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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE**

**Launching a debate on a Community approach towards
eco-labelling schemes for fisheries products**

(SEC(2005)840)

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(Text with EEA relevance)

1. INTRODUCTION

In December 1997 the Commission Communication on the Future for the Market on Fisheries Products in the EU¹ first addressed the need to discuss non-discriminatory, voluntary eco-certification schemes. In subsequent discussions, most Member States agreed that the Community should establish a common line but views differed on how to implement it. In 2002 the Commission adopted a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy² and announced its intention to launch a debate on the eco-labelling of fisheries products.

The objective of the reformed Common Fisheries Policy³ adopted in 2002 is to ensure exploitation of living aquatic resources in a way that provides for sustainable economic, environmental and social conditions. Progress on the implementation of the reform of the Common Fisheries Policy makes it necessary to address the question of the introduction of eco-labelling schemes as a means of integrating environmental protection concerns into the fisheries sector. Moreover, the recent emergence of an increasing number of "eco-labelled" products raises important questions with respect to competition, trade and consumer protection policies.

Attention should also be given to ongoing discussions in international fora on eco-labelling. Work is currently underway in the FAO with regards to the development of guidelines on eco-labelling for fish and fisheries products from marine fisheries. Moreover, WTO members in the Doha Declaration, committed themselves to examine labelling requirements for environmental purposes within the framework of what was being examined by the Committee on Trade and Environment.

The Commission would like to see that the most be made of the potential benefits of credible eco-labelling schemes for fisheries products. This would contribute significantly to integrating environmental protection concerns into the fisheries sector. This Communication intends to launch an in-depth conceptual debate about these topics and to explore the possibilities of moving ahead.

¹ Communication from the Commission to the Council and the European Parliament - The future for the market on fisheries products in the European Union: responsibility, partnership and competitiveness. COM(1997)719 final of 16 December 1997.

² Communication from the Commission setting out a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy. COM(2002)186 final of 28 May 2002.

³ Council Regulation (EC) 2371/2002 of 20 December 2002 concerning conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

2. ECO-LABELLING SCHEMES

2.1. Definition⁴

An eco-labelling scheme entitles a product to bear a distinctive logo, or statement, by way of which consumers are assured that the product has been produced according to a given set of environmental standards, such as the sustainability of the resource used as raw material, the environmental impact of the production method, or the recyclability of the product. The underlying idea is that if consumers are properly informed, their choice could possibly stimulate the promotion and consumption of environmentally friendly products. Thus, consumers can influence the behaviour of producers and policy makers.

The industrial and forestry sectors of today possess a large variety of certification and eco-labelling schemes. The Community's own eco-label award scheme⁵ covers some 20 industrial product groups. However, it does not apply to food products, drinks and medicines.

2.2. Eco-labelling schemes in the fisheries sector

Supermarket chains and trading companies show a growing interest in food products associated with sustainability considerations. This has created momentum in the fisheries sector with the development of private eco-labelling schemes, some of which have found their place on the markets (e.g. the "Dolphin safe" or the "Marine Stewardship Council" labels). In addition to that, private initiatives are increasingly emerging, which come with a variety of environmental claims, the credibility of which is not always easy to ascertain⁶.

2.2.1. "Dolphin-safe/Dolphin-friendly" labelled tuna

The most frequently cited, and possibly most controversial, case of eco-labelling in the fisheries sector is the "dolphin-safe/dolphin-friendly" labelled tuna. This label is meant to certify that the tuna was caught in a way that protects dolphins, either based on the Agreement on the International Dolphin Conservation Programme (AIDCP), a multilateral Regional Fisheries Organisation, or in line with a programme promoted by the Earth Island Institute, a US based non-governmental organisation.

Although "dolphin-safe/dolphin-friendly" labelling started out as a technical regulation, it has ever since changed the market to such an extent that tuna which is not labelled as "dolphin-safe" is no longer acceptable in some countries. However, the AIDCP and the US norms are not complementary. As a matter of fact, the "dolphin-safe" label bars tuna caught in accordance with AIDCP standards from access to the US markets. This has given rise to an ongoing dispute between Mexico and the US. Attempts by the US administration to amend the US law to meet AIDCP requirements have been challenged in the US courts by some NGOs that consider the AIDCP measures not to be stringent enough.

⁴ see Annex I -1 for definitions, experience in other fields and technical details.

