) page three). Some Members felt that point (h), in relation to chain of custody and

use of the eco-label on pack, would prohibit the labelling of their fish and seafood if they choose not to pay the MSC to use their trademark. However others noted that the FAO guidelines on ecolabelling[1] require chain of custody and use of the eco label on pack. Therefore if point h was deleted it would breach the requirements of the FAO code in point (c). In addition, it was also noted that FAO private standards document[2] suggests that only providing a claim of sustainable by certification could be unfair for competitors.

- Issue regarding benchmarking of certifications to aid members in implementing the code when using third party certification as justification for their claim. . It was pointed out that GSSI and Seafish are undertaking work on this, but this may not be complete for some time.

Agreed: Points (h) and (c) will remain in the content of the Code. Any fish or seafood which comes from a certified fishery will display the eco-label on pack. If the Member does not have chain of custody/does not want to use the eco-label on pack, they must use the non-certified route to make a claim (including carrying out a full risk assessment) and this must be explained as their justification if questioned: the secretariat will raise this issue with the Members to decide whether it should be noted in the actual code or just in the accompanying guidance document.

Action: ClientEarth will consult their lawyers regarding point (c), relating to FAO private standards, with regards to competition law (technical paper 553) and report back to members. ClientEarth will make suitable changes to the flow diagrams as agreed in the discussion. Flow chart amended in version five to show that certification comes before appropriate response

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[1] Product certification and ecolabelling for fisheries sustainability: technical paper 422

[2] FAO Private standards and certification in fisheries and aquaculture Current practice and emerging issues: technical paper 553
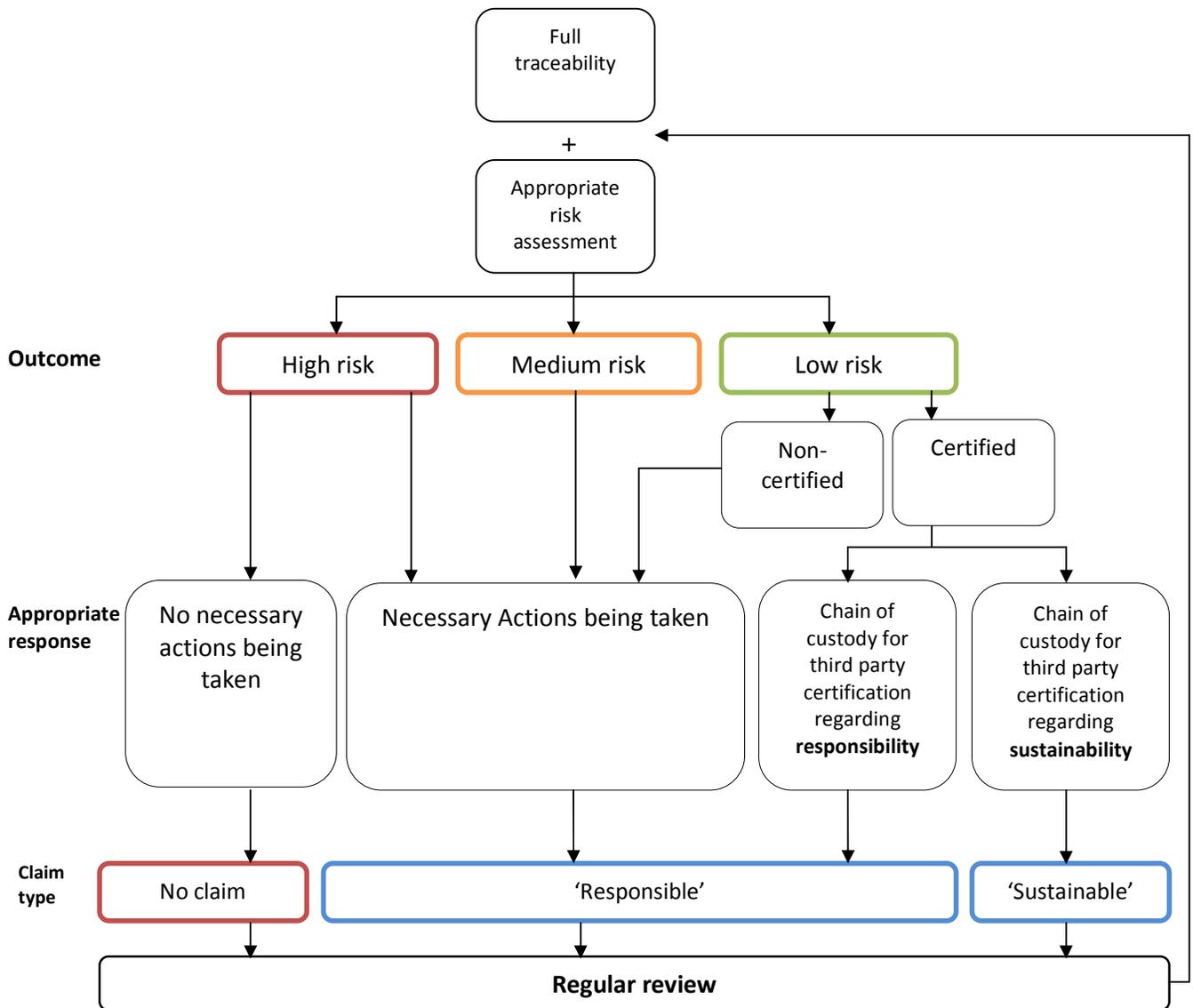
Figure 1. Amendments to labelling Code version five flow diagram

