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FAO's ecolabelling guidelines for marine capture fisheries: an international standard

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Abstract: Many of the world's marine fisher resources are either overfished or fully exploited and global production from wild stocks is close to its long run biological maximum. Consumer awareness about the serious condition of many marine fishery resources has grown, especially in OECD countries. The objective of eco-labelling of fish and fishery products is to achieve the goal of sustainable fisheries, in line with the FAO Code of Conduct for Responsible Fisheries and other related international instruments.

Key words: fisheries ecolabelling, FAO guidelines, equivalence, barriers to trade.

7.1 Introduction

Many of the world's marine fisher resources are either overfished or fully exploited. In 2008, the Food and Agriculture Organization's *State of World Fisheries and Aquaculture* (SOFIA) reported that more than one quarter of the monitored fish stocks were overfished, depleted or recovering while another more than one half were fully exploited, which means that they were estimated to be producing catches at the maximum that could be sustained over time. In a poorly managed fishery, full exploitation may just be an intermediate state of a stock on its way to being over-exploited. Only one-fifth of the stocks – down from two-fifths in the 1970s – remain under-exploited or moderately exploited. Global production of

seafood from wild stocks is therefore close to its long run biological maximum (FAO 2008a).

The world's marine fisheries are also performing badly in economic terms. A recent World Bank–FAO study notes that the contribution of the harvest sector of the world's marine fisheries to the global economy is substantially smaller than it could be. It estimates the annually lost economic benefits in the order of $50 billion. Over the last three decades, the cumulative global loss of potential economic benefits is estimated in the order of $2 trillion. The losses represent the difference between the potential and actual net economic benefits from global marine fisheries (World Bank and FAO 2009).

Those who carry the heaviest burden of over-exploited fishery resources in biological and economic terms are the millions of often poor and vulnerable fishery-dependent communities of developing countries and low income consumers who rely on fisheries and fish for their livelihoods and food security.

7.2 Why ecolabelling

The objective of ecolabelling of fish and fishery products is to achieve the goal of sustainable fisheries. This is in line with the objectives pursued through the FAO Code of Conduct for Responsible Fisheries (CCRF) and other related international instruments, in particular the 1982 United Nations Convention on the Law of the Sea and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.[1]

Ecolabelling is a market-based instrument which usually relies on and reinforces management measures taken by government fisheries management agencies.[2] The Nordic Technical Working Group on Eco-labelling Criteria (2000) identified the following positive incentives that are created by ecolabels for products from capture fisheries:

- The fishing community is provided with a market incentive to request that authorities manage fish stocks in a responsible precautionary way.
- Governments are given an incentive to upgrade their fisheries management practices to improve the market situation for national fisheries products.
- Authorities are given an incentive to improve research and the monitoring of their fish stocks and fisheries.

Consumers' product choices and their willingness to pay a higher price for an ecolabelled product will depend on their general responsiveness and capacity to

[1]The text of the 1982 Convention and 1995 Agreement can be found on this Internet address: http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

[2]A comprehensive review of the principles and practice of seafood ecolabelling has been edited by Ward and Phillips (2008).

address environmental concerns through their purchasing behaviour and their awareness and understanding of the specific objectives pursued through the labelling scheme. Consumer awareness about the serious condition of many of the world's marine fishery resources has grown globally but especially in OECD countries which include many of the major importers of seafood products. Fishery products are among the most traded and valued food products. In 2006, nearly 40 percent of global fish production was internationally traded at an aggregate value of $85.9 billion of which nearly one half by developing countries (FAO, 2008a).

There are growing numbers of consumers in Japan, Germany, Switzerland, the UK, the USA, and other countries, including urban consumers of developing countries, who take into account the environmental impact of their purchases including fishery resources. For some years, there have been ecolabelled seafood products from the Marine Stewardship Council (MSC) or following the numerous and varied recommended buyers' lists from environmental organisations of 'sustainable' or 'non-sustainable' fish purchases, although some are not fully reliable. Consumers are increasingly lured by many of the major retail chains which have guidelines for their suppliers regarding various criteria including environmental friendliness as well as employee working conditions.

7.3 History of the FAO ecolabelling guidelines for fish and fishery products

The impetus for addressing the issue of ecolabelling of fisheries products in FAO arose from the launch of the MSC initiative by Unilever PLC/NV and WWF, a leading environmental organisation, in early 1996. In their joint Statement of Intent, WWF noted its wish for 'a new approach to ensure more effective management of marine life', while Unilever PLC/NV, a major buyer of frozen fish and manufacturer of many of the world's best-known frozen-fish products, expressed 'its commitment to long-term fish stock sustainability to ensure a future for its successful fish business'.[3]

The reactions to the initiative of WWF and Unilever were mixed. While it was applauded by some industry groups, conservation organisations and governments, many fisheries stakeholders and governments were initially sceptical about the intentions of this unlikely partnership between a big corporate player in the fish processing and retailing business and an environmental non-governmental organisation (NGO) which until that time was perceived as having greater interests in marine conservation than supporting the fishing industry.

At the intergovernmental level, the matter was discussed controversially in several sessions of the FAO Committee on Fisheries (COFI) and sessions of its Sub-Committee on Fish Trade from 1997 onwards. It was also considered in a technical consultation of government-nominated experts in 1998 which investigated the feasibility and practicability of developing non-discriminatory, globally

[3]Cited in ICSF (1998; p. 6).

applicable, technical guidelines for the ecolabelling of fish and fishery products from marine fisheries. Unanimity among FAO members on the need for an international normative instrument on fisheries ecolabelling was, however, only reached at COFI, 2003.

