

SSC Labelling W.G. Meeting Minutes

Attendees: Total of 17, including members and non-member advisors.

Chair and Secretariat: ClientEarth

Location: [Food and Drink Federation](#), 6 Catherine Street, London, WC2B 5JJ.

Date & time: 18th April 2012, 9.45am – 4.00pm.

Summary of conclusions and actions:

1. Issues raised by members before the meeting and/or not on the agenda

Decisions/clarifications:

- ClientEarth does not intend to use the content of the labelling code as a tool to lobby for legislative change.
- ClientEarth does not view the labelling code and/or lack of implementation of the code as a tool for legal action against members or non-members.
- CE are developing their role as a facilitator in SSC meetings - to be discussed in further detail at the members' meeting.
- The issue of separate codes for different sectors is to be discussed at the members' meeting.
- The code will cover 2 basic concepts: terminology linked to 'sustainable' and to 'responsible' (see more details under section 4 outcomes)
- These are to have different meanings:
 - 'Responsible' claims are about the 'journey', about processes and behaviours followed towards reaching a goal.
 - 'Sustainable' claims relate to the 'end point', the goal that is being aimed for (and they relate to stock health, management etc).
- You can call a 'sustainable' product responsible but not vice versa.
- Process: Members apply a risk assessment (see AIP-CE). They obtain independent support/advice on the risk assessment/fishery/farm.
- It is up to members to determine whether their independent advice is suitably robust.
- It will be up to members to provide the justification/evidence if challenged about their claim, and to show that their processes and independent advice are suitably robust.
- This is subject to agreement by all members and checking of competition law.

2. Format of the code:

Decisions:

- The code should be a simple document, outlining principles, with separate, detailed guidance on details where they are necessary.

Actions:

- ClientEarth to re-draft and circulate version 4.

3. Public commentary period:

Decisions:

- There will be a less formal feedback period, rather than a rigid consultation. It will be made clear that the code is not a standard.
- Members will decide who to ask directly to respond in the comment period, for example NGOs, consumer groups and panels, Defra etc.

4. Flesh out agreement on what 'responsible' and 'sustainable' mean, including well managed:

Decisions:

- Members will commit to carrying out a risk assessment. If the outcome of the risk assessment is medium/high risk and an improvement plan is put in place, a claim of 'responsible' can be made. If the outcome is low risk and is consistent with the FAO code of conduct and eco-labelling guidelines definition, and guidance in the code, it can be labelled 'sustainable'.
- If challenged, members will have to justify why they have made a claim of sustainable without independent certification.

Actions:

- ClientEarth to re-draft code with a definition of 'sustainable' from the FAO code of conduct, eco-labelling guidelines and checklist.
- Members to consider how this will work in practice. For example, consider a non-certified fishery that they consider to be sustainable, and consider whether it meets the definition and criteria drafted.

5. Reassessment timescales:

Decisions:

- The code will contain a broad point about reassessment of fisheries. Guidelines will provide that aims, milestones and reviews are required; it will be up to the members to

define suitable review periods which need to match the guidelines.

6. 'Well managed' and other terms:

Decisions:

- Terms like 'well managed' should only be used in conjunction with 'sustainable' or 'responsible', but not in isolation. On their own they do not mean anything, the relevant claim being made is one of sustainability or responsibility. A common sense approach was advocated.
- 'Environmentally friendly' or similarly broad terms should not be used at all.

7. Methods and areas annexes:

Decisions:

- The code will say that where extra information is provided in relation to a product, for example regarding specific fishing methods or fishing areas, this should be in clear and accurate terms, or a web-link should be provided with an explanation.
- The code will be non-prescriptive and contain high-level principles.
- Extra information provided should always be useful to the consumer – this may involve some consumer research into what consumers would find helpful.

8. Communication:

Decisions:

- ClientEarth will host information on the SSC and the labelling code, and members will either have information on the labelling code on their sites, and/or a link to the CE hosted site. This may take the form of an invitation to find out more.
- The SSC website will define the differences between self-declared claims and third party certification.