Agenda Item 6. Organic labelling being relevant to the code.

- Does the label of organic have an influence on whether a product can be labelled 'responsible' or 'sustainable'?

Discussion

- Under EU regulation on organic production labelling of organic products, organic does not mean 'responsible' or 'sustainable' by definition. For labelling or products, specific rules are set out in artiles 23-25 of the regulation, and state that only products satisfying the rules of the regulation can be labelled as "organic", "eco" or "bio". The aim of the Regulation is *to "provide the basis for sustainable development of organic production"* (Article 1).

Under the principles of organic production within the regulation:

- Reference is made to using production methods that "practice land-related crop cultivation and livestock production or practice aquaculture which complies with the principles of sustainable exploitation of fisheries" (Article 4). This is interpreted as a reference to the sustainability of feed fisheries.

- "the maintenance of the biodiversity of natural aquatic ecosystems, the continuing health of the aquatic environment and the quality of surrounding aquatic and terrestrial ecosystems in aquaculture production" (Article 5)

- "the feeding of aquatic organisms with feed from sustainable exploitation of fisheries as defined in [the CFP] or with organic feed composed of agricultural ingredients from organic farming and of natural non-agricultural substances" (Article 5).

Agreed: Organic certification will not be specifically mentioned in the code as it should not automatically mean a claim of 'sustainable' can be made. Organic certification should therefore be considered in the same say as other independent certifications and may be relevant to a claim of 'responsible' or 'sustainable' if the conditions of the Code are met. A point may need to be inserted into the guidance to ensure that if the product is organically certified, it must meet the requirements of the EU Organic Regulation

Action: No action.

Agenda Item 7. Self Declared claims (change from original agenda).

- At what point of engagement/necessary actions would a label of 'responsible' be applicable?

Discussion

- There is international interest relating to this issue. There is an upcoming ISO meeting to discuss if there need to be further improvement of standards.

- Discussion around when to pull out of a fishery which has been working to improve but is not meeting agreed targets and milestones.

- What 'active engagement' means discussed. Engagement by observing actions taken by fishery and if those aim to improve, sourcing from the fishery is an adequate engagement.

- On the diagram, concern over the use of the term 'necessary actions': just 'actions' or 'appropriate actions' would be preferred

Agreed: ClientEarth will look at the Conservation Alliance for Seafood Solutions (USA and Canada based initiative) framework for fisheries improvements and will email to members.

Action: ClientEarth will draft the suggested actions and send to members via email.

Agenda Item 8. Guidance Document.

- What needs to be included in the guidance document?

- Should there be a separate glossary?

- Should there be a summary e.g. executive summary?

Discussion

- Short print runs would be preferential.

- Ideas for spread of guidance documents: wipe down sheets for use in kitchens; thumb drives (suggestion that members who desire such forms of the document to fund their production).

- Further case studies and examples can be added to the document.

- Suggestions for appropriate and useful content:

  - Case studies and worked examples using decision and flow charts thought to give useful insight into how to apply the code.

  - Interactive questions on the internet.

  - Varied examples would be beneficial.

  - FAQs for the purpose of NGOs and journalists.

  - Smart online guidance for each sector

  - Advice to get a web agency to design a professional, polished 'smart' and easy to use guidance webpage as opposed to implementing online support in the form of a web chat.

Agreed: There will be a separate glossary in the guidance document. There will not be summaries of other documents as the detail is important for understanding their relevance in the implementation of the code.

Action: A separate glossary will be included in the guidance document. The secretariat will explore the suggestions made during the discussion, and feed to the members for further discussion.