⁵ Council and European Parliament Regulation (EC) No 1980/2000 of 17 July 2000 on a revised Community eco-label award scheme (OJ L 237, 21.9.2000, p. 1).

⁶ See Annex I – 2. for further details.

The Community supports the voluntary AIDCP Dolphin Safe Certification scheme. After the implementation of the Tuna Tracking System⁷, the question is whether and how to implement the AIDCP certification scheme at Community level. A good many elements will need to be considered in this context.

2.2.2. The Marine Stewardship Council eco-labelling scheme

The Marine Stewardship Council (MSC), jointly created in 1997 by Unilever and the World Wildlife Fund for Nature (WWF) but now working apart from them, has launched a large private eco-labelling initiative designed to ensure that the product comes from well managed fisheries and has not contributed to the environmental problem of over fishing.” To date, ten fisheries have been certified amongst which are four European fisheries. Over 180 products around the world carry the MSC label. Twelve fisheries are currently undergoing assessment, including the North Sea Herring and the Alaska Pollack.

The process of developing the MSC principles has shown that there prove to be reserves on the side of developing countries, that fear that their products may be excluded from developed country markets.

3. WORK ON ECO-LABELLING IN INTERNATIONAL FORA

3.1. Food and Agriculture Organisation

In the framework of the FAO, the discussion on eco-labelling started at the 22nd session of the FAO Committee on Fisheries (COFI) in 1997, as a response to the creation of the MSC. Not much progress was made, mostly due to concerns that eco-labelling would lead to new barriers to trade. Experts generally agreed, however, that if guidelines were developed, they should be consistent with the FAO Code of Conduct for Responsible Fisheries⁸.

At the 25th session of COFI in 2003, FAO was asked to develop guidelines on eco-labelling for fish and fisheries products from marine fisheries. At the technical consultation in October 2004 delegations showed for a keen interest to progress quickly with respect to the development of international guidelines for eco-labelling schemes. Considerable progress has been made, and a second technical consultation has been convened for before the COFI meeting. The final text of guidelines has been adopted at the 26th session of the COFI in March 2005. The European Community has been an active participant during this whole consultation process.

3.2. World Trade Organisation

In accordance with the commitment under paragraph 32 (iii) of the Doha Development Agenda (DDA) to give particular attention to labelling requirements for environmental purposes discussions have taken place in the WTO Committee on Trade and Environment since the Doha Ministerial in 2001. These discussions have focused on voluntary schemes

⁷ Council Regulation No 882/2003 of 19 May 2003 establishing a tuna tracking and verification system. (OJ L 127 , 23.5.2003, p. 1).

⁸ Report twenty-third Session of the Committee on Fisheries (Rome, Italy, 15-19 February 1999), *FAO Fisheries Report*. No. 595.

based on the life cycle approach⁹. The Community has suggested that attention should be paid to a number of elements concerning the role and scope of eco-labelling schemes so as to enhance the mutual supportiveness of trade, development and environmental policies¹⁰. They have not yet reached a conclusion.

4. OBJECTIVES FOR A COMMUNITY POLICY ON ECO-LABELLING FOR FISH AND FISHERY PRODUCTS

The Commission views eco-labelling schemes as a means of integrating environmental protection concerns into the fisheries sector and supports the objectives generally associated with such a policy, in particular

- 1) stimulating consumer awareness in view of the environmental dimension of fishing and thereby
- 2) encouraging environmental responsibility of both managers and fishermen by making them more conscious of the environmental impact of fisheries.

In that sense, market incentives such as eco-labelling schemes might induce producers to move towards more responsible fishing practices. The Commission therefore takes the view that voluntary eco-labelling schemes should be encouraged. However, the Commission also considers that the responsibility to protect natural resources through regulation should remain with the public authorities and that, whilst eco-labels can operate in support of sustainable fisheries, they should not replace governmental conservation policy.

The Commission is of the view that a coherent Community policy on eco-labelling for fish and fisheries products should be developed to address the consequences of the emergence of disparate sets of eco-labels.

Such a policy should aim to further :

- (1) *Sustainable fisheries¹¹ and an adequate level of protection of the ecosystem*: eco-labelling schemes, if based on clearly defined criteria and appropriate indicators, can assist in both monitoring progress made on sustainability fishing and in raising public awareness of sustainability issues;
- (2) *A harmonised approach to eco-labelling schemes throughout the Community*: consumers should be assured that all eco-labelling schemes within the Community follow basic similar guidelines and principles;
- (3) *transparent and objective information of consumers*: when purchasing, decisions are based in part on non-product-related characteristics such as production methods and environmental impacts; clear and verifiable information should be available in order

⁹ See Annex I-1.