9. Any other business:

Decisions:

1. With reference to claims of 'sustainable' on aquaculture products, it was decided that another focus group would need to decide whether 'sustainable' can be used for aquaculture products.
2. Implementation and 'policing' should be discussed again when the code has been re-drafted.
3. With reference to considerations of IUU fishing, ClientEarth to send the AIP-CE code to

non-member advisor for comment. The issue can then be re-addressed if necessary.

Actions:

- Organise focus group to discuss aquaculture.
- CE to send AIP-CE code to non-member advisor for comment on IUU fishing.

1: Introduction

1. Housekeeping, apologies
2. Actions since last meeting:
 - Feedback on labelling code V2
 - Draft of version 3 of the code
 - Members initial feedback on V3
 - Communications section of the code drafted
 - Methods and areas annexes drafted
 - Began research to examine what general claims are currently made about sustainability

2: Other concerns not on agenda

3. The point was raised that members would like clarity about ClientEarth's position with regards to the SSC and the labelling code – will it relate just to a UK voluntary code of conduct? Where will it be used next? Is there an intention to lobby Europe for changes in legislation?
4. It was noted that concerns have been raised that the code might be used to lobby for changes in policy. However, this is not the case.
 - a. The letter to EU Fisheries Commissioner Damanaki is now purely an introduction to the SSC, with any opinions about the CMO etc having been removed. This will be addressed in the upcoming members' meeting.
 - b. The code is a voluntary code of conduct, and although one aim of the SSC is to influence law and policy, it is not a tool to lobby for legislative changes.
 - c. ClientEarth will be working on the CMO etc, possibly advocating the usefulness of voluntary codes of conduct as a way forward, but they will not do so 'as the SSC'/in their capacity as SSC secretariat.
 - d. ClientEarth see the SSC in its current form as a pilot and precedent, a proof of concept that competitors can work together on sustainability issues. It is hoped that the *concept* of the SSC can be expanded to other countries.

However, the labelling code being developed by the current members will be a UK [retail] voluntary labelling code.

- e. ClientEarth is an equal member of the SSC, taking a facilitative rather than a prescriptive role; it is in the process of having guidance from a facilitation expert on this.
5. A number of members pointed out that ClientEarth will need to distinguish between their role within the SSC, as facilitators, and their role as a lobbying NGO. It was also suggested that there needs to be a clear plan of where the SSC is going - for example, do members even agree that the SSC will look to expand into Europe as set out in the SSC's vision/terms of reference?
6. Before the meeting, members had expressed concern about the 'legalistic' and 'prescriptive' nature of the current draft version of the labelling code. The working group members present decided to amend the agenda to address these issues. There was agreement that the code should be a dynamic evolving document able to re-address issues where necessary.

Outcome

- ClientEarth does not intend to use the code to lobby for legislative change. CE are working on their facilitative role, to be discussed in further detail at the members' meeting.
 - The role of ClientEarth/SSC and expansion will be further addressed in the upcoming members' meeting (under Terms of Reference / Codes of conduct)
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7. A member questioned why there was a need for a different labelling code for the foodservices sector, rather than one code for all members?
 - It was pointed out that concerns have been raised by some foodservices that they won't be able to "comply" with the code in its current form.
 - While it would be good to have one code, there is need to work out if this is realistic.
 - New members will be signing up to the existing code, whereas current members have had the opportunity to provide input, thus biasing the existing codes to the retail sector.

Outcome

- To be discussed further at the members' meeting.
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8. The group was informed that at the recent CLG meeting there were questions relating to regulation and monitoring of the SSC – how will the SSC keep track of who is making what claims, including non-members?
9. Similarly, the point was made that non-members who make claims will say that they do have full chain of custody traceability and that their claims are valid.

10. It was also pointed out that in its current form, the code is becoming a standard, because it could be used for comparison.

11. Clarification:

- There have been concerns that ClientEarth might take legal action against members who don't implement the code properly. This is not the ClientEarth's intention.
- If non-members make the same claims and these cannot be justified/ are misleading, action can be taken by appropriate authorities (e.g. advertising standards agency / office of fair trading) if complaints are made.
- Within the SSC membership, the worst case scenario of a member not implementing the labelling code, would be the member being asked to leave the coalition (following the process set out in the terms of reference).

