

**NOTE FROM THE FAO SUB-COMMITTEE ON FISH
TRADE SECRETARIAT**

ON

**The draft FAO Evaluation Framework to Assess the
Conformity of Public and Private Ecolabelling Schemes with
the FAO Guidelines for the Ecolabelling of Fish and Fishery
Products from Marine Capture Fisheries**

The draft FAO Evaluation Framework to Assess the Conformity of Public and Private Ecolabelling Schemes with the FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries (the evaluation framework) was discussed during the 13th session of the FAO Sub-Committee on Fish Trade in February 2012. The draft was based on the recommendations made by an FAO Expert Consultation convened in 2010 to draft an evaluation framework¹. The result of the discussions by the Sub-Committee was that “Some Members recommended the adoption of the draft evaluation framework proposed by the Expert Consultation, noting that the evaluation framework could be subject to further revision once more experience had been gained in its implementation, while other Members felt that the draft evaluation framework was not ready for adoption and would benefit from a pilot program to test its applicability.”

The purpose of this note is to clarify some of the concerns that were raised by some Members during the discussions and to hopefully inform the debate as Members discuss how to progress this important area of work during the 30th session of The FAO Committee on Fisheries (COFI) scheduled for 6-12 July 2012.

The concerns that were raised during the 13th session of the FAO Sub-Committee on Fish Trade are written in *italic* and are followed by the Secretariat’s clarification:

Issue 1: The Evaluation Framework does not assess whether the principles in the Guidelines are reflected in the ecolabelling schemes being assessed

Clarification by the Secretariat: The Principles section in the Guidelines describes a number of higher order principles that are essential for ecolabelling schemes. These higher order principles are achieved through the implementation of the requirements contained in the Guidelines’ sections dealing with Minimum Substantive Requirements and the Procedural and Institutional Aspects. In other words, compliance with the requirements contained in the sections dealing with Minimum Substantive Requirements and the Procedural and Institutional Aspects will insure that the ecolabelling schemes are consistent with the principles contained in paragraph 2 of the Guidelines. If the result of the evaluation process is that the ecolabelling scheme is in conformity with all the requirements set out in the sections dealing with Minimum Substantive Requirements and the Procedural and Institutional Aspects, it should be assumed that the scheme is also in conformity with the principles contained in the Guidelines.

Issue 2: Difficult to determine if ecolabelling schemes are barriers to trade

Clarification by the Secretariat: As stated above, the Principles section in the Guidelines describes a number of higher order principles that are essential for ecolabelling schemes. This includes principle 2.5 that ecolabelling schemes “be non-discriminatory, do not create unnecessary barriers to trade and allow for fair trade and competition”. Conformity with all the principles in the Guidelines, including the principle that ecolabelling schemes “do not create unnecessary barriers to trade”, is achieved if the ecolabelling schemes comply with all the requirements contained in the sections on Minimum Substantive Requirements and the Procedural and Institutional Aspects.

Issue 3: Concern with the number of indicators

Clarification by the Secretariat: The Evaluation Framework does contain a large number of indicators (149 indicators that apply to both the marine and inland fisheries guidelines and six that apply only to the inland fisheries guidelines). The indicators developed by the Expert Consultation attempt to capture the requirements

¹ The report from the Expert Consultation is available at: <http://www.fao.org/docrep/013/i2021e/i2021e00.htm>

contained in the Guidelines in their entirety. No attempt was made to prioritize the requirements or to consolidate the requirements. Prioritizing the indicators would imply that some requirements are more important than others. When the Guidelines were adopted by COFI in 2009, they were adopted in their entirety. Consequently the Evaluation Framework contains indicators to assess conformity with all the requirements in the Guidelines. This is especially relevant in terms of the point raised in Issue 1 “*The Evaluation Framework does not assess whether the principles themselves are contained in ecolabelling schemes*”. Compliance with all the requirements contained in the sections on Minimum Substantive Requirements and the Procedural and Institutional Aspects is necessary to ensure that the Principles contained in the Guidelines are respected.

Issue 4: It will be difficult for developing countries to implement the Evaluation Framework.

Clarification by the Secretariat: The main purpose of the Evaluation Framework is to assess the conformity of ecolabelling schemes with the FAO Guidelines. This can be achieved through a variety of means and for a variety of purposes. There is, however, not a requirement for developing countries, or any other FAO member, to implement the Evaluation Framework. It will be, in particular, the responsibility of the owners of ecolabelling schemes to implement the evaluation framework to substantiate their claims of conformity with the FAO ecolabelling guidelines.

The following sections illustrate situations where the Evaluation Framework can be used:

- Ecolabelling scheme X has asserted that it is in conformity with the FAO Guidelines but there has been no internationally recognized mechanism to demonstrate this assertion. If the Evaluation Framework is adopted, ecolabelling scheme X will be able to assess its conformity with the FAO Guidelines through the application of the Evaluation Framework. The most robust manner to undertake the assessment will be through an independent third-party assessment.
- Fishery A would like to certify its fisheries as being sustainably managed to satisfy consumer demand. Several ecolabelling schemes are available but Fishery A’s primary requirement is that its fisheries are certified by an ecolabelling scheme that is in conformity with the FAO Guidelines. Before selecting an ecolabelling scheme to assess its fisheries, Fishery A can require that existing ecolabelling schemes undergo a third party assessment to determine the ecolabelling scheme’s conformity with the FAO Guidelines. Fishery A can then select an ecolabelling scheme that is consistent with the FAO Guidelines.
- Country Y has developed a national ecolabelling scheme but wants to ensure that its scheme is in conformity with the FAO Guidelines. Country Y has the option of undergoing a self-assessment using the Evaluation Framework or, if it is looking for a more robust assessment, to undergo an independent third-party assessment of its national ecolabelling scheme using the Evaluation Framework.

Issue 5: Single evaluation framework (marine and inland) could create confusion

Clarification by the Secretariat: Because of the many commonalities between the marine and inland Guidelines, the Expert Consultation suggested it was possible to develop one Evaluation Framework for both sets of guidelines (The draft inland capture fisheries Guidelines are mainly differentiated from the marine capture guidelines on the issues of enhancement and the use of introduced and/or translocated species). The sections dealing specifically with inland fisheries are highlighted in the drafted Evaluation Framework. If this is confusing it would be relatively easy to separate the Evaluation Framework into two: one for inland fisheries and the second for capture fisheries.

Issue 6: Need a pilot program to assess the Evaluation Framework

Clarification by the Secretariat: A pilot program to assess the Evaluation Framework would be useful. This would, however, imply a *de facto* evaluation of an ecolabelling scheme. This could be an expensive and lengthy undertaking. Furthermore it may be inconsistent with FAO's mandateⁱ.

ⁱAt the 28th Session of COFI in March 2009, the FAO Legal Counsel advised the Committee that FAO, as an intergovernmental organization of the United Nations system, had been cautious about assessing private entities' compliance with guidelines. As a matter of principle, FAO cannot carry out activities which could involve risks for the Organization and its Members. More specifically, if FAO were to carry out any assessment of whether private schemes were consistent with the guidelines, the Organization would be exposed to challenges by aggrieved parties. Insofar as FAO enjoys immunity from every form of national jurisdiction, there might be a need to waive that immunity which is a serious step with important implications. In addition, any potential liabilities, given the financing mechanisms of the Organization, would have to be shouldered by all FAO Members. FAO should therefore not exercise any form of control or supervision over specific certification systems which would inherently expose it to potential liabilities. This position has been restated on a number of occasions, including in connection with certification by FAO of whether Members complied with Codex standards.