¹⁰ Document JOB(03)/130 of 27 June 2003.

¹¹ According to the Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Article 3 (e) "sustainable exploitation" means "the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine ecosystems".

to avoid misleading claims; eco-labelling schemes should also be in conformity with the general requirements of consumer policy to ensure a high level of consumer protection in accordance with Article 153 of the Treaty;

- (4) *Fair competition*: the use of misleading eco-labels should be avoided and labels should be more than promotional tools for individual companies;
- (5) *Open access*: all eco-labelling schemes should guarantee open access, without discrimination, and the cost to be paid by participants should not be prohibitive for small and medium enterprises, or for the small-scale fisheries sector; and
- (6) *Development and trade*: priorities highlighted by the Community in the WTO to address the concerns of developing countries should be given due consideration.

5. AVAILABLE OPTIONS

The main question for public authorities is how far voluntary eco-labelling schemes should be subject to rules in order to protect public interest. Three options seem to be available.

5.1. Option 1: Non- action

The first option to be envisaged is to do nothing. Eco-labelling schemes could then continue to develop freely on the market, without any intervention on the part of the public sector. Up to now, the Community has not taken up any measures in this field. By way of consequence, a non-action option corresponds to the status quo.

Advantages of a non-action option are as follows:

- It would ensure a clear separation between, on the one hand, private sector initiatives that are using aspects related to the origins and manner of capture of fish in their marketing efforts, and, on the other hand, public sector activities aiming to ensure conservation and sustainable development of fisheries. The sector would be responsible for the governance of eco-labelling systems. This could favour a broader development of eco-labelling schemes.
- Business-led voluntary schemes might be more flexible and adaptable to changing circumstances. Public authorities would not be blamed for imposing additional constraints on the trade of fisheries products.
- The need to guard against misleading claims and to promote adherence to best practices could be satisfied by raising the public's and the industrie's awareness of sustainability.

Disadvantages of the non-action option are as follows:

- Without a guarantee of independent certification and accreditation, the reliability of the schemes would be questionable.
- Unlike other labelling systems, such as organic labelling for example, there is no consensus on what an eco-label in the fisheries sector actually means. Some consider it to certify the sustainable management of fish stocks; others focus on the ecological impact of particular fishing techniques or on the fishery production chain taken as a whole. In the

absence of minimum requirements for eco-labelling schemes, some companies could make exaggerated and unjustifiable claims for their products.

- There is a risk that different policies pursued by individual Member States in respect of eco-labels could fragment the Community market. In reaction to the emergence of eco-labelled products in the Community market, some Member States or economic operators could wish to set their own standards for eco-labelling. This could cause barriers to the free circulation of goods.
- If eco-labelling schemes are considered as the exclusive domain of the private sector, any public financial intervention could be viewed by partners who are not subject to the scheme as a public subsidy, creating trade distortion. Such intervention could then lead to complaints by developing countries. Public authorities could also find it difficult to provide developing countries with financial and technical assistance when schemes are controlled solely by the private sector.

The Commission believes that the potential risks arising from the absence of a clear Community approach to the marketing of eco-labelled products should be properly addressed. Rather than having to deal ex-post with conflicting or inadequate schemes and with the ensuing adverse effects on the markets and/or the sound conservation of fish stocks, it would make sense for the Community to pursue a more holistic common approach from the outset. Therefore, the Commission would not recommend to pursue the non-action option.

5.2. Option 2: Creating a single Community eco-labelling scheme for fish and fishery products

It has been suggested that the Community should set up its own comprehensive eco-labelling schema managed by public authorities or their nominees. Under such a single scheme, public authorities would be involved at all stages of the development, operation and control of the scheme.

Three principal arguments are advanced for this approach:

- Because of the potential for overlap between eco-labelling assessments and public management of stocks, a single Community eco-labelling scheme would serve to reassert the prerogatives of public authorities in the management of fisheries resources;
- Private eco-labelling schemes should be restricted, as they could disrupt the market by differentiating between groups of products, e.g. certification of fisheries irrespective of the existence of other fisheries on the fish stock;
- A single eco-labelling scheme would avoid confusion arising from competing eco-labelling schemes and ensure the credibility of one scheme through higher environmental standards, independent guarantees and added authority.