Several factors are likely to have influenced a change in COFI, 2003 by relatively few countries which had opposed international ecolabelling guidelines. The issue of labelling requirements for environmental purposes had become, since the 4th World Trade Organization (WTO) Ministerial Conference in Doha, November 2001, an issue of special focus in the work of the WTO Committee on Trade and Environment (CTE). At Doha, WTO members instructed the CTE to undertake further work on labelling requirements for environmental purposes and in particular to:

- look at the impact of ecolabelling on trade,
- examine whether existing WTO rules stood in the way of ecolabelling policies, and
- identify any WTO rule that would need to be clarified.

In its report to the 5th Session of the WTO Ministerial Conference in Cancún, most CTE Members agreed that voluntary, participatory, market-based and transparent environmental labelling schemes were potentially efficient economic instruments that informed consumers about environmentally friendly products. Importantly, the report noted that ecolabelling tended, generally, to be less trade restrictive than other instruments. However, it also noted that environmental labelling schemes could be misused for the protection of domestic markets. Hence, these schemes needed to be non-discriminatory and not result in unnecessary barriers or disguised restrictions on international trade (WTO, 2003).

Another important factor that might have tipped the balance in favour of the development of FAO ecolabelling guidelines was the fact that the MSC programme was moving successfully ahead and encompassing an increasing number of fisheries and certified product lines. There was also an increasing number of large wholesale and retail chains which announced green procurement guidelines for their fishery products and commitments in the medium term to only procure fish from sustainable sources, including MSC certified fisheries. Thus, it became clear that important segments of market demand in the large fish importing countries were moving towards certified products. A 'green image' became an important strategy to maintain and expand market shares in the food products industry.

Thus a consensus emerged among FAO members on the need for international harmonisation of criteria and procedures and related issues such as equivalence and mutual recognition. This would avoid ecolabelling programmes in fisheries discriminating against certain producers, kinds of fisheries or countries. It would also help to avert a situation that may arise where a series of competing ecolabelling schemes were to apply different standards and criteria causing confusion rather than providing for more informed purchasing behaviour by consumers (Cochrane and Willmann, 2000).

7.4 The development of the FAO ecolabelling guidelines

With the blessing of its members provided at COFI, 2003, FAO initiated the process of developing international ecolabelling guidelines for fish and fishery products from marine capture fisheries. FAO first convened a consultation of experts in their individual capacities in October 2003. The Consultation brought together experts from different disciplines, regions and institutional backgrounds (government, industry, conservation organisations, small-scale fishers) of whom several took part in subsequent negotiation stages as members of their government delegations or as non-governmental observers. The report from the Expert Consultation (FAO, 2003) provided a background document for the subsequent Technical Consultation. The Technical Consultation of experts representing their governments and observer organisations initiated the intergovernmental negotiations proper, in October 2004 (FAO, 2005a). As number of issues of concern and controversy could not be resolved during that meeting, another round of consultation was held to try to reach agreement on these just prior to the 26th session of COFI in March 2005. A particular concern, particularly amongst developing countries, was, and still is, that the ecolabels could be used as technical barriers to trade. Negotiations continued alongside COFI in a small group representing the different regions and interest groups. COFI adopted the final text by consensus, but a few country delegations expressed reservations that have been reflected in the COFI Report (FAO, 2005b). Subsequently, the FAO Secretariat was asked to undertake further work on the minimum substantive requirements set out in the guidelines. After consultation with a group of experts, some amendments to and expansions of this section of the 2005 guidelines were proposed (FAO, 2008b). These amendments were adopted by the 2009 Session of COFI in March 2009 and the revised final guidelines will be published this year.[4]

In the following section, selected provisions of the guidelines including the latest revisions are presented to explain the key intent of the guidelines and comment on the evolution of the text through the various drafting and negotiation stages. Their normative basis is indicated in the guidelines themselves and includes, in particular, the 1982 UN Convention on the Law of the Sea, the 1995 UN Fish Stocks Agreement, the 1995 Code of Conduct for Responsible Fisheries, relevant guides of the International Organization for Standardization (ISO) and provisions of the WTO Technical Agreement on Barriers to Trade, especially ANNEX 3 *Code of Good Practice for the Preparation, Adoption and Application of Standards.*

The text of this chapter follows the structure of the guidelines – Scope, Principles, General considerations, Terms and definitions, Minimum substantive requirements and criteria and Procedural and institutional aspects.

[4]The text of the 2008 amendments to the 2005 Ecolabelling Guidelines is shown in Appendix E of FAO (2008b): ftp://ftp.fao.org/docrep/fao/010/i0006e/i0006e00.pdf. The text of the 2005 Guidelines is shown here: ftp://ftp.fao.org/docrep/fao/008/a0116t/a0116t00.pdf)

7.4.1 Scope

The initial mandate by COFI in 2003 was to develop guidelines for the ecolabelling of marine capture fisheries only. This was extended to inland capture fisheries, as a separate set of guidelines, by COFI in 2005. Draft ecolabelling guidelines for inland fisheries were developed by an expert consultation in 2006, but further work was requested by COFI, 2007 and 2009. As they are not yet finalised, they are not cited in the following. However, key differences between the two sets of guidelines are explained in the annotations.

The text of Paragraph 1 on the scope reads as follows:

> *These guidelines are applicable to ecolabelling schemes that are designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.*

The exclusion of social and economic or health and safety aspects from the scope of the guidelines is notable. This is in keeping with the views expressed by most governments at the 1998 FAO technical consultation. It would have been very unlikely, if at all possible, that international consensus among governments could have been reached on standards relating to social and economic factors.

As a significant portion of production from inland waters is derived from culture-based and enhanced fisheries these fisheries, are included within the scope of inland capture fisheries although the actual boundary between aquaculture and capture-based fisheries for the purposes of ecolabelling guidelines still needs to be clarified (FAO, 2006, 2008b).

