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The Federal Trade Commission's proposed revisions to the Guides for the Use of Environmental Marketing Claims "Green Guides"

Project No. P954501

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In response to the Federal Trade Commission's (FTC) request for public comment on proposed revisions to the Green guides, the MSC would like to make the following submission.

The Marine Stewardship Council (MSC) is an international non-profit organization that administers the most universal and widely respected sustainability and traceability program for the certification of wild-capture fisheries. The MSC's U.S. office and Americas region headquarters is located in Seattle, Washington. In addition to the U.S. office, the MSC operates from eight other offices across the globe.

Fisheries voluntarily enter the program and are scientifically assessed against the MSC standard by internationally accredited, independent, third-party certifiers. The MSC remains neutral throughout a fishery's assessment. MSC's role is to ensure proper application of the methodology, including a meaningful and impactful exchange of information among all stakeholders.

Seafood products that come from a certified fishery are eligible to display the blue MSC ecolabel. The most recent report covering the full year of 2009 records 3,566,260 metric tons of U.S. landings MSC certified. This represents 53% of all U.S. landings and \$3.9 billion in value.

In addition to fishery certification, the MSC program includes "Chain of Custody Certification," a complete traceability program that assures consumers, retailers, restaurants and seafood buyers that any seafood bearing the MSC ecolabel can be fully traced back to a certified sustainable fishery of origin. There are over 7,000 seafood products sold globally with the MSC ecolabel, including 542 products that come from the USA.

In view of the MSC's role as an organization that promotes certification and labelling of sustainably produced seafood, the MSC's comments are specifically on the section of the Green Guides on **"Certification and Seals of Approval"**.

Independent, third-party certification

The Green Guides require that a marketer's use of a logo meets the criteria provided in the FTC's Endorsement Guides. These criteria specify the conditions under which an endorsement can be used by a marketer. The MSC notes however, that the Endorsement Guides do not provide specific clarification of what constitutes a "third-party" endorsement or certification.

While the FTC states that it does not intend to require marketers to obtain third-party certification to substantiate their claims, it is important that where a third-party certification is specified or implied by marketers, that there is clarity over what third-party certification means. We suggest that the Green Guides section on Certification and Seals of Approval includes a definition for the term "independent, third-party certification". The definition can be based on guidance provided by the International Standards Organisation (ISO) and should *inter alia* specify that a third-party certification (or endorsement) is independent of all parties concerned in the production, supply, sale and demand of the product in question, including independent of the standard setting organization itself.

In addition, the FTC can play an important role of identifying credible fishery ecolabeling and certification programs. There are two key guides that lay out criteria. First is the *Guidelines on Ecolabeling of Fish and Fishery Products from Marine Capture Fisheries* (FAO 2005) and second is the International Social and Environmental Accreditation and Labelling Alliance (ISEAL), which currently has two adopted codes (one on setting standards and one on measuring impacts) and a third in development (on verification against the standard by certification bodies and auditors) (see <http://www.isealalliance.org/content/codes-good-practice>).

The MSC suggests that the FTC consider specifically referencing compliance/consistency with these two organizations and their respective guidelines and codes. To summarize, at the highest level, they require that the program must, among other attributes, include the following basic elements:

- Be independent from the fisheries being considered for certification; i.e, be "third-party"
- Provide for the transparent and participatory [ongoing] development of the standard
- Have balanced and transparent governance of the overall program
- Ensure transparent and participatory operation of the program – including a verifiable, impartial and transparent certification process, open to formal and prescribed stakeholder input and review
- Accreditation of certifiers by an independent body. Separation and independence of certifiers, accreditation body and the standard setter
- Be voluntary and open to all interested
- Meet specific ecological guidelines in the standard itself, and have a clear basis in credible science
- Provide for full traceability backed by audits wherever a claim about the sustainability of a product occurs

Traceability

In certain product categories such as the fisheries sector, the association of the labelled product with the environmental attribute that is the subject of the claim can occur much further back in the supply chain, from the point where the label is applied. Products may undergo further stages of processing, transportation and distribution after certification has occurred, and before the consumer facing label is applied. In such cases, the absence of assurance of integrity in the supply chain potentially increases risk of intentional or accidental mislabelling and consumer deception.

There are currently no requirements in the Green Guidance for the application of a seal of approval to incorporate assurance of the supply chain for those product categories in which the supply chains extend beyond the point of the certification of environmental quality.

We suggest that the Green Guides provide specific requirements for products that fall into such categories in order to ensure there is not substitution or co-mingling with products that have not met the requirements of the certification or claim being used. In particular, we suggest that for products for which the environmental claim is not product or process related, and for which there are further steps in the supply chain before the consumer facing label is applied, the Green Guides should specify that independent, third-party certification should include assurance about the chain of custody from the point of association with the environmental attributes of concern to the point that the label is applied.

The Marine Stewardship Council stands ready to provide additional information and answer any questions the FTC may have regarding the application of an ecolabel denoting sustainable seafood. The MSC applauds the work of the FTC to ensure that ecolabels are a mark of genuine sustainability that consumers can trust.