The Commission is not convinced by these arguments. Competing eco-labelling schemes would not necessarily have an effect of confusion as long as the assessment is made in a transparent and non-biased manner and the criteria applied are clearly communicated to the consumer.

In addition, a publicly managed single eco-labelling scheme would present a number of other problems:

- The responsibility of public authorities to protect natural resources through regulation could be obscured by their managing a supplementary voluntary certification system for some stocks or types of fishing only. If the required standard for a single Community eco-label were mere compliance with Community regulations, it would not provide the product differentiation that consumers are looking for. In actual fact, an eco-labelling scheme would carry with it added value only if it were more demanding than mere compliance with applicable legislation. Otherwise, some might be led to believe that the legislation itself was wanting or even "sub-standard".
- If the Community wished to create its own eco-labelling scheme, it would have to decide for each fishery what an eco-label should certify. In the absence of consensus on any single criterion of environmental impact this could give rise to controversy and lead to situations where the public authorities concerned become entangled in contradiction between their management policy and certification standard. Whatever criterion is used, there will always be "winners" and "losers". It could for instance be that many Community fisheries, which are outside safe biological limits, would not be eligible for an eco-label for some time. Public authorities would find it difficult to assume responsibility for this.
- A publicly-managed comprehensive scheme would also imply significant public costs in order to provide the necessary administrative resources for assessment, certification and compliance verification. This, alone, may make it a non-feasible option.

Incidentally, the fact that many fish stocks within the Community waters are outside safe biological limits would produce a situation where a reference to "sustainable exploitation", as laid down in Article 3 (e) of Council Regulation (EC) No 2371/2002 (see above footnote 10), might create advantages for products imported from countries that have a longer history of management under the precautionary approach.

The Commission considers that creating a single publicly administered eco-labelling scheme for fisheries products is neither appropriate or practical. If the private sector sees advantages in and wishes to take the risk of establishing eco-labelling schemes, it should be free to do so, provided that it does not undermine major public policy objectives such as fair competition, objective information and the sound conservation and management of fish stocks.

5.3. Option 3: Establishing minimum requirements for voluntary eco-labelling schemes

A third option would be for the Community to specify a set of minimum requirements for voluntary demand-led eco-labelling schemes.

Eco-labelling schemes could thus freely develop through public and/or private initiatives as long as they comply with the minimum requirements. The involvement of public authorities would be limited to the registration of eco-labelling schemes, and the verification of their compliance with the minimum requirements. These requirements should cover technical as well as procedural and institutional aspects (see Annex II).

Key advantages of this approach are:

- It would allow eco-labelling schemes substantial flexibility and diversity to demonstrate to the consumer that the behaviour of either the fishing industry or fisheries managers contributes to sustainability. Thus eco-labelling would fully play its role as a commercial incentive and would encourage better governance by the fisheries sector;
- It would provide a "safety-net" of conditions designed to avoid the risk of distortion of competition or misinformation and to offer appropriate guarantees for consumers;
- It would serve as an incentive to pursue high-standard environmental objectives, to ensure that the most significant aspects of sustainability are being properly addressed, and to enhance the credibility and consistency of eco-labelling schemes;
- Eco-labelling schemes could thus be adapted to the fishery and/or the economic partner concerned, as for instance small and medium enterprises, or developing countries. Schemes would therefore be more accessible and less costly for the industry to implement; and
- Schemes already in operation could be more easily integrated.

In contrast, the main disadvantage of this option is that what it gains in flexibility it may lose in impact.

- Minimum requirements have to be based on the current experience in conservation policy. As multi-annual management plans are not yet applied to every fishery, minimal criteria may not, at first, be too demanding, compared to the Community conservation policy, without being discriminatory. Criteria will have to be reviewed based on the experience and scientific knowledge gained. The requirement level of eco-labelling schemes would thus need to be progressively upgraded over time;
- There would be no guarantee that all the eco-labels on the market would address sustainability in the same way. Some schemes could focus on fishery management, while others would put particular emphasis on the protection of the ecosystem. This could be compensated by way of adequate information of the consumer;
- The monitoring of eco-labelling schemes requires specific skills in the management and operation of certification schemes. Fisheries management authorities will need to familiarise themselves accordingly;
- In any event, the Commission will have to exercise its supervisory powers to ensure compliance with relevant Community law in this field.