7.4.2 Principles

The full set of principles elaborated by the 1998 technical consultation were maintained with some amendments and re-ordering. For the inland fisheries guidelines, references to the Convention on Biodiversity and the Ramsar Convention on Wetlands were added.

The text of the Principles reads:

> *2. The following principles should apply to ecolabelling schemes for marine capture fisheries:*
>
> *2.1 Be consistent with the 1982 United Nations Convention on the Law of the Sea and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Code of Conduct for Responsible Fisheries and the World Trade Organization (WTO) rules and other relevant international instruments.*
>
> *2.2 Recognize the sovereign rights of States and comply with all relevant laws and regulations.*

2.3 Be of a voluntary nature and market-driven.
2.4 Be transparent, including balanced and fair participation by all interested parties.
2.5 Be non-discriminatory, do not create unnecessary obstacles to trade and allow for fair trade and competition.
2.6 Provide the opportunity to enter international markets.
2.7 Establish clear accountability for the owners of schemes and the certification bodies in conformity with international standards.
2.8 Incorporate reliable, independent auditing and verification procedures.
2.9 Be considered equivalent if consistent with these guidelines.
2.10 Be based on the best scientific evidence available, also taking into account traditional knowledge of the resources provided that its validity can be objectively verified.
2.11 Be practical, viable and verifiable.
2.12 Ensure that labels communicate truthful information.
2.13 Provide for clarity.
2.14 Be based, at a minimum, on the minimum substantive requirements, criteria and procedures outlined in these guidelines.
3. The principle of transparency should apply to all aspects of an ecolabelling scheme including its organizational structure and financial arrangements.

Principle 2.1 was included to give assurance that ecolabelling schemes will not contravene widely accepted or ratified international instruments.

Principle 2.14 establishes the FAO guidelines as a minimum standard for any capture fisheries ecolabelling scheme. Whether the guidelines should be considered *the* international standard within the framework of WTO rules and regulations is open to interpretation for reasons discussed in greater detail in Wessells *et al*. (2001). WTO does not claim to be the appropriate forum for discussions on the general usefulness of ecolabelling schemes or what constitutes appropriate criteria for assessing sustainability. Indeed, WTO explicitly defers such issues to international agreements or bodies with appropriate expertise (Wessells *et al*., 2001).

The precise formulation of Principle 2.6 was controversial until nearly the end of the negotiations that took place during the process of adoption of the guidelines in COFI, 2005. Some felt that its intent was already reflected in Principles 2.1 and 2.5. Others argued that the idea of gaining better access to international markets through ecolabelling schemes should be a principle by itself. Whereas Principle 2.1 already refers to consistency with WTO rules, a reiteration of this requirement was felt necessary for Principles 2.5 and 2.6. This emphasis needs to be interpreted in the context of the debate in WTO, in particular within its Committee on Trade and the Environment, on the applicability of WTO rules to environmental labelling (see Wessells *et al*., 2001). In relation to this subject, it needs to be recalled that the tuna–dolphin and shrimp–turtle trade disputes have likely caused sensitivities

among several countries and a cautious attitude to the potential implications of international ecolabelling guidelines should a trade dispute arise.[5]

7.4.3 General considerations

The intention of this section is to create, to the extent possible, an equal playing field among countries by, *inter alia*, recognising the special conditions and requirements of developing countries and countries in transition on the one hand, while calling for one unique minimum standard on the other hand, in order to avoid any notion of superior or inferior categories of ecolabelled fish and fishery products.

The section also addresses the view of many governments that they should be fully involved, not just individually but also as members of Regional Fisheries Management Organizations (RFMOs) in ecolabelling schemes.[6] It recognises that governments play, or need to play, a paramount and often indispensable role in fisheries management.

In the strict sense, RFMOs do not exist for inland capture fisheries, but the inland fisheries experts agreed to adopt throughout the text of the guidelines the wider term of regional fishery body (RFB) applicable to both RFMOs as well as to bodies having purely advisory functions.

4. *Ecolabelling schemes should take into account that principles, minimum substantive requirements, criteria and procedures set out in this document will apply equally for developed, transition and developing countries.*
5. *Bearing in mind that ecolabelling schemes relate to fisheries management, and rights and duties of States, it is recognized that the involvement of States in ecolabelling schemes is desirable and should be encouraged. It is also recognized that States and, as appropriate, Regional Fisheries Management Organizations (RFMOs) may develop ecolabelling schemes in a manner consistent with these guidelines. Ecolabelling schemes should give full consideration to the recommendations and advice by States, and, as appropriate, RFMOs.*
6. *In accordance with Article 5 of the Code of Conduct for Responsible Fisheries, and recognizing that all countries should have the same opportunities, and in view of the special*
7. *conditions applying to developing countries and countries in transition and their important contribution to international fish*

[5]Information on these trade disputes is available on the WTO Internet site at: http://www.wto.org/english/tratop_e/envir_e/edis04_e.htm and http://www.wto.org/english/tratop_e/envir_e/edis08_e.htm

[6]RFMOs are intergovernmental fisheries organisations or arrangements which have the competence to establish fisheries conservation and management measures that are binding on their members. They are the principal mechanism for cooperation between and among coastal states and fishing nations for the management of international fisheries.

trade, it is acknowledged that in order to benefit from applying ecolabelling schemes, states, relevant intergovernmental and non-governmental organizations and financial institutions should provide developing countries and countries in transition with financial and technical assistance to develop and maintain appropriate management arrangements that will allow them to participate in such schemes. Such assistance should also consider direct support towards the often high costs of accreditation and certification. Development agencies and donor institutions are encouraged to support FAO in facilitating financial and technical assistance to developing countries and countries in transition.