Outcome:

ClientEarth does not intend to use the code as a tool to enable legal action to be taken against members or non-members who did not implement/abuse the code. However, if consumers are mis-lead by claims that do not match the code's principles, then the competent authorities are very likely to consider the content of the code as a guiding principle and take it into consideration when making decisions. This will be a matter for the appropriate authorities following complaints.

12. A number of concerns from a member about the current version of the code were put to the group, as it was felt they were important points that could change the rest of the agenda.

13. Member's concerns:

- 2 tiers of claims are not appropriate.
- In practice, 'sustainable'/'responsible' are used interchangeably.
- Many consumers do not see a difference between these claims and it will be difficult to educate them.
- A situation could arise where the fishery is sustainable, but the stock is not, due to poor management (e.g MSC suspension of mackerel fishery).

14. Member's alternative suggestions:

- Claims should not be about the sustainability of the stock AND management

- They should be more about what the company can do/has done e.g. not “sustainably managed” but sustainably sourced/fished.
- There should be only 1 tier, but the terms sustainable/responsible would be interchangeable.
- Criteria would include gear/area/traceability/avoiding IUU/advocacy for sustainability- including certification.
- Criteria would be proven through challenges raised with an arbitration body.

15. The following questions were considered in more detail:

- a. Do members feel there should only be 1 tier for claims?
- b. Should ‘responsible’/‘sustainable’ be used interchangeably?
- c. Should ‘responsible’/‘sustainable’ refer only to a company’s due diligence and not be about stock health?

16. Reference was made to Seafish guidance, which makes the distinction clear: ‘sustainable’ is about the stock, ‘responsible’ is about behaviour. However, in practice terms are used interchangeably, even by FAO. A member suggested that one approach could be that “all our fish is responsibly sourced” and then – for certified products, the simple use of the certified logo and any claim associated with that logo (as the certification will have been based on specified sustainability criteria).

17. An alternative suggestion was that members should be focusing on behaviour and intent – concern was expressed at the approach taken in the current code, which appeared to go beyond this. It was proposed to draw on existing definitions rather than redefining terms. It was agreed to be very important that the SSC includes members of any size, and that even MSC methodologies are constantly being revised, which leads to a need for pragmatism and to understand the purpose of the labelling code, which is to give information that people can understand.

18. It was noted that there is already separate work being done on benchmarking standards, and the SSC is not trying to replicate a standard. Perhaps some issues should be postponed until the results of these studies are known. It was also noted that currently, the draft version of the code would make it very difficult for a claim of sustainability to be made on farmed products.

19. There was general agreement that trying to build too much sophistication into the draft code has made it too dense and complex for consumers. There should be a simple message to the consumer, with complexity “behind the scenes” such as in a separate guidance document for members.

20. The point was made that for the majority of consumers there is no difference between ‘responsible’/‘sustainable’, suggesting that this is due to a lack of clarity, and that this is an issue that needs addressing. The code can contribute to that. However, participants did not necessarily feel that ‘sustainable’ should not be used.

21. A number of participants suggested that 'responsibility' covers 'sustainability', it is one of its criteria. However, it was pointed out that from a legal viewpoint it might not be wise to make a claim regarding 'responsibility', implying or claiming that this would include 'sustainable'.
22. There was general agreement that 'responsible' is a 'direction of travel', whereas 'sustainable' is saying that you have already achieved "it" – but also asked how is "it" measured? Some members also felt that the parked non-accreditation route to "sustainable" should be re-addressed.
23. It was agreed that the claims outlined in the code would be 'sustainable' and 'responsible' but with the possibility of adding other claims which would not be possible in isolation or combining both claims (e.g. 'sustainably fished, responsibly sourced') leaving flexibility for the member to choose what other words they use in conjunction with these two terms (though not in isolation).
24. It was suggested that the SSC should use a basic definition for 'sustainable', including that the fishery will be there in the future. It would then be necessary for members to satisfy themselves that the fishery demonstrably fits that definition, using *independent* advice and a risk assessment, along the lines of the AIP-CE code. This would form a non-accredited route to "sustainable", but it was noted it should be robust. There was general agreement with this.
25. Discussions then turned to what evidence members could produce to satisfy a challenge to their claims of sustainable.
26. Some members felt that it should be up to members to justify how they have met the code's definition of sustainable. The code wouldn't therefore determine who can give independent advice for risk assessments, members can decide and justify this upon challenge.
27. Members agreed that if your justification for saying 'certified sustainable' is that the product is independently certified, then the member should put this eco-label on the relevant pack. If it is not possible to a member to put the eco-label on a product, then that member should not make this claim, unless the member can justify sustainability in another way, which may then be challenged.
28. The code will be much simpler, with more detailed guidance, which will outline what routes members *might* take to justify a claim of sustainable.