6. CONCLUSION

Given that eco-labelling is now becoming a significant phenomenon in the Community market for fisheries products, it is time to have a debate and establish whether or not a common approach should be envisaged.

It is clear that eco-labelling is a multi-faceted topic and that, therefore, a variety of questions will have to be considered as the intended debate follows its course.

The debate will have to touch upon key questions, like:

- What should an eco-labelling scheme certify: a fishery, a fishing method, anything other component? Should therefore single issue labels be considered as an integral part of an eco-labelling policy?
- How to ensure an approach that is devoid of contradictions whilst simultaneously offering a high degree of voluntarism and feasibility ?
- How to fully use the potential of eco-labelling schemes for the promotion of sustainable fisheries, while yielding real benefits for fishermen, processors and consumers ?
- Should the approach be more result oriented or means oriented?

Yet the overall objective remains to ensure a genuine Community approach to eco-labelling of fish and fisheries products reflecting best practice in this field. It is also the intention to reaffirm the Community's strong commitment to sustainability in the fields of the capture and use of fish. By means of such an approach, collaborative work with the fishing industry to encourage shared stewardship of the resource will also be a must.

The Commission believes that, all in all, the third option of establishing minimum requirements for voluntary eco-labelling schemes would be the most appropriate one at this juncture. This option would offer enough flexibility and would be proportionate in terms of costs. It would make it possible to take appropriate action for greater sustainability, while allowing a gradual approach. It would also offer adequate protection to consumers.

The Commission invites the Council, the European Parliament and the European Economic and Social Committee to debate the issues raised in this Communication. Consultation with the EEA members with the aim of ensuring a common approach will also be necessary, given their strong interest in this issue. Furthermore, the Commission also intends to consult with stakeholders, mainly through the Advisory Committee on Fisheries and Aquaculture and, in parallel, to carry out scientific and technical support work. This should provide enhanced knowledge destined to be fed into the debate and, if ever needed, to form the basis of impact assessments.

As a follow-up to the debate on this Communication, the Commission may come forward with appropriate legislative proposals.

ANNEX I

General aspects on eco-labelling

1. HOW ECO-LABELLING SCHEMES WORK

The International Standard Organisation (ISO) distinguishes between three types of environmental labels and declaration. Eco-labelling schemes fall under type I - environmental labelling (ISO 14024). These are voluntary programs, designed to reduce environmental effects by promoting market-driven demand for and supply of products which are verified by a third party. An eco-label should therefore indicate that an independent person or organisation has verified that the product meets a set of meaningful and consistent standards for environmental protection. Type II - self-declared environmental claims (ISO 14021), which are made without independent third party certification, and type III - environmental declaration (ISO 14025) are not relevant in the current context.

Eco-labelling schemes involve three main procedural and institutional features: 1) the setting of a certification standard, 2) the accreditation of independent certifying bodies and 3) the certification that the product meets the required standard, all along the production and distribution chain. There are a number of possible options for the shaping of such a scheme, where each layer can be managed by public authorities, private entities or a combination of the two. In the fisheries sector, eco-labelling schemes have up to now been entirely managed by the private sector.

Eco-labelling schemes are well established in the industrial sector (for example textiles or detergents). They have been successful in raising awareness of the environmental impact of industrial activity. The Community's own eco-label award scheme¹² aims to promote industrial products which have the potential to reduce negative environmental impact, as compared to other products in the same product group. This scheme covers some 20 industrial product groups, but does not apply to food products, drink and medicines. A large variety of certification and eco-labelling schemes have also been developed in the forestry sector.

In the food sector, Community measures on organic production of agricultural products¹³ set out requirements on production, labelling and inspection. However, this has no connection with an eco-labelling scheme. In any event, products from wild animals such as game and fisheries products are excluded from the scope of the regulation.

Terms and definitions (from: Report of the FAO expert consultation on the development of international guidelines for eco-labelling of fish and fisheries products from marine capture fisheries, Rome, Italy, 14 – 17 October 2003)

¹² Council and European Parliament Regulation (EC) No 1980/2000 of 17 July 2000 on a revised Community eco-label award scheme (OJ L 237, 21.9.2000, p. 1).

¹³ Council Regulation (EC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 198, 22.7.1991, p. 1).