7.4.4 Terms and definitions

The section draws heavily on terminology, definitions and standards agreed within the framework of the International Organization for Standardization (ISO) dealing with general requirements on accreditation and certification. It also contains a series of definitions that were specifically developed by the expert and technical consultations for the marine and inland capture fisheries ecolabelling guidelines.

The concept of the unit of certification (paragraph 25) is of special interest as it provides for the possibility of a fishery becoming certified which harvests only a component of a stock. As will become evident in the next section, for purposes of gauging the health of the stock, however, the impact of all fisheries on this stock would have to be taken into account.

The inland fisheries experts concluded that geographic boundaries of inland fisheries did not need to be defined. 'As fish stocks contributing to river, lake and reservoir fisheries may also, in some cases, be caught in estuarine and marine areas, the consideration of impacts of all fisheries utilizing a stock or stocks across their entire area of distribution, including all life stages, is an important element of assessing the state of the "stock under consideration" ' (FAO, 2006).

The expert consultation on inland fisheries added terms for culture-based fisheries, enhanced fisheries and introduced species. The experts drew a line between capture fisheries and aquaculture that permits artificial stocking but not artificial feeding. Whereas the 2006 expert group meeting concluded that the enhancement features of many inland fisheries are the critical distinction from marine capture fisheries, a more recent expert consultation convened by FAO in March 2008 concluded that enhancements are increasingly used too in marine fisheries. It noted that there is no agreed boundary to determine when a fishery applying enhancement measures should cease to be considered a capture fishery. Thus the 2008 group of experts was not in full agreement on the validity of the definitions provided by the 2006 consultation and recommended that additional work be undertaken on these definitions (FAO, 2008b).

7. For the purpose of these International Guidelines, the following terms and definitions apply.

Accreditation

8. *Procedure by which a competent authority gives formal recognition that a qualified body or person is competent to carry out specific tasks.*
   (Based on ISO/IEC Guide 2:1996, 12.11)

Accreditation body

9. *Body that conducts and administers an accreditation system and grants accreditation.*
   (Based on ISO Guide 2, 17.2)

Accreditation system

10. *System that has its own rules of procedure and management for carrying out accreditation.*
11. *Note – Accreditation of certification bodies is normally awarded following successful assessment and is followed by appropriate surveillance.*
    (Based on ISO Guide 2, paragraph 17.1)

Arrangement

12. *A cooperative mechanism established by two or more parties be they governmental, private or non-governmental entities.*

Audit

13. *A systematic and functionally independent examination to determine whether activities and related results comply with planned objectives.*
    (Based on Codex Alimentarius, Principles for Food Import and Export Certification and Inspection, CAC/GL 20)

Certification

14. *Procedure by which a third party gives written or equivalent assurance that a product, process or service conforms to specified requirements. Certification may be, as appropriate, based on a range of inspection activities which may include continuous inspection in the production chain.*
    (Based on ISO Guide 2, 15.1.2 and Principles for Food Import and Export Certification and Inspection, CAC/GL 20)

Certification body

15. *Competent and recognized body that conducts certification. A certification body may oversee certification activities carried out on its behalf by other bodies.*
    (Based on ISO Guide 2, 15.2)

Chain of custody

16. *The set of measures which is designed to guarantee that the product put on the market and bearing the ecolabel logo is really a product coming from the certified fishery concerned. These measures should thus cover both the tracking/traceability of the product all along the processing, distribution and marketing chain, as well as the proper tracking of the documentation (and control of the quantity concerned).*

Complaint

17. *An objection by a person or body to a decision regarding accreditation, de-accreditation, certification or de-certification.*

Conformity assessment

18. *Any activity concerned with determining directly or indirectly that relevant requirements are fulfilled.*
19. *Notes: Typical examples of conformity assessment activities are sampling, testing and inspection; evaluation, verification and assurance of conformity (supplier's declaration, certification); registration, accreditation and approval as well as their combinations.*
    (ISO Guide 2, 12.2)

Decision

20. *Any resolution by an accreditation or certifying body or arrangement concerning the rights and obligations of a person or body.*

Ecolabelling scheme

21. *Ecolabelling schemes entitle a fishery product to bear a distinctive logo or statement which certifies that the fish has been harvested in compliance with conservation and sustainability standards. The logo or statement is intended to make provision for informed decisions of purchasers whose choice can be relied upon to promote and stimulate the sustainable use of fishery resources.*

Standard for certification

22. *Document approved by a recognized organization or arrangement, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory under international trade rules. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.*
    (Based on TBT agreement, Annex 1, para.2)

    In these guidelines, unless otherwise qualified, the word standard refers to a standard for certification. The standard for certification will include requirements, criteria and performance elements in a hierarchical arrangement. For each requirement, one or more substantive criteria should be defined. For each criterion, one or more performance elements should be provided for use in assessment.

Standard-setting organization or arrangement

23. *Organization or arrangement that has recognized activities in standard setting.*
    (Based on ISO Guide 2, paragraph 4.3)

Third party

24. *Person or body that is recognized as being independent of the parties involved, as concerns the issue in question.*
    (ISO/IEC Guide 2:1996)

Unit of certification

25. *The 'unit of certification' is the fishery for which ecolabelling certification is sought, as specified by the stakeholders who are seeking certification. The certification could encompass: the whole fishery, where a fishery refers to the activity of one particular gear-type or method leading to the harvest of one or more species; a sub-component of a fishery, for example a national fleet fishing a shared stock; or several fisheries operating on the same resources. The 'stock under consideration' exploited by this fishery (unit of certification) may be one or more biological stocks as specified by the stakeholders for certification. The certification applies only to products derived from the 'stock under consideration' (see Para. 30). In assessing compliance with certification standards, the impacts on the 'stock under consideration' of all the fisheries utilizing that 'stock under consideration' over its entire area of distribution are to be considered.*

7.4.5 Minimum substantive requirements and criteria for ecolabels

This section of the guidelines sets out the minimum substantive requirements and criteria for assessing whether a fishery can be certified and awarded an ecolabel. It keeps open the option for ecolabelling schemes to apply additional or more stringent requirements and criteria.