Outcomes:

- Will retain 2 terms: 'sustainable' and 'responsible'
- These have different meanings:
 - 'Responsible' claims are about the 'journey', about processes and behaviours followed towards reaching a goal.
 - 'Sustainable' claims relate to the 'end point', the goal that is being aimed for (and they relate to stock health, management etc).

- It should be possible to call a 'sustainable' product 'responsible' but not vice versa.
 - Process: Members apply a risk assessment (see AIP-CE). They obtain independent support/advice on the risk assessment/fishery/farm.
 - It is up to members to determine whether their independent advice is suitably robust.
 - It will be up to members to provide the justification/evidence if challenged about their claim.
 - If members justification for saying 'certified sustainable' is that the product is independently certified, then the member should put the relevant eco-label on pack.
 - Subject to agreement by all members and subject to checking competition law.
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29. In light of these agreements, the subsequent agenda was altered to cover the following:

- Format of the code
 - Public commentary period
 - Flesh out agreement on what 'sustainable' and 'responsible' mean, including well managed
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3: Format of the code

30. It was reiterated that the code in its current form has the tone and format of legislation, which contradicts the purpose and nature of a voluntary code
31. It was felt that the code itself should be simplified, with more detailed, separate guidelines, only as and where needed. These might include examples of how to demonstrate 'sustainable' and 'responsible', rather than prescriptive criteria.
32. It was agreed that the scope and objectives should be one paragraph with a simpler outline, including a description that members have collaborated to be progressive in developing solutions to today's problems.
33. A member suggested using the framework of the AIP-CE code as it is clear and well laid out. The Defra green claims code should also be looked at.
34. Things to avoid in the code:
- "required" rather than 'committed';
 - hierarchies of points (complex structure);
 - references to points within other points ;
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- Ideally, the code should be a maximum of about three pages – the code itself should be a high level statement, which is easy to read

Outcomes:

- The code should be a simple document, outlining principles, with separate, detailed guidance.
- ClientEarth to re-draft, taking guidance from the AIP-CE code, and Defra green claims code on format/tone and circulate version 4.

4: Public commentary period

35. There was a debate about the need and potential risks of a public comment period for the labelling code.
36. Arguments for: It is crucial for transparency. It does not have to be a formal consultation, but can take a less rigid format. It will be better to get feedback before the code is launched, as it might create bad feeling if members do not stand up to public scrutiny from organisations (and others) and these organisations have not been able to comment and (invitations to working groups are restricted to certain organisations for capacity reasons).
37. Risks: If the SSC/members then ignore comments, this will still leave the members open to criticism, and that consumer feedback and market research is more important.
38. It was agreed that it would be worth the potential risks, and there should be a public comment period.

Outcomes:

- There is to be a more informal feedback period, rather than a rigid consultation. It will be made clear that the code is not a standard.
- The members will need to decide who to target, for example NGOs, consumer groups and panels, Defra etc.

5: Flesh out agreement on what sustainable and responsible mean, including well managed

39. Having previously agreed that members will commit to carrying out risk assessments with independent advice/support on that risk assessment/fishery/farm, it is necessary to decide what outcomes from a risk assessment equate to a claim of 'sustainable, and what outcomes equate to a claim of responsible.
40. It was suggested that 'responsible' behaviour is applying a risk assessment and putting plans in place if the outcome is medium/high risk or similar.

