

December 9, 2010

**By Electronic Submission**

(<https://ftcpublic.commentworks.com/ftc/revisedgreenguides>).

Federal Trade Commission,  
Office of the Secretary, Room H-135 (Annex J)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Guides for the Use of Environmental Marketing Claims; Proposed Rule, 75 Fed. Reg. 63552 (October 15, 2010)**

Dear Sir or Madam:

Oceana, an international nonprofit organization dedicated to preserving and protecting healthy oceans, appreciates the opportunity to comment on the Commission's proposed revised rule on guides for the use of environmental marketing claims ("Guides"). Oceana is the largest international organization focused solely on ocean conservation. Founded in 2001 by a group of leading foundations – The Pew Charitable Trusts, Oak Foundation, Marisla Foundation, the Turner Foundation, and the Rockefeller Brothers Fund – Oceana has worked for the last decade on a limited number of strategic, directed campaigns to achieve measurable science-based outcomes that will help return our oceans to their former levels of abundance.

As part of its mission, Oceana regularly provides input to bodies that evaluate and certify the sustainability of particular species of fish or other seafood and the impact of the methods to harvest such species on the remainder of the ocean ecosystem. Oceana has become concerned about the validity and independence of some third party certifications relating to the "sustainability" of certain fisheries (defined as a particular target species in a designated geographic area such as the Southeast swordfish long line fishery) and about the potential that some certifications may overstate the environmental benefits associated with a certified fishery. When fisheries are the subjects of inappropriate or overly broad certifications as "sustainable" and environmentally sensitive consumers rely on that certification in their purchasing decisions, both those consumers and the affected fish populations and ocean ecosystems suffer. Thus, we are writing now to commend the Commission on its efforts to date and to underscore the importance of maintaining the guidance in the proposed Guides on certification and general environmental benefit claims and of continuing to make clear that in some contexts certifications and "sustainability" claims may become general environmental benefit claims contrary to the Commission's enforcement policy and the proposed revised Guides.

## The Role and Challenges of Certification in the Seafood Industry

As the threats to our oceans and its inhabitants multiply, there have been increasing efforts by governments, non-governmental organizations, and others to seek to use and preserve the oceans and their seafood resources in a more environmentally responsible and sustainable way. Agencies and organizations such as the Food and Agriculture Organization (FAO) of the United Nations (through its Fisheries Department 1995 Code of Conduct for Responsible Fisheries), the U.S. National Oceanic and Atmospheric Administration (NOAA)'s FishWatch, the Marine Stewardship Council, the Monterey Bay Aquarium's Seafood Watch program, the Blue Ocean Institute, Greenpeace, and others have all stepped forward to provide guidance on responsible seafood choices and fishing methods.

The Commission properly noted in its comments on the proposed Guides (75 Fed. Reg. at 63552) that “[a]s consumers have become increasingly concerned about the environmental impact of the products and services they use, marketers have expanded their promotion of the environmental attributes of their products and services.” The seafood industry is no exception. Both governments seeking to promote their domestic fishing industry and industry participants have recognized the marketing and financial benefits associated with offering an environmentally responsible seafood choice and have teamed up to seek certification. Along with sincere environmental sensitivity, these marketing and financial benefits are a significant part of the motivation and financial support for some certification programs.

Properly administered, a certification program should focus on at least four key factors:

- (1) preservation of the target species—this is a primary focus of many programs;
- (2) avoiding damage to other species caught up by the fishing method used (“bycatch”);
- (3) avoiding damage to the habitat in which the fishing occurs; and
- (4) the ecosystem impact of removal of the target species from the biological community.

The second and third issues – bycatch and habitat – are of particular concern to Oceana.

Oceana believes that some certification programs give inadequate – if any – consideration to bycatch and habitat issues. This is likely due at least in part to the fact that the certification panels involved do not have adequate expertise in these issues and are not sufficiently independent of the financial or other influence of the parties seeking certification. The potentially misleading impact of these shortcomings in the certification process is sometimes magnified by the use of broad and unqualified certifications and marketing that are tantamount to general environmental benefit claims based on the decisions of what is portrayed as a wholly independent certification body. As a result, consumers may be misled into believing that a wholly independent and qualified certification body has concluded that harvesting of the seafood they purchase has no significantly adverse environmental consequences when in fact that is not the case.

The fact that there is no established definition or general consumer perception of the term “sustainability” in no way undermines or allays the strength of these concerns. As the Commission correctly recognized (75 Fed. Reg. at 63583), “[i]f used in combination with environmental terms and images, consumers may perceive the term “sustainable” as an environmental claim.” This is precisely how the term is depicted in some certification and



marketing contexts. To address this situation directly, we recommend that the Commission make explicit in its final rule (as it has already done more generally in Example 5 to section 260.6 and elsewhere in the proposed revised Guides) that any such use of the term “sustainable” in certifications or marketing should be accompanied by a specific explanation of the manner in which the term is used in the context in which it appears.

### **The Role of the Proposed Guides**

Considered in this context, the proposed Guides can play a critical role by disclosing the Commission’s enforcement policy as to certifications and general environmental benefit claims and by providing practical guidance by which certification bodies and others can comply with that policy and avoid misleading and deceptive environmental benefit claims relating to “sustainability” and other topics. Proposed revised sections 260.3 (“General principles”), 260.4 (“General environmental benefit claims”), and 260.6 (“Certifications and seals of approval”), as well as section 260.2 (“Interpretation and substantiation of environmental marketing claims”) and the Commission’s accompanying explanation of these sections, are particularly important. The explicit requirement that certification bodies and marketers define the manner in which they are using the term “sustainable” (as suggested above) could also provide substantial consumer benefits. Accordingly, Oceana requests that the Commission include all this proposed guidance regarding its enforcement policy and compliance expectations in a final rule so that all interested parties may obtain the benefits of accurate, appropriately qualified, and substantiated certification and marketing of environmentally responsible seafood choices.

Respectfully submitted,

OCEANA

By \_\_\_\_\_  
David Allison, Senior Campaign Director