The drafting of this section was informed by the Code of Conduct for Responsible Fisheries, the UN Fish Stocks Agreement, the principles and criteria of the MSC as well as those elaborated by the Nordic Technical Working Group on Ecolabelling Criteria (2000), a group set up by the Nordic Council of Ministers in 2000. There were also several expert consultations (see References) that contributed to the finely elaborated text of this core section of the guidelines on the definition and assessment of a sustainable fishery. Minimum requirements are specified for each of three areas: the management systems, the fishery and associated 'stock under consideration', and ecosystem considerations. This is in keeping with the idea that both the process and the outcome of management need to be considered. The requirements and criteria exclude economic, social or safety-at-sea considerations.

This section acknowledges that conventional stock assessment methods may not be possible nor necessarily appropriate in all cases and that 'less elaborate' methods may be used (paragraph 32a). However, attention is also drawn to the need to consider the amount of uncertainty in the final outcome of the assessment and to apply the precautionary approach accordingly. The section explicitly recognises the value of traditional knowledge provided its validity can be objectively verified.

There was considerable concern amongst some countries, especially some developing countries, about the inclusion of 'Ecosystem considerations' in the minimum requirements. This arose from the knowledge that, in many countries,

current knowledge on ecosystems and ecosystem impacts is weak because of the lack of data and research due to financial and human resources constraints. The inclusion of ecosystem considerations could therefore become an effective barrier to obtaining an ecolabel and consequently a barrier to trade. This section, within the core of the guidelines, therefore represents a reasonable compromise between the position of some countries seeking more stringent requirements and criteria and others that wished to see ecosystem considerations entirely omitted from the guidelines.

In reference to the modifications to this section, the inland fisheries expert group noted that enhanced fisheries may involve a number of techniques, some of which are permanent or nearly so, e.g. species introductions and habitat modification, and some of which could be temporary. The sustainability of the target species, therefore, could depend on the maintenance of the enhancements. In the special case of culture-based fisheries, where the fishery is solely maintained by stocking from aquaculture facilities, the experts concluded that sustainability of the target species would not be the focus of an ecolabelling programme. Instead, sustainability would relate primarily to assuring optimal production in the natural ecosystem and management in a manner to conserve biodiversity and ecosystem functions (FAO, 2006).

Introduction

26. *The following sets forth the minimum substantive requirements and criteria for assessing whether a fishery can be certified and an ecolabel awarded to a fishery. Ecolabelling schemes may apply additional or more stringent requirements and criteria related to sustainable use of the resources. The requirements and criteria presented below are to be based on and interpreted in accordance with the current suite of agreed international instruments in particular the 1982 UN Convention on the Law of the Sea, the 1995 UN Fish Stocks Agreement and the 1995 Code of Conduct for Responsible Fisheries, as well as related documentation including the 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem.*
27. *Requirements are specified for each of three areas: the management systems, the fishery and associated 'stock under consideration' for which certification is being sought, and consideration of serious impacts of the fishery on the ecosystem. Criteria and related measurable performance indicators and a corresponding monitoring system should be established in order to assess the conformity of the fishery concerned with the requirements and the criteria of the ecolabelling scheme. In developing and applying the criteria and assessing the conformity of the fishery with the standard of certification, the views and opinions of States, RFMOs and FAO should be fully considered.*

Management systems

28. *Requirement: The fishery is conducted under a management system which is based upon good practice and that ensures the satisfaction of the requirements and criteria described in Paragraph 29. The management system and the fishery operate in compliance with the requirements of local, national and international laws and regulations, including the requirements of any regional fisheries management organization that manages the fisheries on the 'stock under consideration'.*
    - *28.1 For the 'stock under consideration' there are documented management approaches with a well based expectation that management will be successful taking into account uncertainty and imprecision.*
    - *28.2 There are objectives, and as necessary, management measures to address pertinent aspects of the ecosystem effects of fishing as per paragraph 31.*
29. *The following criteria will apply to management systems for any fisheries, but it must be recognized that special consideration needs to be given to small-scale fisheries with respect to the availability of data and with respect to the fact that management systems can differ substantially for different types and scales of fisheries (e.g. small scale through to large scale commercial fisheries).*
    - *29.1 Adequate and reliable data and/or information are collected, maintained and assessed in accordance with applicable international standards and practices for evaluation of the current state and trends of the stocks (see below: Methodological aspects). This can include relevant traditional, fisher or community knowledge, provided its validity can be objectively verified.*
    - *29.2 In determining suitable conservation and management measures, the best scientific evidence available is taken into account by the designated authority, as well as consideration of relevant traditional fisher or community knowledge, provided its validity can be objectively verified, in order to evaluate the current state of the 'stock under consideration' in relation to, where appropriate, stock specific target and limit reference points.*
    - *29.2bis: Taking due account of paragraph 32, for the 'stock under consideration' the determination of suitable conservation and management measures should include or take account of:*
        - *Total fishing mortality from all sources is considered in assessing the state of the 'stock under consideration', including discards, unobserved mortality, incidental mortality, unreported catches and catches in other fisheries.*
        - *Management targets are consistent with achieving MSY (or*

a suitable proxy) on average, or a lesser fishing mortality if that is optimal in the circumstances of the fishery (e.g. multi-species fisheries) or to avoid severe adverse impacts on dependent predators.