41. It was generally agreed that the current definition of 'responsible' in version 3 of the code has the right principles, but the details needs removing (e.g. deadline dates for FIP/AIPs etc).
42. There was some debate about a definition of 'sustainable'. The Bruntland Report was referred to and quoted ('development which meets the needs of the present without compromising the ability of future generations to meet their own needs') and the first two principles of the FAO code of conduct for responsible fisheries. A member also highlighted the FAO checklist for fisheries resource management (J.F Caddy. Circular 917, Firm c917).
43. It was suggested that the requirement in the code could be that the member defines the precise meaning of 'sustainable' themselves (subject to a general description of the 'sustainable' in the code), and it is again up to them to justify this definition and how it has been met if challenged. There was general agreement that the code should give a high level definition. using the wording of the FAO code of conduct and similar for this definition, which the members' products then have to meet – for which members must be able to provide evidence
44. The code should therefore include a definition (including the FAO code of conduct's) with guidance on how to prove this, e.g. third party certification, or sufficient, robust evidence gathered. The difference between 'responsible' and 'sustainable' lies in the outcome of the relevant process – with the same process being undertaken, but a certain outcome (e.g. sustainable fish stocks or similar – to be agreed) needing to be reached to allow 'sustainable' claims.
45. It was pointed out that in version 3 of the code, independent certification is the only route to 'sustainable' claims. It was felt by some members that a second, non-certified option, should be re-instated. Some members felt this option should be included, but agreed that it would be difficult to define. It was again pointed out that the code in its current form disadvantages those who cannot afford/do not want certification. One member commented that there must be equivalence between independent certification and a second (retailer evidence) route.

Outcomes:

- It was generally agreed that the current definition of responsible in version 3 of the code has the right principles, but the details needs removing (e.g. deadline dates for FIP/AIPs etc).
- Members will commit to carrying out a risk assessment. If the outcome is medium/high risk and an improvement plan is put in place, the claim 'responsible' can be made. If the outcome is low risk and is consistent with the code's definition of sustainable, (based on the FAO code of conduct and eco-labelling guidelines definition), and guidance in the code, it can be labelled 'sustainable'.
- If challenged, members will have to justify why they have made a claim of 'sustainable', including if it is without independent certification.

ClientEarth to re-draft with a definition of 'sustainable' from the FAO code of conduct, eco-labelling guidelines and checklist (FAO checklist for fisheries resource management

(J.F Caddy. Circular 917, Firm c917), with guidance on how to prove this, e.g. third party certification, or sufficient, robust evidence gathered.

- Members should consider how this will work in practice. For example, consider a non-certified fishery that they consider to be sustainable, and consider whether it meets the definition and criteria drafted.

6: Re-assessment timescales

46. A member pointed out that the newly drafted version of the code will be much less onerous for members, so re-assessment of products in relation to which claims are made taking place once a year could be acceptable.
47. It was also suggested that this could be a function of assessment results, e.g. higher risk outcomes need more frequent reassessment.

Outcomes:

- The code will contain a broad point about reassessment but stipulate that frequency should be a function of risk assessment results.
- Guidelines will set aims, milestones and reviews, according to which each member will define relevant review periods.

7: 'Well managed' and other terms

48. It was felt that 'well managed' could be used in conjunction with 'sustainable' and 'responsible' but not in isolation.
49. However it was agreed that other self-declared environmental claims will not be used, with these two rules/statements being sufficient to prevent the use of other terms, which then do not need to be listed within the code.
50. It was also suggested that ClientEarth could look at other codes of conduct to see if any of them suggest the avoidance of specific claims (e.g. Defra green claims code suggesting the avoidance of the phrase 'environmentally friendly').

Outcomes:

- Terms such as 'well managed', should only be used in conjunction with 'sustainable' or 'responsible', but not in isolation. On their own they do not mean anything, the relevant claim being made is one of sustainability or responsibility.
- A common sense approach was advocated.
- 'Environmentally friendly' or similarly broad terms should not be used at all.