- Accreditation: Procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks. *(Based on ISO/IEC Guide 2: 1996, 12.11)*
- Accreditation body: Body that conducts and administers an accreditation system and grants accreditation. *(Based on ISO Guide 2, 17.2)*
- Accreditation system: System that has its own rules of procedure and management for carrying out accreditation. *(Based on ISO Guide 2, paragraph 17.1)*
Note – Accreditation of certification bodies is normally awarded following successful assessment and is followed by appropriate surveillance.
- Certification: 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: 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: The concept that all relevant steps in the production chain have been inspected or certified as appropriate and that a system of tracking of certified products is in place. *(Based on IFOAM. 2002. IFOAM Accreditation Criteria for bodies certifying organic production and processing)*
- Life cycle approach: A methodology considering environmental impacts associated with any phase of the product life from the delivery or generation of natural resources to the final disposal", including use and disposal of the product. The extent to which the life cycle is considered may vary depending on the type of environmental label or declaration, the nature of the claim and the product category. *(based on ISO 14021)* The life cycle approach is not considered applicable with regard to eco-labelling for fisheries products
- Standard: 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)*
- Standard-setting organization or arrangements : Organization or arrangement that has recognized activities in standardization. *(Based on ISO Guide 2, paragraph 4.3)*

7. ECO-LABELLING SCHEMES IN THE FISHERIES SECTOR

Minimum labelling requirements such as country of origin, wild/harvested fish, health standards or other regulatory measures in respect of product quality have nothing to do with eco-labelling requirements and consequently are not envisaged hereafter.

7.1. The "Dolphin-safe/Dolphin-friendly" labelled tuna

The terms "dolphin-safe/dolphin-friendly" are used by both the Agreement on the International Dolphin Conservation Programme (AIDCP)¹⁴ and by a programme promoted by the Earth Island Institute¹⁵.

The dolphin-safe certification of the AIDCP gives access to the voluntary use of a "dolphin-safe" certificate or label for tuna caught without any mortality or serious injury to dolphins in the course of the fishing operations. The Earth Island Institute system sets even stricter criteria. It is based on the 1990 US Dolphin Protection Consumer Information Act, which prevents tuna sold in the US from being labelled as "dolphin-safe" if the tuna is caught with purse seine nets. These nets are used with the intention of chasing and encircling dolphins which tend to congregate above schools of tuna in the Eastern Tropical Pacific Ocean. A first attempt to ease the US law in 1999 was challenged in court by Earth Island Institute. In December 2002, the attempt to amend the US law to meet the AIDCP requirements was again challenged in the US courts by some NGOs, who consider the AIDCP measures not to be stringent enough.

Although "dolphin-safe/dolphin-friendly" labelling started out as a technical regulation, it has changed the market profoundly. Today there are many privately labelled tins of tuna, with such labelling becoming the norm in certain markets and sometimes leads to confusion. A WWF survey in 8 European countries identified no less than 26 different claims.

This has obvious consequences on the international tuna market, as tuna which is not labelled "dolphin-safe" is no longer accepted in some countries and therefore has to find other trade outlets. The "dolphin-safe" label bars tuna caught in accordance with AIDCP measures from access to the US markets. This has given rise to an ongoing dispute between Mexico and US.

The Community supports the voluntary AIDCP Dolphin Safe Certification scheme. After the implementation of the Tuna Tracking System¹⁶, the question is whether and how to implement the AIDCP certification scheme at Community level.

¹⁴ IATTC –Tuna tracking and AIDCP Dolphin Safe Certification
<http://www.iattc.org/>

Certification programme for tuna fished according to the procedures for AIDCP Dolphin Safe Tuna certification (last amended June 2004).

¹⁵ Earth Island Institute - International Marine Mammal Project -"Dolphin safe" tuna:
<http://www.earthisland.org/immp/>

Certification programme for tuna fished according to the international "Dolphin safe" tuna standard, developed by Earth Island Institute.

7.2. The Marine Stewardship Council eco-labelling scheme

The Marine Stewardship Council (MSC), jointly created in 1997 by Unilever and the World Wildlife Fund for Nature (WWF), has launched a large private eco-labelling initiative that assesses the environmental impact of fishing¹⁷. The MSC has established general principles and criteria, which are used to assess individual stocks eligible for certification.

The process of developing the MSC principles has shown that there exist reserves on the side of developing countries, countries that fear that their products may be excluded from developed country markets. In its Annual Report of 2003, the MSC refers to a Member State of the Community and states that “fisheries wishing to engage with the MSC programme are eligible for grants” from the Member State concerned. This information has reinforced the concerns of developing countries which consider this to be a discriminatory measure, preventing free access to eco-labelling schemes.