- *The management system should specify limits or directions in key performance indicators (see 30.2), consistent with avoiding recruitment overfishing or other impacts that are likely to be irreversible or very slowly reversible, and specify the actions to be taken if the limits are approached or the desired directions are not achieved.*

29.3 Similarly, data and information, including relevant traditional fisher or community knowledge, provided its validity can be objectively verified, are used to identify adverse impacts of the fishery on the ecosystem, and timely scientific advice is provided on the likelihood and magnitude of identified impacts (see Paragraph 31).

29.4 The designated authorities adopt and effectively implement appropriate measures for the conservation and sustainable use of the 'stock under consideration' based on the data, information, and scientific advice referred to in the preceding bullets. Short-term considerations should not compromise the long-term conservation and sustainable use of fisheries resources.

29.5 An effective legal and administrative framework at the local, national or regional level, as appropriate, is established for the fishery[8] and compliance is ensured through suitable mechanisms for monitoring, surveillance, control and enforcement (see also Paragraph 6).

29.6 In accordance with the Code of Conduct Article 7.5, the precautionary approach is being implemented to protect the 'stock under consideration' and the aquatic environment. Inter alia this will require that the absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures. Further, relevant uncertainties are being taken into account through a suitable method of risk assessment. Appropriate reference points are determined and remedial actions to be taken if reference points are approached or exceeded are specified.

'Stocks under consideration'

30. Requirement: The 'stock under consideration' is not overfished, and is maintained at a level which promotes the objective of optimal utilization and maintains its availability for present and future generations, taking into account that longer term changes in productivity can occur due to natural variability and/or impacts other than fishing. In the event that biomass drops well below such

target levels, management measures (Code of Conduct Article 7.6) should allow for restoration within reasonable time frames of the stocks to such levels (see also paragraph 29.2 bis).

The following criteria are applicable:

30.1 The 'stock under consideration' is not overfished if it is above the associated limit reference point (or its proxy).

30.2 If fishing mortality (or its proxy) is above the associated limit reference point, actions should be taken to decrease the fishing mortality (or its proxy) below that limit reference point.

30.3 The structure and composition of the 'stock under consideration' which contribute to its resilience are taken into account.

30.4 In the absence of specific information on the 'stock under consideration', generic evidence based on similar stocks can be used for fisheries with low risk to that 'stock under consideration'. However, the greater the risk the more specific evidence is necessary to ascertain the sustainability of intensive fisheries.

Ecosystem considerations

31. Requirement: Adverse impacts of the fishery on the ecosystem should be appropriately assessed and effectively addressed. Much greater scientific uncertainty is to be expected in assessing possible adverse ecosystem impacts of fisheries. This issue can be addressed by taking a 'risk assessment/risk management approach'. For the purpose of development of ecolabelling schemes, the most probable adverse impacts should be considered, taking into account available scientific information, and traditional, fisher or community knowledge provided that its validity can be objectively verified. Those impacts that are likely to have serious consequences should be addressed. This may take the form of an immediate management response or further analysis of the identified risk. In this context, full recognition should be given to the special circumstances and requirements in developing countries and countries in transition, including financial and technical assistance, technology transfer, and training and scientific cooperation.

The following criteria are to be interpreted in the context of avoiding high risk of severe adverse impacts.

31.1 Non target catches, including discards, of stocks other than the 'stock under consideration' are monitored and should not threaten these non-target stocks with serious risk of extinction; if serious risks of extinction arise, effective remedial action should be taken.

31.2 The role of the 'stock under consideration' in the food-web is considered, and if it is a key prey species in the ecosystem, management measures are in place to avoid severe adverse impacts on dependent predators.

31.3 There is knowledge of the essential habitats for the 'stock under consideration' and potential fishery impacts on them. Impacts on essential habitats and on habitats that are highly vulnerable to damage by the fishing gear involved are avoided, minimised or mitigated (Code of Conduct 7.2.2). In assessing fishery impacts, the full spatial range of the relevant habitat should be considered, not just that part of the spatial range that is potentially affected by fishing.

31.4 In the absence of specific information on the ecosystem impacts of fishing for the unit of certification, generic evidence based on similar fishery situations can be used for fisheries with low risk of severe adverse impact. However, the greater the risk the more specific evidence is necessary to ascertain the adequacy of mitigation measures.

Methodological aspects

Assessing current state and trends in target stocks

32. There are many ways in which state and trends in stocks may be evaluated, that fall short of the highly quantitative and data-demanding approaches to fish stock assessment that are often used in developed countries. However it should be noted that, to the extent that the application of such methods may result in greater uncertainty about the state of the 'stock under consideration', more precautionary approaches to managing fisheries on such resources could be required which may necessitate lower levels of utilization of the resource. There is a variety of management measures commonly used in small scale or low value fisheries that nonetheless can achieve quite adequate levels of protection for stocks in the face of uncertainty about the state of the resource. A past record of good management performance could be considered as supporting evidence of the adequacy of the management measures and the management system.

7.4.6 Procedural and institutional aspects

This part of the guidelines addresses the three principal procedural and institutional matters that any ecolabelling scheme should encompass: (1) the setting of certification standards, (2) the accreditation of independent certifying bodies, and (3) the certification that a fishery and the product chain of custody are in conformity with the required standard and procedures.

Except for the issue of an independent panel as ultimate appellate body, consensus on this part of the guidelines was reached early in the negotiation process. From the beginning of the ecolabelling discussion in FAO fora, countries supported the principle of independent and transparent third party certification through competent, reliable and accountable bodies. Many of the

provisions in this section are geared towards assuring the application of this principle.