8: Methods and areas annexes

51. Members felt that the annexes in the current code were too prescriptive.
52. It was decided that attempts to identify major terms to avoid would also be too prescriptive.
53. It was agreed that where extra information (i.e. beyond legislative requirements) is provided, there should be a link to an information source that explains terms used.
54. Terms should be as clear as possible and represent an accurate description of the gear/area.
55. Again, the code should only include high-level principles.
56. It was suggested that this should also apply to areas information, and that names rather than numbers should be used.
57. It was pointed out that some retailers put on a long list of possible sub-areas where the fish came from, rather than the wider area, which is technically accurate, but not really useful.

Outcomes:

- The code will say that where extra information is provided, this should be in clear and accurate terms, or a link should be provided with an explanation.
- The code will be non-prescriptive and contain high-level principles.
- Extra information, if provided, should be useful to the consumer – this may involve the SSC/ClientEarth contracting consumer research into what consumers would find helpful.

9: Communications section

58. A communications section has been drafted for the code, although some of this is now void as a result of the meeting's discussions.
59. Key points are that: consumers should know who is a member of the SSC, that the code is/has been adopted and provide links to extra information, such as the SSC website. While not all consumers will want information about the SSC, and specifically about what claims mean, it should be made available if they do.
60. The code will also outline how this information can be provided, e.g. in-store, brochures, website.
61. It was noted that some small companies do not have a website so this may not be practical for all.
62. Some members said that they would want to put up their own descriptions on their websites regarding what claims mean. As different brands have different ways of putting their messages across, this cannot be prescribed and should be flexible.

Outcomes:

- ClientEarth will host information and members will either have information on their sites, and/or a link to the CE hosted SSC site. This may take the form of an invitation to “find out more”.
- The SSC website will define the differences between self-declared claims and third party certification.

10: Any other business

63. A member raised the point that they still did not feel that aquaculture products could be labelled as ‘sustainable’ unless they are organically farmed. It was suggested that sustainable aquaculture might be seen as different to sustainable fisheries. For example, animal welfare is more of an issue in farming. Other members agreed that further work is needed to define sustainable aquaculture.
64. It was felt that a similar approach to wild caught should be used, i.e. a broad definition of ‘sustainable’ as discussed in the meeting, with further guidance on what evidence would be needed.
65. The point was made that consumers may be confused if ‘sustainable’ is not used on aquaculture products, as this will give the impression that aquaculture is always worse than wild caught. However, the ASC only makes a claim of ‘responsible,’ so if this is the current gold standard, how can businesses make a claim of sustainable on farmed fish?
66. It was discussed whether to define ‘sustainable’ aquaculture in terms of a vision, while recognizing that currently there are no certifications that make a claim of ‘sustainable’, or postpone a decision on this issue and only have responsible aquaculture in the code for now.

Outcomes:

4. It was decided that the members would postpone a decision on this issue and organise another focus group to decide whether ‘sustainable’ can be used for aquaculture products.

58. Implementation and ‘policing’ should be covered again when the code has been re-drafted.

59. The question was asked how IUU fishing has been considered in the drafting of the code. If a fishery is sustainable, but there is an element of IUU, can this still be called responsible?

60. It was suggested that this is covered in the FAO code of conduct, which the labelling code uses as a benchmark. However, by its nature, IUU fishing is illegal, so members must in any case take steps not to source IUU fish. If there is a large IUU problem then the fishery would not be classed as 'sustainable', but may be 'responsible' under certain conditions (if and engaged in an improvement plan). IUU fishing has not been explicitly mentioned in the code as it is covered as part of the risk assessment process and full traceability, as well as members compliance with existing legal requirements.
61. A member pointed out that IUU fishing is mentioned in the AIP-CE code.

Outcomes:

- ClientEarth to send the AIP-CE code to relevant individual concerned about IUU, so he can comment. The issue can then be re-addressed if necessary.

11: Next meetings for the diary:

62. Sourcing policies working group: Tuesday 01.05.12

FDF offices
6 Catherine St
Westminster, WC2B5JJ

63. Members meeting: Wednesday 02.05.12:

The National Council for Voluntary Organisations
Regent's Wharf
8 All Saints Street
London
N1 9RL

64. Next labelling WG date TBC