Species concerned:

- Certified fisheries (as on 31.07.2004): Burry Inlet cockles (EU), South African hake, Thames herring (EU), New Zealand hoki, Mexican Baja California red rock lobster, Western Australian rock lobster, South West mackerel handline fishery (EU), Loch Terridon nephrops (EU), Alaska salmon, South Georgia toothfish
- Fisheries undergoing assessment: Bering Sea and Aleutian Island Pacific Cod - Freezer Longline; Chilean Industrial Hake Fishery; US Pacific Halibut Alaska, Washington and Oregon; Pacific Halibut Bristish Columbia, Canada; North Sea herring ; Hastings Fishing Fleet Pelagic Fishery Mackerel and Herring; Australian Mackerel Icefish; Bering Sea/Aleutian Islands and the Gulf of Alaska pollock fisheries; Lake Hjälmarén Pikeperch; Net fishery; Sablefish fishery; Lakes and Coorong fisheries, South Australia (Mulloway, Cockle, Golden perch, Yellow-eyed mullet); British Columbia Salmon fishery; Hastings Fishing Fleet Dover Sole Fishery

7.3. The "Arrangement for the Voluntary Certification of Products of Sustainable Fishing" by the Nordic Council

In 2000, a technical working group of the Nordic Council of Ministers developed criteria for an environmental label based on an assessment of the sustainability of the fisheries. The report, as adopted in August 2001¹⁸, identified a number of verifiable criteria that concentrate on the process of fisheries management by the public authorities. No fisheries have been certified to date. At the international level, the Nordic Council has initiated a debate on establishing international eco-labelling guidelines in the FAO.

¹⁶ Council Regulation (EC) No 882/2003 of 19 May 2003 establishing a tuna tracking and verification system. (OJ L 127 , 23.5.2003, p. 1).

¹⁷ <http://www.msc.org>

¹⁸ “An arrangement for the Voluntary Certification of Products of Sustainable Fishing”, Nordic Technical Working Group on Fisheries Ecolabelling Criteria, Final Report, Copenhagen, June 21, 2000.

7.4. Other private "logos" present on the market

Unilever Fish Sustainability Initiative

<http://www.unilever.com/enviromentsociety/sustainability/fish/>

This Unilever program aims at guiding their internal selection of sources of whitefish supply. Fisheries have been classified from "sustainable" to "not sustainable" according to 5 criteria, each criteria being quoted by a green/orange/red light system.

Carrefour - Logo "Pêche responsable"

Carrefour's own claim to be used on Icelandic cod as from September 2004 (announcement at Seafood International exhibition, May 2004)

7.5. Other considerations

In parallel to the development of eco-labelling schemes, certain supermarket chains have committed themselves to restrict their supply of fish to sustainable fisheries. They have started to develop and join certification programs to this end. In addition to that, some others have even decided not to offer fish for sale at all.

On the other hand, it may be assumed that consumer interest in environmentally - friendly products could contribute to a growing market for fisheries products. It remains difficult to quantify the demand for eco-labelled products, as recent studies show certain limits in this regard. In a recent study in the US, the interrogated consumers indicated a preference for eco-labelled products; in contrast to that, an analysis of the shopping basket showed that the price was the first criterion of choice. In other terms, the success of an eco-labelling scheme would depend, at least in part, on the additional costs which it carries with it. Moreover, consumer interest varies from country to country, depending on market peculiarities and public perception of the concept of sustainability.

ANNEX II

Minimum requirements for eco-labelling schemes for fishery products

1. PRECISE, OBJECTIVE AND VERIFIABLE CRITERIA

The certification standard should rest on precise, objective and verifiable criteria and, where possible, be based on international standards.

Eco-labelling schemes should deliver what they promise and not promise what they cannot deliver. The award of the eco-label should be based on certification standards and criteria that guarantee that the product meets the claims made. Criteria must be objective and precise, in order to forestall allegations of subjectivity. Criteria must also be verifiable, i.e. they must reflect measurable elements, and be monitored by way of appropriate and recognised indicators. A criterion that “the fishery is conducted in a sustainable manner”, without any further objective parameters, would be obviously difficult to verify. On the other hand, requiring that “the fishery is subject to a management plan based on the precautionary approach” and indicating the specific features of the management plan that are required under the precautionary approach would be objective, precise and verifiable. Using “effort stays below F_{MSY} ” as a criterion is even more stringent and would allow for more precise measurement of the achievements of the scheme.