In this context, it is notable that some countries felt strongly the need for MSC to adjust its governance structure in order to assure complete independence between its functions as the owner and promoter of an ecolabelling scheme and the functions of accreditation and certification, including the sensitive aspect of dealing with complaints. In order to achieve consistency with the FAO guidelines, MSC has subsequently appointed an independent objections panel chair to ensure the impartiality of any panels formed to hear appeals against proposed certification decisions. This appointment served to separate the objections process and related decisions from the MSC's Board of Trustees (MSC, 2006).

Further, there was broad consensus on the need to engage all interested parties in the standard-setting process in a consultative and participatory manner. A number of governments and industry groups felt that the MSC process did not accomplish this requirement in its initial phase.

Options for governance structures

The guidelines are not overly prescriptive on other aspects of the governance structure beyond the above-noted separation between ownership and accreditation functions. This allows for ecolabelling schemes to be established by a government, an intergovernmental organisation, a non-governmental organisation, or a private industry association. There are also various options for the geographical range of a scheme – national, regional or international in scope (paragraph 37).

Guidelines for the setting of standards for sustainable fisheries

The setting of standards is among the most critical tasks of any ecolabelling scheme. The standards reflect the objectives for sustainable fisheries that are being pursued through the scheme. Standards comprise quantitative and qualitative indicators of the governance system or management regime of a fishery as well as of its outcome in terms of sustainable fisheries and conservation of marine fishery resources and related ecosystems (paragraph 40).

The principal normative basis for the procedural requirements in standard setting is given by the WTO TBT, ANNEX 3 *Code of Good Practice for the Preparation, Adoption and Application of Standards* and the ISO/IEC Guide 59 Code of good practice for standardisation of 1994. More recent work in this area has been done by the ISEAL Alliance which published in early 2006 the final version of a Code of Good Practice for Setting Social and Environmental Standards (isealalliance.org). At the core of standard-setting norms are the ideas of consultation and participation of interested parties in a transparent and well-informed process of standard setting that provides for appropriate notification and minimum time periods for commenting.

The functions of a standard-setting organisation or arrangement include the setting, reviewing, revising, assessing, verifying and approving of standards. Where there is no specialised body, the organisational structure of a standard-setting arrangement should include, *inter alia*, a technical committee of independent

experts and a consultation forum whose mandates are well established (paragraphs 44 and 45).

The guidelines explicitly identify the various interested parties that ideally should participate in the development of standards of sustainable fisheries. These include representatives of fisheries management authorities, the fishing industry, fishers organisations, the scientific community, environmental interest groups, fish processors, traders and retailers as well as consumer associations (paragraph 54). The inland fisheries expert group added fishing communities and hatchery managers to this list of interested parties.

An innovative feature is the requirement that, in developing or revising a standard, an appropriate procedure should be put in place to validate the standard with respect to the minimum requirements for sustainable fisheries as laid out in the guidelines. There is also a call for standards to not encompass criteria or requirements that are of no relevance for sustainable fisheries or could cause unnecessary barriers to trade or mislead the consumer (paragraph 63).

Guidelines for accreditation

The purpose of accreditation is to provide assurance that certification bodies responsible for conducting conformity assessments with sustainability standards and chain of custody requirements are competent to carry out such tasks. The guidelines lay down the requirements for accreditation organisations to perform this task professionally in a transparent, impartial, independent, and accountable fashion. The primary normative basis is the ISO Guide 61, *General Requirements for assessment and accreditation of certification/registration bodies*, 1996.

The conditions for maintaining, extending, suspending and withdrawal of accreditation are also spelled out in the guidelines as is the responsibility of the accreditation body in relation to the use of accreditation marks, symbols and logos and how to prevent their misleading use in advertisements, etc.

Past experience with ecolabelling schemes points to the importance of having solid procedures to address and resolve complaints in an impartial and independent manner. In this regard, the guidelines spell out the need for the establishment of an impartial and independent committee which, in the first instance, should attempt to resolve any complaints through discussion or conciliation and, if this fails, in the second instance provide a written ruling to the accreditation body and the parties concerned (paragraph 83). The guidelines, however, explicitly state that this provision would not exclude recourse to other forms of legal and administrative processes as provided for in national legislation or international law (paragraph 86).

Guidelines for certification

Certification is an integral and indispensable part of any ecolabelling scheme. In respect to fisheries ecolabelling schemes, it provides assurance to buyers and consumers that a certain fish or fishery product comes from a fishery that conforms to the established standard for a sustainable fishery. In keeping with the Principles, impartial certification based on an objective assessment of all relevant factors

ensures that ecolabels convey truthful information. This is a necessary condition for the ecolabelling scheme to attain its objectives.

The guidelines provide for two types of certification, certification of the fishery itself, including the production of stocking material in the case of inland fisheries, and certification of the chain of custody between the time the fish is harvested and the time the fish or fishery product is sold to the final consumer. The chain of custody assessment examines whether adequate measures are in place to identify fish from a certified fishery at subsequent stages of fish processing, distribution and marketing. While separate certificates may be issued for the fishery and for the chain of custody, fish and fishery products that are labelled to indicate to the consumer their origin from a sustainable fishery require both types of assessments.

As is the case for accreditation organisations, the guidelines lay down the requirements for certification bodies to perform their tasks professionally in a transparent, impartial, independent, and accountable fashion. The primary normative basis includes ISO Guide 62, *General Requirements for bodies operating assessment and certification/registration of quality systems*, 1996, ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*, 1996, and Article 5 of the WTO Agreement on Technical Barriers to Trade.

Beyond the general ISO requirements appropriately adapted to the case of sustainable fisheries, the guidelines contain specific provisions that acknowledge the great diversity of situations and conditions under which fisheries are conducted and managed. To ensure non-discrimination, the access to the services of a certification body should be open to all types of fisheries, whether managed by a regional, governmental, parastatal or non-governmental fisheries management organisation or arrangement. Further, access to certification should not be conditional upon the size or scale of the fishery, nor should certification be conditional upon the number of fisheries already certified (paragraph 112).

Non-discrimination in access to certification services is also the intent of the provision on the certification fee structure (paragraph 125).

> In establishing the fee structure and in determining the specific fee of a certification assessment, the certification body should take into account, inter alia, the requirements for accurate and truthful assessments, the scale, size and complexity of the fishery or chain of custody, the requirement of non-discrimination of any client, and the special circumstances and requirements of developing countries and countries in transition.

Given the highly dynamic nature of fisheries, the guidelines contain detailed provisions on the maintenance, renewal and possible suspension and withdrawal of certification. They call for periodic surveillance and monitoring of the fishery and chain of custody at appropriate time intervals (paragraph 128), prompt notification by the client of intended changes to the management of the fishery or chain of custody (paragraph 129), and reassessments in the event of changes significantly affecting the status and management of the fishery or chain of custody, or if analysis of complaints and other information indicates that the

certified fishery and/or chain of custody no longer comply with the required standard (paragraph 130).

The period of validity of a certificate should not exceed five years in the case of a fishery and three years in the case of the chain of custody (paragraph 131). Given regular monitoring and auditing exercises and a full reassessment, the validity of certification can be renewed for the same time periods (paragraph 132).

The guidelines place the responsibility on the certifying body to specify the conditions under which certification may be suspended or withdrawn (paragraph 133). If a certification is withdrawn or suspended, the certifying body should require that a certified fishery and/or chain of custody discontinues use of all advertising matter that contains any reference thereto and returns any certification documents. The certification body also has the responsibility of informing the public about the withdrawal or suspension after the appeals process is exhausted (paragraph 134).

Assurance of the chain of custody is complex in fisheries because of the often large number of fishing vessels, landing places and localities of processing, marketing and distribution. In recognition of rapid technological progress in traceability, the physical segregation of certified from non-certified fish and fishery products was not considered to be an indispensable requirement in all instances, as had initially been proposed by the expert consultation. However, the guidelines provide for detailed chain of custody requirements and monitoring and auditing procedures by the certification body (paragraphs 135–140).

In recognition of the proliferation of unsubstantiated product claims and logos in respect to fish and fishery products, the guidelines are very specific about the responsibilities of the certification body, accreditation body or owner of the ecolabelling scheme over the use and control of certification claim, symbol and logo. They are required to ensure that symbols or logos should not relate to claims that are of no relevance for sustainable fisheries or could cause barriers of trade or mislead the consumer (paragraph 141). Only products from certified sources can carry a mark/claim/logo (paragraph 142), no fraudulent or misleading use can be made with their use and display (paragraph 143), and suitable action must be taken to deal with incorrect references to the certification system or misleading use of symbols and logos found in advertisements, catalogues, etc. (paragraph 145).

Resolution of complaints and appeals

Within the procedural part of the guidelines, this section on the resolution of complaints and appeals relating to certification has been intensely discussed in the negotiation process. The Expert Consultation proposed to include in this section an independent panel external to the ecolabelling scheme as an ultimate appellate body. This panel which would consider in last instance appeals of a finding or decision concerning the conformity assessment only, thus excluding the chain of custody assessment, would have been convened and serviced by FAO. All costs relating to it would have had to be borne by the appellant.

The idea of the independent panel was derived as an added precaution to ensure independence in addressing complaints, particularly given the high proportion of

fish and fishery products internationally traded, the likelihood of cross-border complaints, and the often paramount role of governments in fisheries management. Governments, as a general rule, do not like to be assessed by, and subject to, decision-making through non-governmental entities, especially on a matter as complex and controversial as fisheries management.

There was not unanimous support for the inclusion of an independent panel in the FAO guidelines. Several countries felt that possible recourse to other forms of legal and administrative processes as provided for in national legislation or international law would provide adequate safeguards to seek redress in the case of flawed rulings within the ecolabelling scheme's internal complaint and appeal procedures. Other countries expressed a strong desire for an independent panel, probably because of concerns about access to other systems of ruling, e.g. the courts, and timely rulings.

However, after careful examination and review of past practices, it became evident that FAO's envisaged role in servicing such an independent panel would be in conflict with the Organization's basic text. While FAO's basic text foresees the convening of expert panels, their constitutional purpose, as evidenced also by past practice, is to provide advice to the Director General on specific subjects. The independent panel, on the other hand, is an appellate body whose purpose is of a judicial nature and not to give advice to the Director General.

7.5 Conclusions

In the area of ecolabelling, the FAO guidelines for marine capture fisheries are a unique voluntary international instrument that establishes minimum standards in procedural and substantive terms. The guidelines can help to prevent the proliferation of non-credible ecolabels, contribute to the creation of an equal playing field by recognising the special conditions and requirements of fisheries in developing countries and countries in transition, provide clarity on equivalence of ecolabelling schemes and non-discrimination, avoid unnecessary barriers to trade, and establish the legitimacy of ecolabelling applied to fisheries.

Time will show whether the guidelines will succeed in all these aspects. One area of special attention for FAO will be the promotion of participation of developing country small-scale fisheries in ecolabelling schemes. These fisheries support millions of fishers and contribute directly and significantly to poverty alleviation and food security. The sustainability of these fisheries is critical for maintaining and enhancing the contribution of fisheries to national well-being.

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