Furthermore, certification standard and criteria should be subject to appropriate and participatory consultation of interested parties. Finally, wherever relevant international standards and/or generally accepted standards for the conservation and management of living marine resources exist, they should be used as a reference-point for eco-labelling criteria. One such reference-point is the FAO Code of Conduct for Responsible Fisheries.

8. INDEPENDENT ASSESSMENT AND CHAIN OF CUSTODY

Eco-labelling schemes should be based on independent assessment and ensure the accurate identification of the product throughout the chain, “from the net to the plate”. Appropriate procedures, including appeal and complaint procedures, should be in place.

In order to protect consumers and the fishing industry, an eco-labelling scheme should be reliable and credible. To this end, the standard-setting body, the accreditation body and the certification bodies should be independent from one another. Without a proper separation of their respective responsibilities, the independence and integrity of eco-labelling schemes cannot be guaranteed. Accreditation and certification bodies and their respective procedures should also comply with the relevant international ISO standards.

In practice, eligibility for an eco-label has to be assessed against the relevant certification standard by independent certifying bodies. The certification process should be based on a clear assessment procedure and should cover both the fishery

and the post-harvest chain so that eco-labelling can be seen to be fair to all producers and provide credible guarantees for the consumer. A chain of custody would then have to be constructed by a description of the technical means which ensure adequate traceability all the way through to the final consumer.

Where levels of performance are set, either for a fisheries management system, a fish stock or a fishing vessel, they should be capable of being adequately monitored. After the initial assessment, and in order to uphold the credibility of the scheme for consumers and its economic benefits for fishermen, there should be a regular evaluation to verify that the product continues to meet the requirements and to ensure a regular validation of the criteria used.

9. OPEN ACCESS

Eco-labelling schemes should not discriminate in terms of access to the certification process.

With regard to international trade, eco-labelling schemes should in no case lead to a distortion of trade or competition. Such schemes should not be unfairly discriminatory as to which fisheries, which vessels or which products are eligible for certification. Eco-labelling schemes should be open to all products marketed within the Community, whatever their provenance, in order to comply with the Community's WTO obligations under the Technical Barriers to Trade Agreement. They should not discriminate between domestic goods and imports, or between products from different trading partners.

Developing countries contribute substantially to the Community's supplies of fish and fisheries products. The use of eco-labelling schemes could thus be an additional opportunity for them to get added value for their products. Special arrangements and technical and financial assistance would allow them to participate in such schemes. Fisheries Partnership Agreements could be appropriate vehicles to this end.

Consideration must also be given to the potential difficulties that small and medium enterprises (SMEs) could encounter in acceding to eco-labelling schemes. Stock assessment and criteria monitoring are often highly demanding in terms of data quantity and data quality. This implies significant costs, which may go beyond the means of SMEs. The Commission would therefore encourage the use of alternative, less data demanding, methods for stock assessment where SMEs are concerned. The schemes should however provide for equal guarantee of sustainability for the fisheries concerned.

Finally, it could also be the case that eco-labelling schemes already in operation encounter difficulties in complying with minimal requirements set. In such a case a reasonable delay should be foreseen for adaptation if ever needed.

10. CONTROL OF ECO-LABELLING SCHEMES

Eco-labelling schemes should be properly controlled, in order to ensure that they comply with the minimal requirements, that certification is satisfactory and that the information provided to consumers is accurate.

Adequate controls will reinforce the credibility of schemes for consumers and offer additional guarantees to the fishermen that the schemes are applied in an independent and non-discriminatory manner. The monitoring and control of the Common Fisheries Policy will provide elements which may also be of interest for the supervision of the scheme. This will be of particular importance in situations where the participants in a certified fishery fail to comply with applicable conservation and management measures.

11. ACCURATE INFORMATION OF THE CONSUMER

The certification standard used to award an eco-label should be available to the consumer. Product information at the point of sale should reflect the assessment undertaken.

It is essential that consumers know what an eco-labelling scheme stands for. The certification standard together with the criteria used should therefore be made available to consumers so that they can see for themselves what a given eco-labelling scheme represents. In addition, the information on the product at the point of sale should accurately reflect the certification standard. Without this, there would be a risk of misleading consumers about the real significance of eco-labels.